

## EVALUATION AGREEMENT

This Evaluation Agreement (**Agreement**) is made between SecureAuth and the individual, entity or company requesting the Evaluation Service.

BY ACCESSING OR USING THE EVALUATION SERVICE YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS IN THIS AGREEMENT. WE GRANT YOU ACCESS TO THE EVALUATION SERVICE ONLY IF YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” AND “YOUR” WILL REFER TO THAT ENTITY. IF YOU DO NOT HAVE AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MAY NOT ACCESS OR USE THE EVALUATION SERVICE.

**1. USE OF THE EVALUATION SERVICE.** We will make the Evaluation Service available to you subject to the terms of this Agreement, the Documentation and the applicable order document. You may only use the Evaluation Service for internal evaluation purposes during the evaluation term, and by no more than the number of permitted Users or assets. Unless otherwise prohibited, you may access the Evaluation Service from locations worldwide except from any countries sanctioned, embargoed or prohibited to do business with under U.S. or other applicable laws. You acknowledge that we may change the Evaluation Service or discontinue making the Evaluation Service available to you at any time in our sole discretion. You may convert your evaluation rights to full license or subscription rights by entering into our applicable master agreement and submitting the required order document.

**2. TERM AND TERMINATION.** This Agreement remains in effect until end of the evaluation or trial term as stated on the order document. However, either party may terminate the Evaluation Service upon five (5) days’ prior written notice to the other party. Upon termination of the Evaluation Service, you will lose all access to the Evaluation Service and any Customer Data you stored in the Evaluation Service. You are responsible for removing all Customer Data prior to the effective date of termination and we have no obligation to maintain any Customer Data after the effective date of termination.

**3. CUSTOMER DATA.** You retain all rights, title and interest in and to your Customer Data and at all times remain the data controller. We may use your Customer Data as necessary for the performance of the Agreement and to improve the Evaluation Service. You are solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all information and material, including Customer Data, submitted to the Evaluation Service by you or your Users, how you acquired the Customer Data, and the use of the Customer Data. You are also responsible for the backup of your Customer Data.

**4. SERVICE LOCATIONS AND TRANSFER OF DATA.** You acknowledge that some of the Evaluation Service may be

performed by us or our third-party suppliers from locations outside the United States. Data collected or otherwise processed by us or our third-party suppliers in the performance of the Evaluation Service may be transferred to, and stored and processed in, the United States or any other country in which we or our affiliates or suppliers maintain facilities. You are responsible for obtaining any required consents to this processing from your employees, customers, and any other users of the Evaluation Service, or as otherwise required by law.

### 5. YOUR RESPONSIBILITIES.

**5.1. Generally.** You are responsible for all activity occurring under your User accounts, the way you and your Users use the Evaluation Service, and for the results obtained and conclusions drawn from the use of the Evaluation Service. You must: (A) select, purchase, configure, operate and maintain your equipment, hardware, websites, network and Internet, data and telephone connections necessary for use and support of the Evaluation Service; and (B) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Evaluation Service and notify us promptly of any unauthorized access or use. You must not: (a) use any methodology other than the one approved by us for connection to the Evaluation Service; (b) interfere with or disrupt the integrity or performance of the Evaluation Service or the data contained therein; (c) attempt to gain unauthorized access to the Evaluation Service or its related systems or networks, or permit direct or indirect access to or use of the Evaluation Service in a way that circumvents a contractual usage limit; (d) create derivative works or copy the Evaluation Service or any part, feature, function or user interface thereof; (e) frame or mirror any part of the Evaluation Service, other than framing on your own intranets or otherwise for your own internal business purposes or as permitted in the Documentation; (f) access the Evaluation Service to build a competitive product or service; (g) resell the Evaluation Service, any component of the Evaluation Service, or access to, or use of the Evaluation Service, directly or indirectly to third parties; (h) reverse engineer, disassemble, or decompile the Evaluation Service or component, or attempt to discover or disclose the source code, underlying ideas or algorithms of the Evaluation Service or any component; or (i) remove, alter or obscure the Evaluation Service’s confidentiality or proprietary rights notices (including copyright and trademark notices).

**5.2. Compliance with Laws.** You must not use or permit the Evaluation Service or any components of the Evaluation Service to be used: (a) in violation of any applicable laws or regulations, including without limitation, U.S. export laws or any laws governing the Customer Data that you process, transfer or make available via the Evaluation Service; (b) in violation of the Agreement or Documentation; or (c) in ways that infringe the rights of SecureAuth or third-parties or in ways that interfere with networks or other users.

**5.3. Protected Data and Production Use.** During the evaluation term, you must not, or permit any third party to, include any sensitive or protected data, including but not limited to personal data, personal health information, or personally identifiable information, from which one can identify individuals (e.g., home

address, salary history, government issued identification number, performance ratings, medical information or date of birth) as part of the Customer Data. You must not use the Evaluation Service during the evaluation term for production purposes.

