Software License Agreement

This Software License Agreement (**Agreement**) is made between Core Security SDI Corporation, with a place of business at 1000 Holcomb Woods Parkway, Suite 401, Roswell, GA 30076 and its affiliate SecureAuth Corporation, with a place of business at 8845 Irvine Center Dr., Suite 200, Irvine, CA 92618 (collectively the **Company**) and the customer executing the quote or order document (**Customer**). This Agreement is effective as of the last date signed on the quote or order document.

1. COMPANY PRODUCTS. For purposes of this Agreement, the **Product(s)** mean (i) the object/binary code version of the Company's software product(s), including selected modules, application program interfaces (**API**), connectors and databases (collectively the **Software**) identified in the Order; (ii) any hardware which Company may provide associated with the Software (**Equipment**), if applicable; and (iii) the related user manuals and other published protocols, standards and technical specifications provided by Company and as updated from time to time (**Documentation**).

2. EVALUATION AND SDK LICENSES.

2.1. Evaluation License. If Customer has downloaded or has otherwise been provided with a Product for evaluation purposes, Company hereby grants Customer a limited, temporary, revocable, nonexclusive, nontransferable, non-assignable right and license to use that Product solely for Customer's 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 Company, beginning on the date Company first makes the Software available for download by Customer or otherwise delivers the Software to Customer, plus any extensions granted by Company in writing. Any virtual machine which may be made available by Company remains the property of Company. No components contained within the virtual machine, including but not limited to the operating system and database, will be deemed rented, leased, or owned by Customer. Upon the expiration or termination of any evaluation period, Customer will stop using and uninstall any software provided as part of the Evaluation License and destroy any virtual appliance images which may have been created pursuant to the evaluation. Customer acknowledges and agrees 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 Customer under a limited license to the SDK solely for Customer's internal use to develop integrations with the Products. Customer 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 Customer's license to the underlying Products or Evaluation License terminates.

2.3. General. Unless otherwise required by Company, there is no fee for Customer's 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 Customer uses an Evaluation License beyond the scope of the license granted, (a) Customer will be deemed to have accepted a Commercial Use license to use the Product, (b) Customer will be invoiced for the applicable license fees and Support fees, and (c) Customer will pay the fees in accordance with Section 9 (Order and Payment). Customer is responsible for any applicable shipping charges or taxes in connection with Customer's use of the Product. Notwithstanding anything otherwise set forth in the Agreement, Customer understands and agrees that all Products licensed to Customer under an Evaluation License or SDK License are provided "AS IS" and Company does not provide any warranties or Support in connection with an Evaluation License or SDK License.

3. COMMERCIAL USE LICENSE. For purposes of this Agreement, **Commercial Use** means use of a Product in a production environment for Customer's business purposes. If Customer has downloaded or has otherwise been provided with a Product for Commercial Use, subject to the terms and conditions of this Agreement and Customer's payment of all applicable fees, Company hereby grants Customer, 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 the Customer's 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 the Company's 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**). Customer's use of the Software and Third-Party Software is limited to the number of users (e.g., named users, individuals with unique user identifications) and/or assets (e.g., IP addresses, URL addresses, and/or devices, with which the Customer may utilize the Software) as set forth in the Order (**Permitted Licenses**). If Customer wants to use the Products in excess of the Permitted Licenses or at another location, Customer must first obtain the written consent of Company, and pay the then-current license fee and transfer and/or upgrade charges. **Territory** means worldwide unless otherwise agreed in the Order (subject always to applicable export restrictions).

4. LICENSE RESTRICTIONS AND OBLIGATIONS.

4.1. Restrictions. The Products and Third-Party Software may only be used to administer Customer's internal business operations. Customer may not and may not permit others to:
a. redistribute, assign, sell, rent, lease, sublicense, lend,

transfer, resell or distribute 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 Company);

b. copy the Products or Third-Party Software, in whole or in part, except for backup purposes, unless Company consents in writing (in total no more than one (1) copy of the Software may be generated by Customer for the authorized purposes, unless given written consent by Company);

c. modify, obscure, or delete any proprietary rights notices included in or on the Software, Documentation, Third-Party Software, or media, and Customer agrees to include all notices on all copies;

d. modify the Products or Third-Party Software or make derivative works of the Software or Third-Party Software, including translation or localization;

