

# **TP-LINK AUTHORIZED RESELLER AGREEMENT**

This **TP-LINK AUTHORIZED RESELLER AGREEMENT** (“Agreement”) is entered into by and between **TP-LINK USA CORPORATION**, a California corporation (“**TP-LINK**”), and the nonexclusive authorized reseller which has agreed to bound by this Agreement by executing the TP-LINK Authorized Reseller Application (“**Reseller**”) (collectively a/the “**Party/ies**”) and is effective as of the date Reseller first becomes a TP-LINK authorized reseller (the “**Effective Date**”). In consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

## **1.0 Definitions**

1.1 “**Distributor**” means Petra Industries, LLC.

1.2 “**End User**” means a bona fide end user of the Products who does not intend to resell the Product to a third party.

1.3 “**Intellectual Property Rights**” means all copyright, moral rights, patent rights, Marks, design right, rights in or relating to databases, rights in or relating to Confidential Information, and any other intellectual property rights (registered or unregistered) throughout the world.

1.4 “**Marks**” means trademarks, service marks, and trade names whether or not registered.

1.5 “**Products**” means the products that TP-LINK USA Corporation authorizes Distributor to sell.

1.6 “**Territory**” means the United States.

1.7 “**UPP**” means TP-LINK USA Corporation’s Unilateral Price Policy (attached to this Agreement as “Exhibit A”).

## **2.0 Appointment**

TP-LINK appoints the Reseller, and the Reseller accepts the non-exclusive right to act upon the terms and conditions set forth in this Agreement, to become an authorized reseller of the Products by purchasing the Products from Distributor and resell the Products within the Territory only to End Users.

## **3.0 Territory**

Reseller shall resell the Products only in the Territory.

## 4.0 Term and Termination

4.1 The initial term of this Agreement is one (1) year from the Effective Date (the “**Initial Term**”). After the end of the Initial Term, the Agreement will automatically renew for successive one (1) year terms (each a “**Renewal Term**”), unless either Party provides a written notice of the Party’s intent not to renew this Agreement at least thirty (30) days prior to the end of the Initial Term or the end of any Renewal Term. The Initial Term and any Renewal Term(s) are collectively referred to as the “**Term**.”

4.2 In the event a Party is in material breach of this Agreement, the Agreement may be terminated immediately by the non-breaching Party, provided that a notice describing the breach has been provided to the breaching Party and the breaching Party has failed to cure such breach within 30 days after receipt of the notice.

## 5.0 Terms of Sales

5.1 Unilateral Price Policy. TP-LINK has unilaterally adopted the UPP. Reseller may request the latest Unilateral Advertised Price List by sending an e-mail to [UP.USA@TP-LINK.com](mailto:UP.USA@TP-LINK.com).

5.2 Reseller shall comply with the following:

5.2.1 promote the sale and use of the Products;

5.2.2 promptly and effectively respond to questions and requests from End Users of the Products and from TP-LINK, including, but not limited to, questions and requests from TP-LINK regarding any or all customers of the Reseller;

5.2.3 maintain a staff of competent sales personnel who are trained to describe, demonstrate, and sell each of the Products;

5.2.4 represent the Products in a professional manner during the Term and refrain from:

a. any conduct that is or could be detrimental to the reputation or integrity of TP-LINK and the Products; or

b. engaging in any unfair competitive or misleading or deceptive practices respecting the Products, including, but not limited to, product disparagement and bait and switch practices;

5.2.5 refrain from knowingly or negligently directly or indirectly advertising, promoting, or selling any of the Products in each of the following ways:

- a. on any marketplace sites, including, but not limited to, Amazon, Best Buy marketplace, Rakuten (unless and only to the extent each website used for this purpose by the Reseller is expressly approved by TP-LINK in writing and which approval has not been rescinded by TP-LINK in whole or part), and
- b. for resale;

5.2.6 comply with all applicable federal, state, and local laws and regulations, and all of TP-LINK policies;

5.2.7 promptly provide, when requested, information relating to its compliance with applicable laws with respect to Reseller's obligations pursuant to this Agreement;

5.2.8 immediately forward to Distributor and/or TP-LINK the information concerning all complaints or claims of damage relating to any of the Products that may come to Reseller's attention; and

5.2.9 upon termination of this Agreement, immediately cease all use of anything which would give the impression that Reseller is an authorized reseller or representative of or for the Products or has any affiliation whatsoever with TP-LINK or the Products, unless TP-LINK approves in writing.

