

Software License Agreement

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS 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 AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” WILL REFER TO THAT ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT RECEIVE THE PRODUCTS.

This Software License Agreement (**Agreement**) is made between SecureAuth Corporation (**Company**) and the customer executing the Order (**Customer**). This Agreement is effective as of the last date signed on the Order.

1. DEFINITIONS

Affiliate means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting or equivalent rights of the subject entity.

Commercial Use means use of a Product in a production environment for your business purposes.

Customer Data means Confidential Information, data (whether in an audio, video, image or text format) and 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) that you, including your customers and end users, transmit to or from the Products or processes through the Products. Customer Data does not include information or data regarding usage or performance of the Products that are not linked to or associated with Personal Information.

Deliverable means a quantifiable service to be provided with our professional services and specified in an Order, including without limitation application program interfaces (**API**), configurations, information, documents, reports, technical and non-technical data, specifications and other material. Deliverables do not include third party products, work for hire, or custom development.

Documentation means our or our licensors’ user manuals and other published protocols, standards and technical specifications for use with the Products and as updated from time to time, as long as the later modification does not materially diminish your ability to use and access the Products.

Intellectual Property Rights means current and future worldwide rights under patent, copyright, trade secret, trademark, tradename, moral rights, mask works and other similar rights, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Products are used or offered.

Order means an ordering document (e.g., quote, schedule, order form, SOW) specifying the Products to be provided and that is entered into between you and us or any of our Affiliates and which incorporates this Agreement by reference.

Product(s) means our proprietary software applications in object/binary code, including selected modules, APIs, and connectors, databases, and any copies, translations, derivations, adaptations or modifications thereof, and includes any portion of the foregoing (the **Software**); any appliances or hardware, including virtual machines or servers, which we may provide associated with the Software (**Equipment**), if applicable; and the Documentation.

Territory means worldwide unless otherwise agreed in the Order (subject always to applicable export restrictions) and except for any countries sanctioned, embargoed or prohibited to do business with under U.S. or other applicable laws.

Third-Party Software means software products not developed by us, but that we may distribute to you, with or within the Software.

Users means (a) a specifically identified individual or machine authorized to use the Product (named user); (b) individuals with a unique user identification who are enabled (e.g., have access to an application, Product portal or Product) or can be managed by the Product, including but not limited to those individuals that are designated by you as active or inactive within the Product’s profile data store, and authorized by you to use the Products and may include, for example, you and your Affiliates’ employees, consultants, clients, external users, contractors, agents, and third parties with which you do business; or (c) a user as otherwise defined on the Order.

We, us, or our means SecureAuth Corporation, with a place of business at 8845 Irvine Center Dr., Irvine, CA 92618, and/or any of its Affiliates who enter into an Order under this Agreement.

You or your means the company or other legal entity for which you are accepting this Agreement together with Affiliates of that company or entity which have entered into an Order for the Product.

2. EVALUATION AND SDK LICENSES

2.1. Evaluation License. If you have downloaded or have otherwise been provided with a Product for evaluation purposes, we grant you a limited, temporary, revocable, nonexclusive, nontransferable, non-assignable right and license to use that Product solely for your own internal evaluation purposes and not for use in a production environment (**Evaluation License**). The Evaluation License is provided for an evaluation period of up to 14 days or as otherwise agreed in writing by us, beginning on the date we first makes the Software available for download by you or otherwise deliver the Software to you, plus any extensions granted by us in writing. Any virtual machine which may be made available by us remains our property. No components contained within the virtual machine, including but not limited to the operating system and database, will be deemed rented or leased to you, or owned by you. Upon the expiration or termination of any

evaluation period, you will stop using and uninstall any Product provided as part of the Evaluation License and destroy any virtual appliance images which may have been created pursuant to the evaluation. You acknowledge and agree that any Product licensed pursuant to an Evaluation License may not include all the features and functionality that are included in the comparable Product that may be licensed for Commercial Use.

