

## ESET Partner Agreement

All partners are required to agree to the following standard ESET Partner Agreement Terms and Conditions before proceeding. Please read and then indicate your agreement to proceed at the bottom of the page. By proceeding and continuing to place orders, and otherwise making use of the PartnerZone or representing/acting as a reseller partner for ESET and its products, you agree to the terms and conditions laid out for ESET Partners.

### ESET Standard Partner Agreement Terms and Conditions

THIS AGREEMENT (the "Agreement") is hereby entered into between:

**4D Innovations Group (Pty) Limited,**  
("4D")

trading as ESET Southern Africa, the exclusive distributor for ESET products in Southern Africa as appointed by ESET LLC, USA, ("the Owner")

and

**"ESET Partner",**  
("VAR")

on the terms and conditions set out hereunder.

#### 1. General Undertaking.

4D and VAR are entering into this Agreement to establish a reseller relationship whereby VAR will promote the licensing of the Owner's software products identified in Schedule A (the "Software Product") to prospective end-users ("End-Users") To the extent, if any, set forth below, VAR shall also provide or arrange certain technical support services with respect to the Software Product. For these purposes, the Software Product subject to this Agreement means the existing version and any future versions, releases or derivatives of the Software Product.

#### 2. Term of Agreement.

The term of this Agreement ("Term") shall commence upon the date last below written and shall continue in full force and effect unless terminated as provided in Section 17 ("Termination").

#### 3. Appointment of Marketing Agent.

(a) Generally, 4D hereby designates and appoints the VAR and the VAR hereby accepts such designation and appointment, during the Term hereof, as marketing agent to promote licenses by Owner of the Software Product to prospective End-Users in the "Target Market" identified in Section 3(c)("Target Market") according to this Agreement.

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4D Innovations Group (Pty) Ltd | Reg No. 2003/018050/07

Directors: E. van Vlaanderen, J. Stanford,

C.J. van Vlaanderen, S.P Flynn, A Ngcaba, D.S Ferreira, A.E van Vlaanderen (Alternate Director)

Tel: +27 21 659 2000 | Fax: +27 21 689 1151 | E-mail: [info@eset.co.za](mailto:info@eset.co.za) | URL: [www.eset.co.za](http://www.eset.co.za)

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Postal: PO Box 596, Rondebosch, 7701, Cape Town, South Africa

(b) License to VAR for Internal Use. 4D hereby grants the VAR for the duration of the Term hereof and the VAR hereby accepts a limited, nonexclusive license in object code form. VAR may make and use as many copies of the Software Product and associated documentation as it deems necessary but only in support of its (and its affiliates') company-wide internal business operations (including demonstration, testing, promotion and evaluation) and not for re-sale. This Subsection (b) relates solely to VAR's internal use of the Software Product, it does not include use of the Software Product in support of services which are sold or otherwise provided to third party clients and it does not enlarge or diminish any right VAR may have under another provision hereof to market or distribute the Software Product to End-Users.

(c) Target Market. For purposes of this Agreement, the "Target Market" means all prospective End-Users of the Software Product located in or having procurement authority over prospective End-Users located in the following geographic region: Southern, Western and Central Africa.

(d) Marketing Rights. The marketing rights will be non-exclusive.

(e) Best Effort. During the Term hereof, and subject to the provisions of this Agreement, the VAR shall use its best efforts to promote and market the Software Product in the Target Market. For these purposes "best efforts" means, at a minimum, that the VAR shall:

(i) Sales Forecast. Prepare annual sales forecasts.

(ii) Marketing Activities. Actively undertake marketing efforts, including: (a) ensuring that its marketing representatives are conversant in the features and operation of the Software Product; (b) demonstrating the Software Product to prospective End-Users; (c) disseminating 4D-approved marketing literature, news releases and product descriptions, and (d) including descriptions of the Software Product in any standard catalogue of software published or distributed by the VAR. 4D will provide available graphic files for suitable marketing literature which will be in a form which may be altered to suit local market standards and norms, however all rights to NOD32, ESET, and all associated images and trademarks will remain as the exclusive property of the Owner and all marketing literature prepared by 4D will be owned and approved by the 4D.