## **6.0 Intellectual Property Rights; Use of Marks**

6.1 Ownership of Intellectual Property Rights. All ownership rights, title, and Intellectual Property Rights in and to the Products will remain with TP-LINK and/or its licensors.

6.2 License to Marks. TP-LINK grants to Reseller a limited, non-exclusive, and non-sublicensable right to include TP-LINK's Marks in Reseller's advertising and promotion materials of the Products during the Term of this Agreement. Reseller may not use or modify TP-LINK's Marks in any other form or manner without the express written consent of TP-LINK. All goodwill arising from the use by Reseller of TP-LINK's Marks will belong to TP-LINK.

6.3 No Rights. Except as provided in this Agreement, Reseller acquires no right in TP-LINK's Intellectual Property Rights and Reseller will not act to impair TP-LINK's Intellectual Property Rights. To the extent permitted by applicable law, Reseller will not and will prohibit others from the following: copying, modifying, creating derivative works, decompiling, reverse engineering, disassembling, or otherwise reducing TP-LINK's Product to a human-perceivable form.

## 7.0 Confidentiality

### 7.1 Definitions.

7.1.1 “**Confidential Information**” means the terms of this Agreement, all business, financial, engineering, and/or technical information belonging to, or properly in the possession of, a Party, and/or to which the other Party has access during its performance of this Agreement, regardless of form or medium (including, without limitation, information and tangible and intangible property which may relate to proprietary products, concepts, marketing information, trade secrets, technology, processes, drawings, specifications, programs, models, financial information and projections, formulae, data, know-how, developments, designs, improvements, software programs, marketing materials, plans and strategies, customer and supplier lists, and other valuable business information and products), and whether or not marked or otherwise identified by the Disclosing Party as being confidential. Confidential Information shall not include any of the following: (i) information that a Party independently develops without any use of and/or access to the other Party’s Confidential Information as established by appropriate documentation; (ii) information that the Receiving Party lawfully receives free of restriction from a third party having the right as of the date of such disclosure to so furnish such Confidential Information without any breach of the confidentiality obligation owed to the Disclosing Party; (iii) information that is in the public domain at the time of disclosure or which becomes part of the public domain afterward through no wrongful act of the Receiving Party; (iv) information that, at the time of disclosure to Receiving Party, was known to the Receiving Party free of restriction as evidenced by appropriate documentation; and (v) information that the Disclosing Party agrees in writing that is free of such restrictions.

7.1.2 “**Disclosing Party**” means the Party disclosing Confidential Information proprietary to such Party to another Party.

7.1.3 “**Receiving Party**” means the Party to whom the Disclosing Party discloses Confidential Information proprietary to the Disclosing Party.

7.2 Restrictions on Use. Each Party acknowledges and agrees that Confidential Information shall at all times remain the property of the Disclosing Party, and that the Disclosing Party shall have free and unlimited access at all times to all materials containing the Disclosing Party’s Confidential Information and shall have the right to claim and take possession of such materials on demand. The Receiving Party shall not, except as required to perform the Receiving Party’s obligation set forth in this Agreement, during the Term or any time after the Term, directly or indirectly use, divulge, disseminate, disclose, lecture upon, or publish any Confidential Information without having first obtained the Disclosing Party’s written permission. The Receiving Party shall safeguard and maintain the secrecy of the Confidential Information and all documents and things that include or embody the Confidential

Information to the same extent that the Receiving Party protects the Receiving Party's own Confidential Information, but in no event with less than a reasonable degree of care. The Receiving Party shall also require all of the Receiving Party's officers, employees, agents, subcontractors, and the like who might reasonably be expected to assist in the performance of the Receiving Party's obligations under this Agreement to comply with the terms of this Section. This obligation to safeguard and maintain the secrecy of the Confidential Information shall commence on the Effective Date (or the date upon which the Confidential Information was first disclosed, if prior to the Effective Date) and shall continue for a period ending three (3) years following the termination of this Agreement, except that any trade secrets of the Disclosing Party disclosed to the Receiving Party during the Disclosing Party's performance of this Agreement shall be kept secret for as long as such information remains a trade secret under the applicable law.