2.2. SDK License. Any software development kits (SDK) consisting of sample code, Documentation and API are provided to you under a limited license to the SDK solely for your internal use to develop integrations with the Products. You may not reproduce, disclose, market or distribute the SDK or any applications containing any executable versions of the SDK to third parties or over the internet, or use the executables in excess of any restrictions that may be contained in an Order. The license to the SDK terminates when your license to the underlying Products or Evaluation License terminates.

2.3. General. Unless otherwise required by us, there is no fee for your use of the Evaluation License in accordance with this Agreement. Sections 3 (Commercial Use License) and 12 (Indemnification) of this Agreement do not apply to Evaluation Licenses or SDK Licenses. However, if at any time you use an Evaluation License beyond the scope of the license granted, (a) you will be deemed to have accepted a Commercial Use license to use the Product, (b) you will be invoiced for the applicable license fees and Support fees, and (c) you will pay the fees in accordance with Section 7 (Order and Payment). Notwithstanding anything otherwise set forth in the Agreement, you understand and agree that all Products licensed to you under an Evaluation License or SDK License are provided "AS IS" and we do not provide any warranties or Support in connection with an Evaluation License or SDK License.

3. COMMERCIAL USE LICENSE. If you downloaded or have otherwise been provided with a Product for Commercial Use, subject to the terms and conditions of this Agreement and your payment of all applicable fees, we grant you, for the license term or license subscription, a limited, nonexclusive, nontransferable, non-assignable (except as otherwise provided in the Agreement), revocable right and license in the Territory to: (a) install and use the Software and Third-Party Software on your computer systems/network; (b) install and use the Software and Third-Party Software on the number of physical and virtual machine(s) designated on the Order and located at the physical location(s), if any, designated in the Order (c) access our passive Domain Name System database, equal to the number of Users and queries designated in the Order, if applicable; and (d) use the Documentation provided in connection with the Products and Third-Party Software for the use and support of the Products and Third-Party Software (collectively the **License**). Firmware provided in or with Equipment is also subject to the License grant and restrictions. Your use of the Software and Third-Party Software is limited to the number of Users and/or assets (e.g., IP addresses, URL addresses, and/or devices, with which the you may utilize the Software) as set forth in the Order (**Permitted Licenses**). If you want to use the Products in excess of the Permitted Licenses or at another location, you must first obtain our written consent and pay the then-current license fee and transfer and/or upgrade charges.

4. LICENSE RESTRICTIONS AND OBLIGATIONS

4.1. Restrictions. The Products and Third-Party Software may only be used to administer your internal business operations. You may not and may not permit others to:

- a. provide, disclose or make available to, or permit use of the Software or Third-Party Software by persons other than your employees, consultants, agents, representatives or authorized contractors;
- b. sell, resell, license, sublicense, transfer, distribute, lend, rent or lease the Products or Third-Party Software to any third party or use the Products or Third-Party Software on behalf of any third-party (unless otherwise agreed in writing by us);
- c. exceed the number of Permitted Licenses or Users for a particular Software or Third-Party Software as set forth in an Order;
- d. use the Software or Third-Party Software (i) to maliciously or negligently cause damage to any third-party's computer, network systems or data, (ii) to infringe on the Intellectual Property Rights of any third party or any rights of publicity or privacy, (iii) send or store infringing or unlawful material, (iv) to propagate, send or store any virus, worms, Trojan horses, harmful or malicious code, or other programming routine intended to damage any computer, network system or data, or (v) in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or in any life support applications, devices or systems;
- e. infringe or misappropriate our or our licensors' Intellectual Property Rights;
- f. copy the Products or Third-Party Software, in whole or in part, except for backup purposes, unless we consent in writing (in total no more than one (1) copy of the Software may be generated by you for the authorized purposes, unless we give written consent);
- g. modify or create derivative works of the Products or Third-Party Software or any part, feature or function thereof, access a Product or Third-Party Software to build a competitive product or service, or reverse engineer, disassemble or decompile a Product or Third-Party Software or component, or attempt to discover or disclose the source code, underlying ideas or algorithms of the Product or Third-Party Software or any component;
- h. modify, remove, alter or obscure confidentiality or proprietary rights notices (including copyright and trademark notices) included in or on the Software, Documentation, Third-Party Software or media, and you agree to include all notices on all copies;
- i. use Software or Third-Party Software imbedded on Equipment on any other hardware unless provided by the us as a replacement or without our express written consent;
- j. circumvent, disable or defeat the limitations on your use of the Product or Third-Party Software; or
- k. disclose the results of any performance, functionality or other evaluation or benchmarking of the Product or Third-Party Software to a third party without our express prior written consent.