(f) Demonstration Version. 4D shall make available to the VAR a suitable number of copies of a limited function demonstration version of the Software Product that VAR may make available to prospective End-Users without charge for evaluation and marketing purposes. The demonstration version shall include such functions and documentation as the 4D and VAR mutually agree.

#### **4. Modifications to Software Product.**

VAR shall have no right to modify the Software Product.

#### **5. Licenses of Software Product to End-Users.**

Copies of the Software Product shall be licensed by Owner directly to End-Users under Owner's standard End-User License Agreement then in effect. VAR shall not be a party to any such agreement. Owner shall have exclusive authority to modify the provisions of any End-User License Agreement and VAR shall not assert or attempt to assert any authority (either in its own name or on behalf of Owner or 4D) to (a) modify or execute any End-User License Agreement (whether in original or modified form); (b) make statements,

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representations or warranties concerning the Software Product or any associated services that exceed or are inconsistent with 4D-approved marketing literature or the provisions of the End-User License Agreement.

#### **6. Receipt of Proceeds, Payment of Compensation.**

(a) Prices, Payments from End-Users. 4D shall establish and maintain in its sole discretion retail prices for the Software Product and associated services to End-Users, it being understood that VAR is acting in the capacity of a reseller.

(b) Compensation of Parties. When VAR purchases from 4D licenses to use the software, VAR will pay 4D the amount (retail price) as set by 4D reduced by the amount of margin or discount as specified in SCHEDULE A. The payment will be made against 4D's ESET account statement issued on a monthly basis.

(c) VAR will initiate the transfer to 4D's account pursuant to this section immediately on receipt by the VAR of 4D's statement of account. Additionally, the VAR can access and view VAR's account online at any point via the PartnerZone portal. All VAR payments shall be transferred to 4D's account pursuant to the following specification:

**Account Name:** 4D Innovations Group (Pty) Ltd

**Account Number:** 62376766998

**Branch Code:** 260 505

**Bank:** RMB Private Bank

**Branch Name:** Willowbridge

(d) "Closed" Defined.

(i) Generally. An End-User License Agreement shall be considered "closed" by 4D when an on-line order is received and confirmed by 4D.

(ii) Competing Claims. If the VAR and any other person make competing claims to a sale, the VAR and the other person shall resolve their claims through negotiation. Pending such outcome, 4D may in good faith withhold payment of the disputed amount. In no event shall 4D be liable for paying duplicate or multiple sales commissions with respect to any End-User License Agreement or associated services.

(e) Certain Out-of-Pocket Costs. Except as otherwise set forth in this Agreement, VAR shall bear all out-of-pocket costs for travel, photocopying, overnight courier, long-distance telephone and the like incurred by it in performing its responsibilities under this Agreement, including any work described in Section 9 ("Software Support Services") or any work or expenses incurred in the execution of the VARs marketing expenses such as advertising, or trade show activities.

(f) Certain Taxes and Fees. The VAR shall collect and remit to appropriate Revenue authorities any Value added tax applicable to End-User License Agreements. The VAR is obliged to pay full invoiced amount not decreased by any deductions such as taxes, fees and other charges.

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(g) Late Payments. Any late payment by VAR to 4D which is not excused under a specific provision of this Agreement shall in addition to other relief be subject to any costs of collection (including reasonable attorneys' fees) and shall bear interest at the rate of one and one-half (1.5) percent per month, or at the maximum permissible rate stipulated by the Usury Act or any other applicable enactment from time to time, until paid. 4D reserves the right to request Owner to suspend or cancel the EULA and in effect, disable the Software Product in the event of late payment or non-payment. VAR is obliged to furnish 4D with the end-users details in the event of non-payment by VAR. 4D further reserves the right to contact the end-user directly to recover any amounts due by the VAR to 4D.