7.3 Compelled Disclosure of Confidential Information. In the event that the Receiving Party is required by document subpoena, civil investigative demand, interrogatories, request for information, or other similar process of law by any governmental action or court of competent jurisdiction to disclose any Confidential Information, the Receiving Party shall deliver to the Disclosing Party a prompt written notice of such requirement(s) so that the Disclosing Party, at the Disclosing Party's own cost and expense and with reasonable assistance from the Receiving Party, may seek a protective order or other appropriate remedy. If the Disclosing Party fails to obtain such protective order or other appropriate remedy and the Receiving Party is compelled to disclose the Confidential Information, the Receiving Party may so disclose the Confidential Information, but only to the extent compelled, without liability to the Disclosing Party.

7.4 Equitable Relief. Each Party acknowledges that any material violation by the Receiving Party of the rights and obligations provided in this Section 7 may result in immediate and irreparable injury to the Disclosing Party, and hereby agrees that the Disclosing Party may be entitled to seek immediate temporary, preliminary, and/or permanent injunctive relief against any continued violations upon adequate proof, as required by applicable law. This remedy is separate from, and in addition to, any other remedy that the Disclosing Party may have, including damages, which may be available at law or in equity.

## **8.0 Representations and Warranties, Disclaimers**

### **8.1 Mutual Representations/Warranties**

Each Party represents and warrants to the other Party that:

8.1.1 Power. The Party has all necessary power and authority to initial/sign, deliver, perform, and/or comply with, this Agreement.

8.1.2 Binding Contract. This Agreement constitutes a legal and binding agreement, enforceable against the Party in accord with the terms of this Agreement.

8.1.3 Obligations. The Party has not incurred any obligation or liability on behalf of, or as actual, apparent, or ostensible agent of, the other Party, or for which any person may seek to charge the other Party, or for which the Party may seek contribution, indemnity, refund, or reimbursement from the other Party.

8.1.4 Conflicts. The Party's initialing/signing of, delivery of, performance of, and compliance with, this Agreement will not violate or conflict with the terms of any agreement, contract, instrument, judgment, order, promise, or applicable law, statute, regulation, or rule to which the Party or any assets of the Party is bound.

8.1.5 Pending Actions. The Party has no knowledge of any pending legal proceeding by which any person seeks to restrain, prohibit, or invalidate the Party's initialing/signing of, delivery of, performance of, and/or compliance with, this Agreement.

8.2 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, NO OTHER WARRANTIES ARE EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **9.0 Indemnifications**

9.1 Reseller shall indemnify, defend, and hold TP-LINK and TP-LINK's officers, directors, employees, and agents free and harmless from and against any and all damages or injuries, costs, and other liabilities and expenses (including reasonable attorneys' fees and court costs) arising out of, or in connection with:

- a. a breach by Reseller of any material term of this Agreement;
- b. the negligent or willful acts or omissions of Reseller in connection with this Agreement;
- c. bodily injury, death, or property damage arising from Reseller's performance of Reseller's duties and obligations under this Agreement; and
- d. the violation of any law in any way arising out of, or caused or alleged to have been caused by, Reseller's performance of Reseller's duties and obligations under this Agreement.

TP-LINK agrees to give Reseller a prompt written notice of any claims, to tender the defense to Reseller, and to grant Reseller the right to control settlement and resolution, except that any settlement requiring TP-LINK to admit liability or pay money will require TP-LINK's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

9.2 TP-LINK shall indemnify, defend, and hold Reseller and Reseller's officers, directors, employees, and agents free and harmless from and against any and all damages or

injuries, costs, and other liabilities and expenses (including reasonable attorneys' fees and court costs) arising out of, or in connection with:

- a. a breach by TP-LINK of any material term of this Agreement;
- b. the negligent or willful acts or omissions of TP-LINK in connection with this Agreement;
- c. bodily injury, death, or property damage that any of the Products caused or arising from TP-LINK's performance of TP-LINK's duties and obligations under this Agreement;
- d. TP-LINK's infringement of third party's Intellectual Property Rights, which are effective as of the Effective Date of this Agreement; and
- e. the violation of any law in any way arising out of, or caused or alleged to have been caused by, TP-LINK's performance of TP-LINK's duties and obligations under this Agreement.

Reseller agrees to give TP-LINK a prompt written notice of any claims, to tender the defense to TP-LINK, and to grant TP-LINK the right to control settlement and resolution, except that any settlement requiring Reseller to admit liability or pay money will require Reseller's prior written consent, not to be unreasonably withheld, conditioned or delayed.

9.3 The foregoing states TP-LINK's entire liability and Reseller's sole and exclusive remedy with respect to under any theory of infringement of any Intellectual Property Rights of any third party.