4.2. Obligations. You are responsible for: (a) selecting, purchasing, configuring, operating and maintaining your equipment, hardware, websites, network and Internet, data and telephone connections necessary for use and support of the Products; (b) all activities that occur in any User accounts and under your logins; (c) the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (d) obtaining

all necessary consents and authorizations (i) to use the Products to access the computers and network systems and the data contained therein, and (ii) from its Users for the transmission of Customer Data to third parties in connection with the Products; (e) using best practices and commercially reasonable efforts to prevent unauthorized access to, or use of, the Products, including promptly notifying us when you become aware of any unauthorized access or use; and (f) using the Products only in accordance with the Agreement, Documentation, and applicable laws and government regulations.

4.3. Third-Party Software. The Third-Party Software is governed strictly by the third-party's (i) clickwrap agreement, which requires you to "Accept" and/or "Agree" before utilizing and/or installing the software; (ii) the terms and conditions referenced *via* a universal resource locator (URL) indicated on an applicable Order; or (iii) terms and conditions contained within a text file (e.g., .txt), which accompanies the Third-Party Software. Third-Party Software may only be used with the Products. Third-Party Software is not to be construed as Software under this Agreement. The owner of the Third-Party Software may be deemed a third-party beneficiary with respect to your use of that software.

4.4. Relationship to Cloud Subscription Services. This Agreement is limited to Products and does not convey any right to use our hosted, online or web-based services (the **Cloud Subscription Services**). Any use of our Cloud Subscription Services by you will be governed by a separate agreement.

5. INTELLECTUAL PROPERTY RIGHTS. Except as expressly set forth in this Agreement, this Agreement does not grant (a) us any Intellectual Property Rights in Customer Data or (b) you any Intellectual Property Rights in the Products, Third-Party Software or our trademarks. Title and full ownership, trade secrets, copyright, patent rights and all other Intellectual Property Rights to the Products remains with us, whether or not any portion thereof is or may be validly copyrighted or patented. We will own all rights in any copy, translation, modification, adaptation or derivation of the Products, including any improvement or development thereof. You are only granted the limited rights to the Products as described in this Agreement. All rights not specifically granted in this Agreement to you are exclusively reserved to us or our licensors. You agree to treat the Products as our proprietary information. You agree that we own and have the right to exploit and include in the Products any suggestions, enhancement requests, feedback, recommendations or other information provided by you, your employees, contractors and Users related to the Products without any obligation to you.

6. COMPANY OBLIGATIONS. We will (a) maintain appropriate administrative, physical, and technical safeguards to protect the security and integrity of the Products and the Customer Data in accordance with our then current security policies and (b) access and use the Customer Data only for the purposes of (i) performing our obligations under this Agreement; (ii) preventing or addressing service or technical problems, (iii) responding to your requests in connection with customer support matters, (iv) enforcing this Agreement, and (v) complying with laws. We will not disclose Customer Data to a third party except to the extent necessary to carry out the terms of this Agreement or as permitted

or required by law. You control and own all right, title, and interest in and to Customer Data and at all times remains the data controller.

7. ORDER AND PAYMENT

7.1. Orders. You will place a binding order, subject to our acceptance, by sending us a signed Order (or purchase order, where allowed by us). You agree that your purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by us, our distributors or resellers regarding future functionality or features of the Products.