**6. PROPRIETARY RIGHTS.** Subject to the limited rights expressly granted in this Agreement, SecureAuth or our licensors reserve all rights, title and interest in and to the Evaluation Service, including all related intellectual property rights. We will own all rights in any copy, translation, modification, adaptation or derivation of the Evaluation Service, including any improvement or development thereof. No rights are granted to you other than as expressly set forth in this Agreement. We have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Evaluation Service and any other of our products or services any suggestions, enhancement requests, recommendations or other feedback provided by you, including by your Users, relating to the Evaluation Service.

**7. CONFIDENTIALITY.** Information that is disclosed by one party (**Disclosing Party**) to the other party (**Receiving Party**) in connection with this Agreement that is identified as confidential or that would reasonably be understood to be confidential based on the nature of the information or the circumstances surrounding its disclosure, is Confidential Information of the Disclosing Party. Notwithstanding the foregoing, any feedback you provide to us regarding the Evaluation Service, is our Confidential Information. The Receiving Party must: (a) use the same degree of care to protect the Confidential Information that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (b) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors and agents who need access for purposes consistent with this Agreement and who have confidentiality obligations to the Receiving Party containing protections no less stringent than those in this Agreement. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of a compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**8. WARRANTY DISCLAIMER.** THE EVALUATION SERVICE, INCLUDING ALL COMPONENTS, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SECUREAUTH AND ITS AFFILIATES AND THIRD-PARTY SUPPLIERS DISCLAIM AND MAKE NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE EVALUATION SERVICE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR OTHERWISE ARISING FROM COURSE OF PERFORMANCE OR USAGE OF TRADE. NEITHER SECUREAUTH NOR ITS AFFILIATES OR THIRD-PARTY SUPPLIERS WARRANT THAT THE EVALUATION SERVICE PROVIDED PURSUANT TO THIS

AGREEMENT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT CERTAIN RESULTS MAY BE OBTAINED FROM THE USE THEREOF, OR THAT THE DATA STORED WITHIN THE EVALUATION SERVICE WILL BE SECURE OR NOT OTHERWISE MISAPPROPRIATED, LOST OR DAMAGED. Any use or testing of the Evaluation Service is at your sole risk. We are not obligated to provide any maintenance, technical or other support for the Evaluation Service.

**9. LIMITATION OF LIABILITY.** IN NO EVENT WILL SECUREAUTH, OUR AFFILIATES, LICENSORS OR ANY OF OUR THIRD-PARTY SUPPLIERS BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA (EVEN IF SECUREAUTH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN CONNECTION WITH THIS AGREEMENT OR THE EVALUATION SERVICE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM: (I) THE USE OR THE INABILITY TO USE ALL OR A PORTION OF THE EVALUATION SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, GOODS OR SERVICES; (III) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE EVALUATION SERVICE; OR (IV) UNAUTHORIZED ACCESS TO, OR LOSS, MISAPPROPRIATION OR ALTERATION OF CUSTOMER DATA.

**10. INDEMNIFICATION.** You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim or legal action alleging: (a) that Customer Data or your or your User's use of the Evaluation Service infringes or misappropriates a third party's privacy or intellectual property rights; (b) harm caused by your or your User's gross negligence, willful misconduct; or (c) your breach of this Agreement or violation of applicable law.

**11. RELATIONSHIP TO OTHER AGREEMENTS.** If you entered into a master agreement for paid-for licenses or subscription services with us, the terms in that master agreement do not apply to your use of the Evaluation Service. This Agreement governs your access to the Evaluation Service but not your access to our other paid-for licenses or subscription services.

**12. RELATIONSHIP OF THE PARTIES.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. We do not undertake to perform any of your legal or regulatory obligations, or assume any responsibility for your business or operations.

**13. GENERAL PROVISIONS.** You may not assign any of your rights or obligations under this Agreement, whether by operation of law or otherwise, without our prior written consent. This Agreement is governed exclusively by the laws of the State of

California, without regard to its conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transaction Act, as adopted by any state or governing body, does not apply. This Agreement constitutes the entire agreement between the parties regarding the Evaluation Service, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning the Evaluation Service. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. Any inconsistent or additional terms on your purchase order are excluded regardless of us accepting the purchase order for payment or processing purposes.

#### 14. DEFINITIONS.

**SecureAuth** means SecureAuth Corporation and its affiliates.

**Customer Data** means data and your confidential information that you transmit or process through the Evaluation Service. Customer Data does not include information or data regarding usage or performance of the Evaluation Service that are not linked to or

associated with personal information (data, either alone or in combination with other information, by which a natural person can be identified or located, or that can be used to identify or locate a natural person).

**Documentation** means SecureAuth's or its licensors' user manuals and other published protocols, standards and technical specifications as updated from time to time.

**Evaluation Service** means the product or service offered on an evaluation, beta, trial, proof of value, or proof of concept basis under this Agreement.

**User(s)** means individuals who are authorized by you to use the Evaluation Service and include your employees, consultants and contractors.

**We, us or our** means SecureAuth Corporation, with a place of business at 8845 Irvine Center Dr., Irvine, CA 92618.

**You or your** means the company or other legal entity accepting this Agreement.