(h) International payment. VAR shall be liable for any and all bank charges, commissions and exchange that may be incurred as part of any transaction and payment originating outside the Republic of South Africa. Payment in full is required.

#### **7. Production of Software Product.**

It is recorded that the Owner shall be responsible for production of the Software Product and related documentation in digital format only. The cost of production of CD's, packaging, printed documentation shall be borne by VAR. It is further recorded that the Owner owns all intellectual property rights to all intellectual property produced by Owner.

#### **8. Delivery of Software Product.**

It is recorded that the Owner shall be responsible for making the Software Product available and accessible for electronic delivery to the VAR and End-User.

4D authorises VAR to:

- Print paper licenses for End-User
- Reproduce Software Product on CD or other digital storage for End-Users.

#### **9. Software Support Services.**

(a) Installation. The Software Product shall be made available to End-Users in electronic format. Any difficulties encountered in the installation process shall be handled under Subsection (c) ("Help Desk, Trouble Reports").

(b) Training. 4D shall not be responsible for training End-User in the features, use and operation of the Software Product.

(c) Help Desk, Trouble Reports. The VAR shall be responsible for providing a "help desk" to receive and respond to End-User questions or complaints about the Software Product whether remotely or on-site as required. This service will be available at the absolute minimum during normal working hours on standard work days by trained technical support personnel. VAR will be responsible for technical training of his technical staff. 4D will provide Level 2 Support via its support centre at its office in South Africa, by e-mail or telephone. Where necessary, 4D can provide remote training or training at the 4D offices located at Belmont Square, Belmont Road, Rondebosch, Cape Town. In-house training can be provided to VAR, and VAR shall cover the

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costs of travel, accommodation, and materials in this regard. 4D will provide Level 2 Support via its support centre at its office in South Africa, by e-mail or telephone. For details on the Support Process, please view Section 27.

#### **10. Certain Proprietary Rights.**

(a) Software Product. VAR acknowledges and agrees that, except as expressly set forth herein, nothing in this Agreement shall be deemed to grant, whether expressly, by implication, estoppels, forfeiture or otherwise, any ownership, license, entitlement or other proprietary rights under any foreign or domestic law governing inventions, patents, trademarks, service marks, trade secrets, copyrights or franchise, with respect to the Software Product or any accompanying documentation and with respect to any modifications or derivative works thereof.

(b) Use of Owner's Trademarks. 4D hereby authorises VAR, during the Term hereof and on a nontransferable, nonexclusive basis strictly in support of the marketing and licensing efforts contemplated herein, to reproduce Owner's logo, trademark, trade name or other identifying mark ("Mark") for the Software Product; provided that in each instance use of the Mark shall be in a form specifically approved by 4D in writing. The foregoing right is conditioned on VAR's use of the Mark being truthful, not misleading, lawful and commercially reasonable and on VAR taking all necessary steps to identify the Mark as the property of Owner and protect Owner's exclusive ownership of the Mark. Any URL's established containing NOD32 or ESET will be transferred to the Owner upon request.

(c) Certain Marketing Information. Unless otherwise agreed by 4D in writing, all original sales and marketing research, records and information of any kind created or gathered hereunder by 4D (or its employees or agents) shall be owned exclusively by 4D. VAR hereby irrevocably assigns all ownership or other rights it might have in such materials to 4D. Upon termination, VAR is not authorised to continue to possess or use for its own business purposes any such marketing information generated by it pursuant to this Agreement.