7.2. Affiliate Orders. Your Affiliates located in the Territory may execute an Order subject to this Agreement and will be entitled to all the rights and be bound by all the obligations of you under this Agreement, any amendments whenever made, and the Order executed by the Affiliate. You will (a) remain obligated to perform your commitments (including payment obligations) under the Agreement with respect to any Products provided to your Affiliates; and (b) act as the single point-of-contact with us with respect to the Products provided to your Affiliates.

7.3. Payment. You will pay us for the Products and Support at the rates set forth on the Order. Invoiced amounts will be due and payable net 30 days from the invoice date or other period (if any) as may be indicated in the invoice. Fees are nonrefundable and your payment obligation is not cancelable. You are responsible for providing us with your complete and accurate billing and contact information and notifying us of any changes to your billing and contact information.

7.4. Overdue Charges. Subject to the "Payment Disputes" section, if any invoiced amount is not received by us by the due date, then without limiting our rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. You will pay to us all reasonable costs and expenses for collection of overdue amounts, including legal fees. In addition, we may condition future purchases on payment terms shorter than those specified in this Section 7.

7.5. Payment Disputes. We will not exercise our rights under the "Overdue Charges" section above if you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. You must provide written notice to us of your good faith dispute within 15 days of invoice receipt. We will promptly review and respond to the notice. After the dispute is resolved, you will immediately pay the invoice. If you fail to provide notice to us within the 15-day period, then your right to dispute the invoice will be deemed waived.

7.6. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, **Taxes**). You are responsible for paying all Taxes (including taxes which may be applicable to online transactions in your state) associated with your purchases. If we have the legal obligation to pay or collect

Taxes for which you are responsible, we will invoice you and you will pay that amount, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.

7.7. Delivery. The Software will be delivered electronically as and when determined by us, which will allow you to take immediate possession of the Software. All Software will be deemed accepted upon delivery. In the event you acquire Equipment under this Agreement, title and risk of loss to the Equipment will pass to you upon delivery to the common carrier, F.O.B. Origin, Freight Collect (unless the Equipment is rented, leased or loaned to you by us). You are responsible for all shipping and handling fees.

8. TERM AND TERMINATION

8.1. Term. The License is effective from the day we initially deliver the applicable License under this Agreement and continues for the period specified in the Order (**Initial Term**) or until terminated as provided in this Agreement. License subscriptions and Support will automatically renew for successive one (1) year terms (each, a **Renewal Term**) upon the conclusion of the Initial Term unless either party provides written notice of termination 90 days prior to the end of the Initial Term or Renewal Term, as applicable.

8.2. Termination. A party may terminate the Agreement, Order or License for cause upon 30 days' written notice to the other party of a material breach, including untimely payment, if the breach remains uncured at the expiration of the 30-day period. Consent to extend the cure period will not be unreasonably withheld, so long as the breaching party has commenced cure during the 30-day notice period and pursues cure of the breach in good faith. We may terminate the Agreement, Order and/or License: (a) immediately if (i) you cease your business operations or become subject to insolvency proceedings and the proceedings are not dismissed within 90 days, (ii) you are using the License for illegal purposes; or (iii) you are infringing on our or our licensors' Intellectual Property Rights; and (b) with at least 30 days prior notice if a change in law comes into effect which renders our provision of the License illegal, impossible or would materially adversely affect our ability to provide the License.

8.3. Effect of Termination. Termination of this Agreement, Order or any License will not prevent either party from pursuing all available legal remedies. Any payment obligations as of the termination of the Agreement, Order or License will remain in effect. Upon termination of a License, you must, in accordance with our directions, return or destroy our Confidential Information and the Products, and provide written certification of destruction.