e. reverse engineer or disassemble or decompile the Software or Third-Party Software, in whole or in part or otherwise attempt to derive its source code;

f. provide, disclose or make available to, or permit use of the Software or Third-Party Software by persons other than the employees, consultants, agents, representatives or authorized contractors of Customer;

g. exceed the number of Permitted Licenses or users for a particular Software or Third-Party Software as set forth in an Order;

h. use Software or Third-Party Software imbedded on Equipment on any other hardware unless provided by the Company as a replacement or without express written consent of Company;

i. circumvent, disable or defeat the limitations on Customer's use of the Software;

j. 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;

k. disclose the results of any performance, functionality or other evaluation or benchmarking of the Software to a third party without the express prior written permission of Company; or

l. infringe or misappropriate Company or its licensors' intellectual property rights.

4.2. Obligations. Customer is responsible for: (a) all activities that occur in any user accounts and under its login; (b) the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (c) 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; and (d) using best practices and commercially reasonable efforts to prevent unauthorized access to, or use of, the Products, including promptly notifying Company when it becomes aware of any unauthorized access or use.

4.3. Third-Party Software. **Third-Party Software** means software products not developed by Company, but that Company may distribute to Customer, with or within the Software. The Third-Party Software is governed strictly by the third-party's (i) clickwrap agreement, which requires Customer 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.

5. TITLE. In the event Customer acquires Equipment under this Agreement, title to the Equipment will pass to Customer upon shipment by the Company (unless the Equipment is rented, leased or loaned to Customer). In all other instances, Customer acknowledge that, as between Customer and Company, title and full ownership, trade secrets, copyright, patent rights and all other intellectual property and proprietary rights to the Products remain with Company, whether or not any portion thereof is or may be validly copyrighted or patented. Customer is only granted the limited license rights to use the Products and Third-Party Software as described in this Agreement. All rights not specifically granted in this Agreement to Customer are exclusively reserved to Company or its licensors. Customer agrees to treat the Products as Company's proprietary information. Customer will take all reasonable steps to protect the Products and Third-Party Software from disclosure to or use by any unauthorized third party. Customer agrees that Company owns and has the right to exploit and include in the Products any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer related to the Products.

6. COMPANY OBLIGATIONS. Company will (a) maintain appropriate administrative, physical, and technical safeguards to protect the security and integrity of the Products and the data or information submitted by License to or through the Products (**Customer Data**) in accordance with the Company's then current security policies and (b) access and use the Customer Data for the purposes of (i) preventing or addressing service or technical problems, (ii) responding to Customer's requests in connection with customer support matters, (iii) enforcing this Agreement, and (iv) complying with laws. Company 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. Customer controls and owns all right, title, and interest in and to Customer Data and at all times remains the data controller.

7. TERM AND TERMINATION.

7.1. Term. The License is effective from the day Company grants 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.

7.2. Termination. A party may terminate a 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. Company may terminate the License and/or this Agreement: (a) immediately if (i) Customer ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days; (ii) Customer is using the License for illegal purposes; or (iii) Customer is infringing on Company's or its licensors' intellectual property rights; and (b) with at least 30 days prior notice if a change in law comes into effect which renders Company's provision of the License illegal, impossible or would materially adversely affect Company's ability to provide the License.

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

7.4. Temporary Suspension. Company may, without liability to the Customer, suspend the service to the Company Products and all or some of Customer's users in the event the Company deems, in good faith, suspension is necessary: (a) following an actual, attempted, or aborted security breach or cyber-attack on Company; (b) to protect the Company's systems and their integrity; or (c) if required by a governmental or regulatory entity or law enforcement agency. Company will notify Customer of the cause of the suspension to the extent and in the manner, that Company provides a notification to all of its 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.

7.5. Survival. Those provisions of this Agreement that by their terms should survive any termination of this Agreement will be deemed to survive and remain in full force and effect, including, but not limited to Sections 1 (Company Products), 4 (License Restrictions and Obligations), 5 (Title), 7.3 (Effect of Termination), 9 (Order and Payment), 11 (Limitation of Liability), 12 (Indemnification), 13 (Confidentiality), 14 (Usage Verification) and 15 (General Provisions).