#### **11. Confidential Information.**

(a) Acknowledgment of Confidentiality. VAR hereby acknowledges that it has or may be exposed to confidential and proprietary information of 4D and the Owner including, without limitation, the Software Product or other technical information (including functional and technical specifications, designs, drawings, source code, analysis, research, processes, computer programs, algorithms, methods, ideas, "know how," and the like), business information (sales and marketing research, materials, plans, accounting and financial information, personnel records and the like, including information described in Section 10(c)("Certain Marketing Information")), and other information designated as confidential expressly or by the circumstances in which it is provided ("Confidential Information"). Confidential Information does not include (i) information already known or independently developed by VAR outside the scope of this Agreement, (ii) information in the public domain through no wrongful act of VAR, or (iii) information received by VAR outside the scope of this Agreement from a third party who was or is under no obligation to maintain the confidentiality of such information. Finally the VAR will not: (i) distribute, transfer, loan, rent, or provide access to the Licensed Software, except as provided herein, (ii) remove or add any Proprietary Rights notice associated with the

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Licensed Software without the express written permission of 4D, and (iii) disassemble or decompile the Licensed Software for any purpose.

(b) Covenant Not to Disclose. VAR hereby agrees that during the Term hereof and at all times thereafter, and except as specifically permitted herein or in a separate writing signed by 4D, it shall not use, commercialise or disclose 4D's Confidential Information to any person or entity, except to its own employees having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as 4D may approve in writing; provided, that all such recipients shall have first executed a confidentiality agreement in a form acceptable to 4D. VAR shall not alter or remove from any Software Product or accompanying documentation any proprietary, copyright, trademark or trade secret legend. VAR shall use the same degree of care in safeguarding 4D's Confidential Information as it uses in safeguarding its own confidential information. Unless VAR is specifically authorised herein or under a writing signed by 4D to have access to source materials for the Software Product, VAR shall not reverse engineer or attempt to discover the underlying design, logic or trade secrets embodied in the Software Product. Upon termination, or at any time upon request by 4D, and except as otherwise specifically stated herein, VAR shall return all Confidential Information of 4D in its possession or control.

## 12. International Transfer of Personal Information

ESET South Africa transfers certain personal details of its clients and partners to countries outside of South Africa. This is done to ensure that the organisation can continue to provide the products and services it offers and forms part of the data management strategy at ESET. The data is processed in accordance with strict information security and data governance guidelines to ensure that required controls stipulated in the protection of personal information act are adhered too. Should you wish to learn more on the transfer of information outside the borders of South Africa, please contact the data protection officer at ESET on [dpo@eset.co.za](mailto:dpo@eset.co.za).

## 13. Injunctive Relief.

The parties acknowledge that violation by one party of the provisions of Section 10 ("Certain Proprietary Rights") or Section 11 ("Confidential Information") would cause irreparable harm to the other party not adequately compensable by monetary damages. In addition to other relief, it is agreed that preliminary and permanent injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

## 14. Warranties.

(a) Non-Infringement Warranty. It is recorded that the Owner represents and warrants during the Term hereof that to the best of its knowledge and belief the Software Product, when properly used as contemplated herein, will not infringe or misappropriate any copyright, trademark, patent, or the trade secrets of any third persons; provided that (i) Owner is given prompt written notice of such claim; (ii) Owner is given the right to control and direct the investigation, preparation, defense or settlement of any claim; (iii) End-User and VAR fully cooperate with Owner in the investigation, preparation, defense or settlement of any claim; (iv) End-User

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and VAR have in all respects complied with the terms of the End-User License Agreement and this Agreement, respectively, and (v) the alleged infringement was not caused by any unauthorised alteration of the Software Product or use of it in combination with other software, equipment or technology not supplied or approved by Owner. Upon being notified of such a claim, Owner shall in its sole discretion (i) defend through litigation or obtain through negotiation the right of End-User to continue using the Software Product; (ii) rework the Software Product so as to make it non-infringing while preserving the original functionality, or (iii) replace the Software Product with software having substantially equivalent functionality.

(b) No Performance Warranty. Except as provided in Subsection (a) ("Non-infringement Warranty"), the Software Product and any associated services are provided by Owner strictly on an "AS IS" basis without any express or implied warranty, guarantee or other assurance of quality, conformity with specifications, reliability or functionality.