8.4. Temporary Suspension. We may, without liability to you, suspend the service to the Products and all or some of your Users in the event the we deem, in good faith, suspension is necessary: (a) following an actual, attempted, or aborted security breach or cyber-attack on us; (b) to protect our systems and their integrity; or (c) if required by a governmental or regulatory entity or law enforcement agency. We will notify you of the cause of the

suspension to the extent and in the manner, that we provide a notification to all of our affected customers. The suspension will only remain in place for the minimum amount of time necessary to cure the cause of the suspension, if possible.

8.5. Survival. Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assigns, including the Sections titled "License Restrictions and Obligations", "Intellectual Property Rights", "Order and Payment", "Effect of Termination", "Confidentiality", "Indemnification", "Limitation of Liability", "Usage Verification" and "General".

9. SUPPORT, PROFESSIONAL SERVICES AND TRAINING

9.1. Support. If you purchase a Commercial Use License, we or our designated representative will provide maintenance support (**Support**) for the Products during the Initial Term and any Renewal Terms as set forth on the Order or, if the Commercial Use License is a perpetual license, then for the Products during the term of the Support plan as set forth on an Order. Support will be provided in accordance with our standard maintenance and support policy, and as updated from time to time, as long as the later modification does not materially diminish your ability to use and access the Products. Our current Support policies are available at www.secureauth.com/support/terms.

9.2. Professional Services. Professional services will be provided in accordance with the terms and conditions of the Professional Services Agreement at www.secureauth.com/product-and-service-terms. We offer professional services for standard consulting, installation, integration, configuration, tailoring, architectural review, value added modules and other time and materials services. You are responsible for installing any Software and Third-Party Software as permitted under this Agreement unless you purchase professional services and execute a statement of work with us.

9.3. Training. Training and education services may be purchased in accordance with terms and conditions of the Education & Training Terms at www.secureauth.com/product-and-service-terms.

10. CONFIDENTIALITY

10.1. Confidential Information. Confidential Information means all information disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party includes the terms and conditions of this Agreement, all Orders (including pricing), as well as the Products, business and marketing plans, financial information, strategies, data, technology and technical information, research and development, product plans and designs, and business processes disclosed by a party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the

Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

10.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (b) 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 and contractors who need that access for purposes consistent with this Agreement and who have confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those in this Agreement. Neither party will disclose the terms of this Agreement or Order to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for the Affiliate's, legal counsel's or accountant's compliance with Section 10 (Confidentiality).

10.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party: (a) gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted); (b) reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure; and (c) discloses only the information required by law.

11. WARRANTIES AND DISCLAIMERS

11.1. General Warranty. Each party represents and warrants that it has validly entered into this Agreement and has the legal power to do so.

11.2. Warranty. With respect to the Commercial Use Licenses only, we warrant that for a period of thirty (30) days from the date of initial delivery: (a) the Products will perform in substantial accordance with the Documentation; (b) except as specified in the Documentation and to the best of our knowledge, the Software does not contain any program routine, device, or other undisclosed feature, including, without limitation, malicious logic, worm, or Trojan horse; and (c) the Equipment will function substantially and materially with its Documentation and will be free from material defects. If the Product fails to fulfill or is not in compliance with one or more of the warranties set forth in this Section, then you must inform us in writing during the warranty period and provide information and materials, reasonably requested by us, to document and reproduce the noncompliance. Your exclusive remedy under this provision will be to have us, at our expense and sole option, either repair or replace the nonconforming Product; and if we are unable to correct the warranty issue after a reasonable opportunity, you may terminate the License and we will refund any unused prepaid fees paid for the applicable Product and Support. If refunded, your License for the defective Product will be terminated and the Product must be

returned to us. This warranty does not apply to problems caused by (i) abuse, misuse, alteration, neglect, accident, unauthorized repair or installation, or acts or omissions of any party other than us; (ii) your hardware, software, networks or systems; (iii) your failure to promptly install or allow an installation of a revision, update or release provided by us or our licensor; or (iv) use of the Product not in accordance with the Documentation or the Agreement. For products, acquired from a third-party on behalf of you by us, then you agree to look solely to the manufacturer of those products for all warranties made by manufacturer regarding those products.