8. SUPPORT; PROFESSIONAL SERVICES AND TRAINING.

8.1. Support. If Customer purchases a Commercial Use License, Company or its designated representative will provide maintenance support (**Support**) for the Products during the Initial Term and any Renewal Terms as set forth on the Order. Support will be provided in accordance with Company's standard maintenance and support policy, at www.secureauth.com/support/terms.

8.2. Professional Services. Professional services will be provided in accordance with the terms and conditions of the Professional services packages, at www.secureauth.com/legal/psp. Customer is responsible for installing any Software and Third-Party Software as permitted under this Agreement unless Customer purchases professional services and executes a statement of work (**SOW**) with Company.

8.3. Training. Training services and certification sources may be purchased in accordance with the training order form found at www.secureauth.com/legal/training.

9. ORDER AND PAYMENT.

9.1. Orders. **Order** means an ordering document (e.g., quote, schedule or SOW) entered into between Customer and Company and which incorporates this Agreement by reference. Customer will place a binding order, subject to Company's acceptance, by sending Company a signed Order or a purchase order, where allowed by Company. Customer agrees that its License of the Products is not contingent upon the delivery of any future functionality or features by the Company.

9.2. Payment. Customer agrees to pay to Company the license fees and Support fees for the Products. Customer must make all payments due to Company in full within 30 days from the date of each invoice or other period (if any) as may be indicated in the invoice. Fees are nonrefundable and Customer's payment obligation is not cancelable. Customer must provide written notice to Company of its good faith dispute within 15 days of invoice receipt. Company will promptly review and respond to the notice. After the dispute is resolved, Customer will immediately pay the invoice. If Customer fails to provide notice to Company within the 15-day period, then Customer's right to dispute the invoice will be deemed waived. Any amounts payable to Company by Customer that remain unpaid after the due date will be subject to a late charge equal to the lesser of (a) 1.5% of the invoice amount per month from the due date until the amount is paid or (b) the maximum rate permitted by law. Customer will pay to Company all reasonable costs and expenses for collection of overdue amounts, including legal fees.

9.3. Taxes. 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. Customer is solely responsible for all taxes (including taxes which may be applicable to online transactions in Customer's state), fees, duties and governmental assessments (except for taxes based on Company's net income) that are imposed or become due in connection with the subject matter of this Agreement.

9.4. Delivery. The Software will be delivered electronically as and when determined by Company, which will allow Customer to take immediate possession of the Software. All Software will be deemed accepted upon delivery.

10. WARRANTY AND DISCLAIMER.

10.1. General Warranty. Each party represents and warrants that it has the legal right and power to enter into this Agreement.

10.2. Company Warranty. With respect to the Commercial Use Licenses only, Company warrants to Customer that: (a) the Products will perform in substantial accordance with the Documentation; (b) except as specified in the Documentation and to the best of Company's 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) any professional services and operation services performed by Company pursuant to this Agreement (**Services**) will be performed in a good and workmanlike manner by appropriately qualified and trained personnel. If the Software or the Services (as applicable) fail to fulfill or is not in compliance with one or more of the warranties set forth in Section 10.2, then Customer must inform Company in writing and provide Company with information and materials, reasonably requested by Company, to document and reproduce the noncompliance. Customer must provide the written warranty claim for Products to Company within 30 days of the delivery date of the applicable Product. Customer must provide a written warranty claim for Services to Company within 30 days after the date of the invoice for the Services. As Customer's sole and exclusive remedy, Company will, as applicable, modify the Product, replace the Product with other software offering comparable functionality, or re-perform the Services, in each case as may be necessary to cause the Product or the Services (as applicable) to comply with the warranties set forth in Section 10.2. If Company is unable to correct the warranty issue after a reasonable opportunity, Company will refund the License fees paid for the applicable Product or refund for the allegedly defective Service, as applicable.

10.3. Warranty Exclusion. The warranties in Section 10.2 do not cover problems caused by (a) abuse, misuse, alteration, neglect, accident, unauthorized repair or installation, or acts or omissions of any party other than Company; (b) Customer's hardware, software, networks or systems; (c) Customer's failure to promptly install or allow an installation of a revision, update or release provided by Company or its licensor; or (d) use of the Product not in accordance with the Documentation or the Agreement. THIS SECTION 10 DESCRIBES COMPANY'S SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY FOR A WARRANTY CLAIM.