(c) Warranty Disclaimer. The owner hereby expressly disclaims with respect to all services, software products, updates, enhancements or other deliverables provided hereunder, all implied warranties, including any implied warranties of merchantability, title, accuracy, integration or fitness for a particular purpose.

#### **15. Limitation of Remedies & Liabilities.**

(a) Remedies. Except for certain injunctive relief authorised under Section 12 ("Injunctive Relief"), VAR's sole and exclusive remedies for Owner's default hereunder shall be (i) to obtain the repair, replacement or correction of the Software Product to the extent, if any, covered by any applicable warranty under Section 13 ("Warranty") or, if Owner reasonably determines that such remedy is not economically or technically feasible, (ii) to obtain a partial or full refund of compensation received by Owner with respect to the copy of the Software Product at issue. Except as expressly limited hereunder, the Owner shall have the full benefit of all remedies and defenses generally available

(b) Liabilities. Except for damages arising from bodily injury caused solely by the gross negligence of Owner and 4D, Owner and 4D shall not be liable for any amount exceeding the amount of compensation actually received by owner hereunder. In no event shall owner be liable, whether in contract, tort (including negligence) or otherwise, for any indirect, incidental or consequential damages (including lost savings, lost profit or business interruption even if owner is notified in advance of such possibility) arising out of or pertaining to the subject matter of this agreement. The VAR hereby expressly acknowledges that the foregoing limitation has been negotiated by the parties and reflects a fair allocation of risk.

#### **16. Notices.**

Notices sent to either party shall be effective when delivered in person or by "fax" machine, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the address set forth above, or at such other address as the parties may from time to time give notice. A facsimile of this Agreement and notices generated in good form from a fax machine (as well as a photocopy thereof) shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely placed in question.

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**17. Default.**

Either party may be declared in default of the Agreement if it breaches any material provision hereof and fails within ten (10) days after receipt of notice of default to correct such default or to commence corrective action reasonably acceptable to the other party and proceed with due diligence to completion. Either party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of creditors, a receiver is appointed or a petition for Bankruptcy is filed with respect to it and such proceeding is not dismissed within thirty (30) days. Any notice of default shall be sent in accordance with Section 15 ("Notices") and shall identify the contract provision at issue and describe in reasonable factual detail how the other party has materially violated the provision. If timely corrective action is not forthcoming, the aggrieved party may then terminate this Agreement pursuant to Section 17 ("Termination") and pursue all other available remedies.

**18. Termination.**

This Agreement shall terminate when the Term expires or, if earlier, upon one party's giving written notice of termination after following the procedures in Section 16 ("Default"). Except as otherwise specifically agreed hereunder, termination shall have no effect upon the parties' rights and obligations with respect to: (i) Section 6 ("Receipt of Proceeds, Payment of Compensation"); (ii) Section 10 ("Certain Proprietary Rights"); (iii) Section 11 ("Confidential Information"); (iv) any separately executed agreement between the parties, or (v) any End-User License Agreement entered into prior to the effective date of termination hereof.

**19. Disputes, Choice of Law.**

Except for certain emergency judicial relief authorised under Section 12 ("Injunctive Relief") which may be brought at any time, the parties agree that all disputes between them shall first be subject to the procedures in Section 16 ("Default") and then shall be submitted for informal resolution to their respective Chief Executive Officers. Any remaining dispute shall be submitted to a single arbitrator who shall be a former judge or attorney having experience in similar disputes. The award of the arbitrator shall include a written explanation of the decision, shall be limited to remedies otherwise available in court and shall be binding upon the parties and enforceable in any court of competent jurisdiction. This agreement shall be governed by and construed in accordance with the substantive laws of the republic of South Africa and any action shall be initiated and maintained in a court of competent jurisdiction in South Africa.