11.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 11.2, THE PRODUCTS (INCLUDING BUT NOT LIMITED TO ALL EVALUATION LICENSES AND SDK LICENSES) ARE OFFERED "AS IS" AND "AS AVAILABLE" AND YOU RECEIVE NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. WE, OUR AFFILIATES AND LICENSORS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT; AND ANY WARRANTY ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WE DO NOT WARRANT THAT THE USE OR OPERATION OF ANY OF THE PRODUCTS WILL BE SECURE, UNINTERRUPTED, FREE OF HARMFUL CODE OR ERROR FREE OR THAT THE PRODUCTS WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE, EQUIPMENT OR HARDWARE (EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION), OR THAT THE PRODUCTS WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA, OR THAT THE PRODUCTS WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS.

12. INDEMNIFICATION

12.1. Indemnifications. We agree to indemnify, defend and hold you harmless from and against any unaffiliated third-party claim or legal action alleging: (a) that the Products as made available to you by us infringe any United States patent, copyright or trademark (**IP Indemnity**); or (b) death, bodily injury or the damage to or loss of any real or tangible personal property to the extent arising out of our gross negligence or willful misconduct in the performance of this Agreement. You agree to indemnify, defend and hold us and our licensors harmless from and against any unaffiliated third-party claim or legal action arising from or in connection with your breach of this Agreement.

12.2. Procedure. The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. Failure to provide timely notice or reasonable assistance will relieve the indemnifying party of its obligations under Section 12 to the extent the indemnifying party has been materially prejudiced. The indemnifying party will have full control and authority over the defense, including appeals, negotiations and any settlement, except that: (a) it may not make an admission of fault on behalf of the other party without written consent, (b) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (c) the other

party may join in the defense with its own counsel at its own expense. The indemnifying party will (i) retain and pay attorneys and court costs as part of its defense obligation, (ii) reimburse the other party for reasonable out-of-pocket expenses that it incurs in providing assistance, and (iii) pay the amount of any resulting adverse final judgment (including any award of attorney's fees and costs), penalties, sanctions or settlement. SECTION 12 STATES THE SOLE LIABILITIES AND EXCLUSIVE REMEDIES FOR CLAIMS DESCRIBED IN SECTION 12.

12.3. Exceptions. We have no obligation to indemnify you for an IP Indemnity to the extent that any claim or allegation arises from: (a) your use of the Products contrary to this Agreement or the Documentation; (b) use of any Product in combination with a hardware, software, technology, method or process not provided or approved by us if infringement would not occur without the combination, unless contemplated by this Agreement or the Documentation expressly authorizes a combination with such hardware, software, technology, method or process; (c) modification of the Products by anyone other than us, or modification made by us for non-standard features or functionality for you or according to your direction if the infringement would not have occurred without your requested modifications; or (d) your failure to install or allow an installation of a revision, update or release made available or provided by us or our licensors that would have eliminated the infringement.

12.4. Possible Infringement. In the event that we, in our sole discretion, reasonably determine, that the Product, or any portion thereof, infringes or misappropriates, or may infringe or misappropriate, any third-party Intellectual Property Right, we will, as your sole and exclusive remedy (but without limitation of our indemnification obligations under Section 12), and at our sole discretion, either: (a) obtain a license, at reasonable cost, for you to continue using the Product, or portion thereof; (b) modify the Product while retaining substantively equivalent functionality; (c) replace the affected Product with functionally equivalent software or services; or (d) terminate the applicable License in whole or in part and give you a refund for any unused, prepaid fees for the infringing Product covering the remainder of the Initial Term or Renewal Term, as applicable, after the date of termination.