10.4. DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.2, THE PROFESSIONAL SERVICES PRODUCTS (INCLUDING BUT NOT LIMITED TO ALL EVALUATION LICENSES AND SDK LICENSES) ARE OFFERED "AS IS" AND "AS AVAILABLE" AND CUSTOMER RECEIVES NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. COMPANY, ITS 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. COMPANY DOES 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 OR HARDWARE (EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION), OR THAT THE PRODUCTS OR PROFESSIONAL SERVICES WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA, OR THAT THE PRODUCTS OR PROFESSIONAL SERVICES WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS .

11. LIMITATION OF LIABILITY.

11.1. NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY OR ITS AFFILIATES OR LICENSORS WILL BE LIABLE 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) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE, TORT OR OTHER THEORY OF LIABILITY) EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE OR REASONABLY FORESEEABLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11.2. LIMITATION OF DAMAGES. The aggregate liability for all claims under this Agreement is limited to direct damages up to: (a) the amount paid by Customer to Company under this Agreement during the 12 months prior to the event giving rise to liability if the breaching party is Company; or (b) the amount due from Customer under this Agreement during the 12 months prior to the event giving rise to liability if the breaching party is Customer. 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, the Company's 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.

11.3. Exceptions to Limitations. The limits of liability in Section 11.2 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) Licenses' failure to comply with its payment obligations; or (d) breach of a party's obligations under Section 12 (Indemnification) or Section 13 (Confidentiality). Notwithstanding anything to the contrary in the Agreement, Company's aggregate liability with respect to Customer Data will be limited to the amounts in Section 11.2.

12. INDEMNIFICATION.

12.1. Indemnities. Company agrees to indemnify, defend and hold Customer harmless from and against any unaffiliated third-

party claim or legal action alleging that the Products as made available to Customer by Company infringe any United States patent, copyright or trademark. Customer agrees to indemnify, defend and hold Company and its licensors harmless from and against any unaffiliated third-party claim or legal action arising from or in connection with Customer's breach of this Agreement.

12.2. <u>Procedure</u>. 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. <u>Exceptions</u>. Company has no obligation to indemnify Customer to the extent that any claim or allegation arises from (a) Customer's use of the Products contrary to this Agreement or the Documentation; (b) the combination or use of the Products with any other services, technology, content or material that were neither (i) provided by Company, nor (ii) specified by Company for use with the Products as contemplated by this Agreement or the Documentation; (c) modification of the Products by anyone other than Company, or modification made by Company for non-standard features or functionality for Customer or according to Customer's direction if the infringement would not have occurred without Customer's requested modifications; or (d) Customer's failure to install or allow an installation of a revision, update or release provided by Company that would have eliminated the infringement.

12.4. <u>Possible Infringement</u>. In the event that Company, in its sole discretion, reasonably determines, that the Products, or any portion thereof, infringes or misappropriates, or may infringe or misappropriate, any third-party intellectual property right, Company will, as Customer's sole and exclusive remedy (but without limitation of Company's indemnification obligations under Section 12), and at Company's sole discretion, either: (a) obtain a license, at reasonable cost, for Customer to continue using the Products, or portion thereof; (b) modify the Products while retaining substantively equivalent functionality; (c) replace the affected Products with functionally equivalent software or services; or (d) terminate the applicable License in whole or in part and give Customer a refund for any unused, prepaid fees for the infringing Products covering the remainder of the Initial Term or Renewal Term, as applicable, after the date of termination.