**20. Independent Contractor Status.**

Each party and its people are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.



**21. Relationship to End-User.**

This Agreement governs the relationship between 4D and VAR with respect to the Software Product. The relationship of the licensor (or sub-licensor, as the case may be) of the Software Product and End-User (including such matters as warranties, limitation of liabilities and the like) shall be governed solely by the terms and conditions set forth in the End-User License Agreement. Nothing herein shall be deemed to enlarge, diminish or otherwise change the End-User's rights or responsibilities under the End-User License Agreement, it being understood that End-User is not a third party beneficiary of any provision herein.

**22. Entire Agreement, Amendment.**

This document, Schedule A attached hereto, the accompanying attachments which are hereby incorporated by reference, constitute the entire agreement between the parties and supersede all other representations, understandings or communications, whether written or verbal, with respect to the subject matter hereof. This Agreement is expressly limited to its terms and the provisions of any purchase order, invoice or similar documentation are specifically rejected and shall have no effect. Any amendment, modification or waiver of this Agreement, or any part hereof shall be binding only if contained in a writing signed by the party sought to be bound. Waiver of any provision of this Agreement in one instance shall not preclude future enforcement of it in future situations.

**23. Severability.**

If any provision hereof is determined by a tribunal of competent jurisdiction to be illegal or unenforceable, it shall automatically be deemed conformed to the minimum requirements of law and, along with all other provisions hereof, shall thereupon be given full force and effect. Headings are for reference purposes only and have no substantive effect.

**24. Assignment, Subcontracting.**

Unless authorised under a specific provision or an amendment to this Agreement, no part of this Agreement (including the provisions of Section 13 ("Warranties")) may be transferred, assigned or delegated by either party to or for the benefit of any third party (including any End-User) and any attempt to the contrary shall be void and of no legal effect. This Agreement is binding upon, is enforceable by and shall inure to the benefit of the parties and their authorised successors and assigns.

**25. Force Majeure.**

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4D shall not be liable for delays or failure to perform as a result of causes beyond its reasonable control, including acts of god (such as fire, storm, earth quake), electrical outages, labor disputes or delay or failure by VAR, Owner or any End-User in the timely performance of its obligations hereunder or under any End-User License Agreement.

## 26. Security, No Conflicts.

Each party represents that its participation in this Agreement does not create any conflict of interest prohibited by the South African government or any other domestic or foreign government and shall promptly notify the other party if any such conflict arises during the Term.

## 27. Service Level Agreements

4D shall provide remote technical and sales support to VAR during normal South African working hours according to the following SLA metrics:

**Email Tickets:** Response time of no greater than 2 hours

**Technical Support:** VAR shall have access to 4D Technical Consultants for troubleshooting and configuration issues. Response time will be within the same business day where the query is submitted before 16:00 on said business day. Issue resolution will be dependent on the complexity of the issue encountered and as follows:

Low Complexity – 2 business hours

Medium Complexity – 6 business hours

High Complexity – 12 hours

## 28. Support Process

In terms of the support process, VAR shall have the following channels for the submission of support queries:

### *Sales Support:*

Email: [partners@eset.co.za](mailto:partners@eset.co.za)

Telephone: 0860-373-872

Chat Support

### *Technical Support:*

Email: [support@eset.co.za](mailto:support@eset.co.za)

Telephone: 0860-373-872

Chat Support

**SCHEDULE A**

**1. Description of Software Product** (per Section 1)

(a) All versions and variants of ESET products listed on the ESET PartnerZone.

**2. Sales Margin** (per Section 6(b)):

4D reserves the right to review the sales margin entirely at its own discretion. Partners may approach 4D at any such time they feel it is appropriate to apply for a review.

**3. Duration of Agreement**

This agreement is effective for a period of 1 year from date of signing

**4D Innovations Group (Pty) Ltd t/a ESET Southern Africa**      **VAR:** \_\_\_\_\_

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

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