13. LIMITATION OF LIABILITY

13.1. NO CONSEQUENTIAL DAMAGES. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR LICENSORS HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE LOSS, WHETHER DIRECT OR INDIRECT, OF USE, PROFIT, REVENUE, BUSINESS, OPPORTUNITY, GOODWILL OR DATA, OR FOR BUSINESS INTERRUPTION OR COST OF COVER), HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE, TORT OR OTHER THEORY OF LIABILITY) EVEN IF THE PARTY OR ITS AFFILIATES KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE OR REASONABLY FORESEEABLE AND EVEN IF A REMEDY FAILS OF ITS

ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

13.2. LIMITATION. THE AGGREGATE LIABILITY FOR ALL CLAIMS UNDER THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES UP TO: (A) THE AMOUNT PAID BY YOU TO US UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY IF THE BREACHING PARTY IS US; OR (B) THE AMOUNT DUE FROM YOU UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY IF THE BREACHING PARTY IS YOU. THIS LIMITATION APPLIES TO ANY DAMAGE, HOWEVER CAUSED, AND ON ANY THEORY OR LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, NEGLIGENCE (ACTIVE OR OTHERWISE), THE USE OR PERFORMANCE OF THE PRODUCTS, OR OTHERWISE AND REGARDLESS OF WHETHER THE DAMAGES WERE FORESEEABLE OR NOT. NOTWITHSTANDING THE ABOVE, OUR CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO AN EVALUATION LICENSE OR SDK LICENSE WILL NOT EXCEED \$100. Neither party will be liable for any claim brought by the other party more than 12 months after the other party became aware of the claim.

13.3. Exceptions to Limitations. The limits of liability in Section 13.2 apply to the fullest extent permitted by law, except with regard to: (a) violation of the other party's Intellectual Property Rights; (b) willful misconduct, gross negligence or fraud; (c) your failure to comply with your payment obligations; or (d) breach of a party's obligations under Section 10 (Confidentiality) or Section 12 (Indemnification). Notwithstanding anything to the contrary in the Agreement, our aggregate liability with respect to Customer Data will be limited to the amounts in Section 13.2.

14. USAGE VERIFICATION. We may request annually a certified report detailing your installation and usage of the Products, including whether or not you have exceeded the scope of License granted. You will provide the report within 10 business days following our request. Some Software may contain devices that allow the Software to connect with our servers to ascertain compliance with the Permitted Licenses. You will cooperate with us to ascertain your usage and compliance with this Agreement, including allowing us to access the Products remotely. If your use of any Product is found to exceed the scope of License granted, you will be charged additional license and Support fees at our then-current rates, for each instance of additional use in excess of the License scope granted and the fees will be payable in accordance with this Agreement. This Section 14 does not limit or restrict any other of our rights or remedies that are otherwise set forth in this Agreement or available by law.

15. GENERAL

15.1. Entire Agreement. The Agreement, Order(s), and any amendments contain the entire agreement with respect to the subject matter of this Agreement and supersede and replace all prior or contemporaneous proposals, understandings, agreements, negotiations and representations, oral or written. Any pricing, payment and term length conditions in an Order that are inconsistent with the Agreement will control for that Order only.

Any inconsistent or additional terms of your purchase order or similar document are excluded regardless of us accepting the purchase order or other Customer document for payment purposes. All headings are for reference purposes only and must not affect the interpretation of the Agreement.

15.2. Assignment. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. Notwithstanding the foregoing, if you are acquired by, sell substantially all your assets to, or undergo a change of control in favor of, either (a) a direct competitor of ours or an Affiliate of a direct competitor of ours, or (b) an entity located outside of the United States, then we may terminate this Agreement. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15.3. Severability. If any provision of this Agreement is held by a court of competent jurisdiction or arbitrator to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

15.4. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Any waiver, amendment or other modification of this Agreement must be in writing and signed by an authorized representative of both parties.

15.5. Notices. Notice or approval must be in writing, signed by a party's authorized representative. Notices will be deemed to have been given upon: (a) personal delivery, (b) the second business day after mailing, or (c) the first business day after sending by email (provided email will not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to you will be addressed to the relevant billing contact designated by you. All other notices to you will be addressed to the relevant contact administrator designated by you.