## **10.0 Limitation of Liability**

10.1 NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING WHETHER OR NOT THAT PARTY WAS AWARE OF THE POSSIBILITY OF THOSE DAMAGES AND DESPITE THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS AGREEMENT.

10.2 Exclusions from Limitations of Liability. The limitations of liability in Section 10.1 do not apply to, and each Party accepts liability to the other for:

- a. breach of Section 7 (Confidentiality);
- b. Reseller's indemnification obligations under Section 9 (Indemnification); and
- c. matters that cannot be excluded or limited under applicable law.

## **11.0 General Provisions**

11.1 Independence of Parties. The Parties are independent contractors and nothing contained in this Agreement shall be construed to make TP-LINK or Reseller a partner, joint

venturer, principal, agent, or employee of the other. Nothing contained in this Agreement shall be construed to make Reseller the agent for TP-LINK for any purpose, and neither Party shall have any right, power, or authority, express or implied, to incur any liabilities or obligations on behalf, or binding upon, the other Party. Reseller specifically agrees that Reseller shall have no power or authority to represent TP-LINK in any manner and that Reseller will not at any time represent orally or in writing to any third party that Reseller has any right, power, or authority that this Agreement does not expressly granted.

11.2 Construction and Interpretation. The section and other headings contained in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be interpreted in accordance with the fair meaning of its words. Both Reseller and TP-LINK certify that each has been or have had the opportunity to be represented by their own counsel and that they are familiar with the provisions of this Agreement, which have all been fully negotiated, and agree that the provisions are not to be construed either for or against the drafting party.

11.3 Notices. Any notices required under this Agreement, but excluding service of process or papers in any legal proceeding, shall be in writing and shall be sent by delivery in person, facsimile, e-mail, or certified mail addressed to the appropriate Party at the addresses set forth below:

**To TP-LINK:**

TP-LINK USA CORPORATION  
975 Overland Court  
San Dimas, CA 91773  
Tel: (626) 333-0234  
Fax: (626) 961-9691

**To Reseller:**

The Reseller's address and contact information set forth in the TP-LINK Authorized Reseller Application.

Either Party may change its address for receipt of notice by notifying the other Party in accordance with this Section. If notices are sent by certified mail to the addresses indicated above, the notice shall be considered delivered five (5) business days from the postmarked date. If notices are delivered in person, by facsimile, or by e-mail, the notice shall be considered delivered under this Agreement at the date and time of delivery.

11.4 Assignment. Neither Party shall assign or transfer this Agreement or all or any part of the Party's rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, TP-LINK may assign this entire Agreement, including all of TP-LINK's rights and obligations under this Agreement, without Reseller's consent: (i) to the surviving entity in the event of a merger, acquisition, or consolidation; or (ii) to the successor to, or purchaser of, any portion of TP-LINK business resulting from a reorganization, spin-off, or sale of all or a portion of the assets of any business, division, or group of TP-LINK. In the event of any of the foregoing assignments, TP-LINK



will have no further obligations or liability to Reseller under this Agreement except for obligations and liabilities that accrued before such assignment. Any unauthorized assignment or transfer shall be null and void. This Agreement shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns.

11.5 Severability. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

11.6 Amendment, Modification, and Waiver. No amendments or modifications of this Agreement, or waiver of any of the terms of this Agreement, will be effective unless set forth in writing that both Parties sign. Failure by either Party to require the other Party to perform any of the terms of this Agreement, or waiver by either Party of any breach of this Agreement by the other Party, shall not prevent subsequent enforcement of such term or be deemed a waiver of any subsequent breach.

11.7 Survival. All representations and warranties in this Agreement will survive, remaining fully enforceable and effective after, the Effective Date and any performance of this Agreement. Any obligations of any Party under this Agreement, which, by the nature of such obligation, would continue beyond the cancellation, discharge, expiration, or termination of this Agreement shall survive such cancellation, discharge, expiration, or termination.

11.8 Further Assurances. The Parties covenant and agree that, subsequent to the Effective Date of this Agreement, and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts which are or may become necessary to effectuate the purposes of this Agreement or to confirm or perfect any rights assigned, conveyed, granted, or transferred under this Agreement.

11.9 Attorneys' Fees. In any legal proceeding, regardless of legal theory, arising out of, or related to, this Agreement, the prevailing party will recover the reasonable amount of all attorneys' fees and expenses and costs, including expert witness fees and expenses, that the prevailing party incurred for each and every such legal proceeding between the Parties, or between or among the Parties and any other person, whether or not paid, in addition to any other remedies that any adjudicator may award to the prevailing party.