13. CONFIDENTIALITY. Each party (a **Receiving Party**) understands that the other party (the **Disclosing Party**) may disclose information of a confidential nature including, without limitation, the Products, product information, data, pricing, financial information, end user information, software, specifications, research and development and proprietary algorithms or other materials that is (a) clearly and conspicuously marked as "confidential" or with a similar designation or (b) is disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used (**Confidential Information**). The terms and conditions of this Agreement also constitute Confidential Information of each party. The Receiving Party agrees, for itself and its agents and employees, that it will not publish, disclose or otherwise divulge or use for its own purposes (other than as expressly permitted under this Agreement) any Confidential Information of the Disclosing Party furnished to it by the Disclosing Party without the prior written approval of the Disclosing Party in each instance. Each party will use at least the same level of care to maintain the Confidential Information of the other party as it uses to maintain the confidentiality of its own non-public information, and in no event less than a reasonable degree of care. The foregoing obligations do not extend to any information to the extent that the Receiving Party can demonstrate that the information (i) was at the time of disclosure or, to the extent that the information thereafter becomes through no fault of the Receiving Party, a part of the public domain by publication or otherwise; (ii) was already properly and lawfully in the Receiving Party's possession at the time it was received by the Receiving Party free from any obligation of confidentiality, (iii) was lawfully received by the Receiving Party from a third party who was under no obligation of confidentiality to the Disclosing Party with respect thereto, or (iv) was independently developed by the Receiving Party or its independent contractors without use of or reference to the Disclosing Party's Confidential Information. If the Receiving Party is required to disclose Confidential Information in accordance with a judicial or governmental order or requirement, the Receiving Party will promptly notify the Disclosing Party (unless notice is prohibited by law) to allow the Disclosing Party to contest the order or requirement or seek confidential treatment for the information.

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

15. GENERAL PROVISIONS.

15.1. Entire Agreement. The Agreement, Order(s), SOW, 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 Customer's purchase order or similar Customer document are excluded regardless of Company 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 Customer is acquired by, sells substantially all its assets to, or undergoes a change of control in favor of, either (a) a direct competitor of the Company or an affiliate of a direct competitor of the Company, or (b) an entity located outside of the United States, then Company 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. Each provision of this Agreement will be viewed as separate and distinct, and if any provision is deemed by the arbitrator or a court of competent jurisdiction to be illegal, invalid or unenforceable, the arbitrator/court finding the illegality, invalidity or unenforceability will modify or reform this Agreement to give as much effect as possible to the provision. Any provision which cannot be modified or reformed will be deleted and the remaining provisions of this Agreement will continue in full force and effect.

15.4. Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver. 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 and sent by email transmission, overnight courier or registered or certified mail to the address provided on this Agreement or as otherwise specified in writing by a party for notice. Notices provided by email transmission or overnight courier will be effective 1 business day after they are sent. Notices provided by registered or certified mail will be effective 3 business days after they are sent.

15.6. Force Majeure. Except for payment obligations, each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or services because of causes beyond its reasonable control, and without its fault or negligence, including without

limitation, acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental action (including the passage of laws or regulations or other acts of government that impact the delivery of the Products), internet failure, communication line failure and power failures.

15.7. Independent Contractors. It is the intention of Company and Customer that Company and Customer are, and will be deemed to be, independent contractors with respect to the subject matter of this Agreement, and nothing contained in this Agreement will be deemed or construed in any manner whatsoever as creating any partnership, joint venture, employment, agency, fiduciary or other similar relationship between Company and Customer. Company does not undertake to perform any of Customer's regulatory obligations or assume any responsibility for Customer's 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. Notwithstanding the foregoing, Customer acknowledges and agrees that in the event of a breach by Customer of Sections 2-5 or 13 of this Agreement, Company, without limitation of its other rights and remedies, is entitled to seek immediate injunctive relief in any court of competent jurisdiction, without requirement of posting bond and without the necessity of showing actual money damages.

15.10. Terms Applicable to Third Party Products. If indicated in the Documentation and/or the installer provided with the Software, the Products may contain or be distributed with third party software which is covered by a different license, and the owner of the third-party software may be deemed a third-party beneficiary with respect to Customer's use of that software.

15.11. Government Rights. Where the United States Government is the Customer, the Customer's rights to use, modify, reproduce, release, perform, display, or disclose the 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 and Documentation with only those rights set forth in this Agreement, and any use of the Software and Documentation by the Government constitutes agreement by the Government that that the 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. Customer is responsible for ensuring that its use of the Products is in accordance with laws and regulations that apply to it.

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. Customer 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**). Customer is responsible for screening for Prohibited Uses and obtaining any required licenses, governmental approval, or other authorizations.

15.14. 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 Customer's rights under the terms and conditions of any applicable end user license for the Open Source Software.

15.15. Marketing. Company may use Customer's company name, logo, trademark, trade name, service mark, or other commercial designation to indicate the existence of a customer relationship between Customer and Company. Company may place Customer's name and/or logo in audio and online presentations to other potential customers and business partners and use Customer's name in a press release.