15.6. Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, internet failure, communication line failure and power failures, war, acts of terror, riot, acts of God or governmental action (including the passage of laws or regulations or other acts of government that impact the delivery of the Products).

15.7. 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. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes. We do not undertake to perform any of your regulatory obligations or

assume any responsibility for your business or operations.

15.8. Dispute Resolution. The parties will attempt in good faith to resolve any controversy or claim promptly through business discussions and will, upon written request, escalate a dispute to executive management for resolution. If the parties fail to resolve the dispute within 30 days of written request, or any longer period agreed to in writing, the parties may pursue the remedies to which they are entitled. This Section does not restrict either party's right to seek injunctive relief.

15.9. Governing Law; Arbitration. This Agreement is to be governed by and interpreted in accordance with the laws of the State of Delaware, U.S.A., without giving effect to its principles of conflict of laws. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Transactions Act, as adopted by any state or governing body, do not apply to this Agreement. Any action or proceeding arising out of or relating to this Agreement will be resolved by arbitration in Orange County, California in accordance with the Commercial Dispute Resolution Procedures of the American Arbitration Association and, in the event either party seeks injunctive or provisional relief, the Optional Rules for Emergency Measures of Protection. The arbitration will be heard and determined by a single arbitrator experienced in the software industry. The arbitrator's decision in any arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The prevailing party will be entitled to recover its attorneys' fees and arbitration costs from the other party. The parties agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration panel, except as may lawfully be required in judicial proceedings relating to the arbitration or by disclosure rules and regulations of securities regulatory authorities or other governmental agencies.

15.10. Injunctive Relief. Each party acknowledges that money damages may not be sufficient compensation for a breach of Sections 2-5 or 10. Each party agrees that the other will have the right, in addition to its other rights and remedies, to seek injunctive relief in accordance with this Agreement for any violation or threatened violation of Section Sections 2-5 or 10 and waives any requirement that the party seeking injunctive relief post a bond or any other security.

15.11. Government Rights. Where the United States Government is the Customer, your rights to use, modify, reproduce, release, perform, display, or disclose the Software and Third-Party Software are established by this standard commercial license in accordance with DFARS 227.7202-1, for the Department of Defense, and FAR 27.405-3 and FAR 52.227-19 as applicable to other agencies. The Government acquires the Software, Third-Party Software and Documentation with only those rights set forth in this Agreement, and any use of the Software, Third-Party Software and Documentation by the Government constitutes agreement by the Government that that the Software, Third-Party Software and Documentation are

“commercial items”, “commercial computer software” and “commercial computer software documentation” as defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

15.12. Compliance with Laws. Each party will comply with the laws and regulations applicable to it in connection with its obligations and performance under this Agreement. You are responsible for ensuring that your use of the Products is in accordance with laws and regulations that apply to you.

15.13. Export. Each party is responsible for ensuring that its actions with respect to the Products comply with the export control laws of the United States. You will not, directly or indirectly, export, re-export, transfer, re-transfer, sell, supply, or allow access to or use of the Products to, in, by, or for sanctioned, embargoed, or prohibited countries, persons, or end uses under U.S. or other applicable law (collectively, **Prohibited Uses**). You are responsible for screening for Prohibited Uses and obtaining any required licenses, governmental approval, or other authorizations.

15.14. Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

15.15. Open Source Software. Certain items of software included with the Products are subject to the “open source” or “free software” licenses (**Open Source Software**). Some of the Open Source Software is owned by third parties. Nothing in this document limits your rights under the terms and conditions of any applicable end user license for the Open Source Software.

15.16. Marketing. We may use your company name, logo, trademark, trade name, service mark, or other commercial designation to indicate the existence of a customer relationship between you and us. We may place your name and/or logo in audio and online presentations to other potential customers and business partners and use your name in a press release.