11.10 Force Majeure. Neither Party will be held responsible for its failure to timely fulfill any of its obligations under this Agreement if and to the extent that such failure is due to acts of God (such as floods, storms, fires and earthquakes), acts of war, terrorism, general civil insurrection, or other matters strictly beyond the control of and without any fault or negligence of such Party.

11.11 Choice of Law. The laws of the State of California, including laws regarding statutes of limitation and/or laches, but not including conflicts of laws principles, will govern

the application, enforcement, and interpretation of this Agreement except to the extent that the laws of the United States of America pre-empt the laws of the State of California.

11.12 Jurisdiction and Venue. The Parties agree to submit any claim of whatever nature, regardless of legal theory, between the Parties and/or non-party arising out of, or related to, this Agreement, to any competent courts of California in the County of Los Angeles. The Parties waive all objections to the personal jurisdiction and venue of the competent courts of California in the County of Los Angeles for any claim arising out of, or related to, this Agreement.

11.13 Counterparts. This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart signature page of this Agreement by facsimile, e-mail, or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

11.14 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters that this Agreement covers and supersedes all prior proposals, and all other written and oral communications between the Parties.

## EXHIBIT A

### TP-LINK USA Corporation

#### Unilateral Price Policy

Effective: October 1, 2015

We recognize that our partners invest time and resources to deliver an extraordinary customer experience through knowledgeable staff and compelling presentation. To support our partners' efforts, TP-LINK USA Corporation ("TP-LINK") wishes to establish policies that allow partners to earn the profits necessary to maintain the high level of customer excellence people have come to expect from TP-LINK partners.

In order to successfully compete in the marketplace and to maintain its premium brand image, TP-LINK has announced this Unilateral Price Policy. Hereafter, all sales from Authorized Resellers to End Users of products set forth in TP-LINK's *Unilateral Advertised Price List* inside the United States shall be subject to this Unilateral Price Policy.

TP-LINK products covered and their coordinating minimum advertised prices are set forth in the *Unilateral Advertised Price List*. TP-LINK reserves the right from time to time to alter, modify, suspend, or cancel this Unilateral Price Policy, the products covered, and/or the minimum advertised prices.

This policy does not restrict the Authorized Reseller's right to establish independent resale prices of TP-LINK products. TP-LINK reserves the right to determine whether an Authorized Reseller has advertised TP-LINK's products at a net advertised price less than the minimum advertised price established in this Unilateral Price Policy. Upon such determination TP-LINK may, without assuming any liability, cancel all orders and may indefinitely refuse to accept new orders from the Authorized Reseller.

This policy has been unilaterally adopted by TP-LINK. TP-LINK neither solicits nor will it accept assurances by an Authorized Reseller of acquiescence with this policy. Nothing in this policy shall constitute an agreement between TP-LINK and any Authorized Reseller of compliance with this policy. The Authorized Reseller within its own discretion can choose to acquiesce or not acquiesce with this policy. TP-LINK will not discuss conditions of acceptance related to this policy. This policy is non-negotiable and will not be altered, modified, or amended for any Authorized Reseller.

Advertising that requests the End User to "see price in cart," "click to see price," "add to cart for best price," "Why we do not show a price?" or a price that is struck through, no price listed or any language or graphic representation that implies, or from which the End User can infer, that the End User click through to the cart to see a price lower than that set forth in the *Unilateral Advertised Price List*, shall not constitute acquiescence with TP-LINK's Unilateral Price Policy.

The offer of promotional codes and mail-in rebates on product(s) in the *Unilateral Advertised Price List* shall constitute acquiescence with TP-LINK's Unilateral Price Policy.

The offer of a gift card redeemable for value on a future purchase with the purchase of product(s) in the *Unilateral Advertised Price List* shall constitute acquiescence with TP-LINK's Unilateral Price Policy.

TP-LINK, from time to time within its sole discretion may announce promotion prices and bundles of the products listed in the *Unilateral Advertised Price List* which shall constitute acquiescence with TP-LINK's Unilateral Price Policy.

TP-LINK's sales personnel have no authority to modify or grant exceptions to this policy. All questions regarding interpretation of this policy should be directed to the TP-LINK Unilateral Price Policy Coordinator at: [UP.USA@TP-LINK.com](mailto:UP.USA@TP-LINK.com).