



## END USER AGREEMENT

THIS END USER AGREEMENT IS ENTERED INTO BETWEEN SECURONIX, INC. ("SECURONIX") AND YOUR ORGANIZATION ("CUSTOMER") AS OF THE EFFECTIVE DATE (DEFINED BELOW) ("AGREEMENT") AND GOVERNS THE PURCHASE, ACCESS AND USE OF SECURONIX'S PRODUCTS (INCLUDING SERVICES AND SOFTWARE) AND PROFESSIONAL SERVICES BY CUSTOMER. IN ORDER TO USE OR RECEIVE THE BENEFITS OF ANY PRODUCT, CUSTOMER MUST PURCHASE THE APPLICABLE PRODUCT THROUGH AN ORDER FORM.

THE INDIVIDUAL ACCEPTING THIS AGREEMENT ON BEHALF OF THE CUSTOMER REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT.

BY EXECUTING THIS AGREEMENT, CLICKING A BOX INDICATING ACCEPTANCE, EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR USING ANY SECURONIX PRODUCT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT.

This Agreement may be updated from time to time, and the current version will be posted at <https://www.securonix.com/legal-center/>. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a Subscription Term or upon the effective date of a new Order Form, and in any event continued use of any Securonix Product after the updated version of the Agreement goes into effect will constitute Customer's acceptance of such updated version.

### 1. DEFINITIONS.

- 1.1     **"Affiliate"** means, with respect to each party, an entity that controls, is controlled by, or is under common control with such party. For purposes of this definition, "**control**" means the beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity. An entity will be deemed to be an "**Affiliate**" only for so long as such control exists.
- 1.2     **"Confidential Information"** means any information that one party (the "**Disclosing Party**") provides to the other party (the "**Receiving Party**") in connection with this Agreement, whether orally or in writing, that is designated as confidential or that reasonably should be considered to be confidential given the nature of the information and/or the circumstances of disclosure.
- 1.3     **"Customer Materials"** means all information, data, content, and other materials, including Personal Data (as defined in the Securonix Data Processing Addendum), in any form or medium, that is submitted, posted, collected, transmitted, or otherwise provided by or on behalf of Customer through the Products, or to Securonix in connection with Customer's use of the Products, but excluding, for clarity, System Data and any other information, data, data models, content, or materials owned or controlled by Securonix and made available through or in connection with the Products.
- 1.4     **"Documentation"** means the operator and user manuals, training materials, specifications, minimum system configuration requirements, compatible device and hardware list and other similar materials in hard copy or electronic form (including materials found at <http://documentation.securonix.com>) as provided by Securonix to Customer relating to the Products, which may be updated by Securonix from time to time.
- 1.5     **"Effective Date"** means the earlier of (a) the date of Customer's accepting this Agreement, or (b) the first date of Customer's access or use of any Product in any manner, as applicable.
- 1.6     **"Entitlements"** means the number of units purchased for the applicable Product as set forth in the applicable Order Form. The unit for each Securonix Product is defined in the Licensing Guidelines available at <https://www.securonix.com/legal-center/> (the "**Securonix Licensing Guidelines**").
- 1.7     **"Excluded Claims"** means obligations and claims based on: (a) a party's breach of its obligations in Section 6 (Confidential Information) (but excluding obligations and claims relating to Customer Personal Data (as defined in the Securonix Data Processing Addendum); (b) either party's express obligations under Section 8 (Indemnification); and/or (c) liability which, by law, cannot be limited (e.g., tort claims for gross negligence and intentional misconduct).
- 1.8     **"Intellectual Property Rights"** means patent rights, trademarks, inventions, copyrights, trade secrets, know-how, data and database rights, design rights, mask work rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.



1.9     **“Order Form”** means a mutually executed order form or other mutually agreed upon ordering document which references this Agreement and sets forth the applicable Products, Support Services and/or Professional Services to be provided by Securonix.

1.10    **“Person”** means any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity.

1.11    **“Products”** mean the Software, Services, Trial Products, and/or Beta Products subscribed to by Customer under an Order Form and made available by Securonix, and includes any applicable Support Services, in each case, as described in the Documentation. A Product is deemed delivered upon the subscription start date set forth in the Order Form. Products shall not include Professional Services or Customer Materials.

1.12    **“Professional Services”** means the implementation, installation, configuration, consulting, and/or other professional services, if any, to be provided by Securonix to Customer in accordance with a mutually executed Statement of Work, which will be executed separately between the parties and will be governed by the terms of this Agreement. Professional Services shall not include the Products.

1.13    **“Securonix Data Processing Addendum”** means the data processing addendum available at <https://www.securonix.com/legal-center/>.

1.14    **“Securonix IP”** means the Products, the underlying Software provided in conjunction with the Products, source code, threat models, use cases, behavior models, machine learning models, dashboards, algorithms, rulesets, report interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the Products or any Professional Services (including any and all deliverables), and Documentation and System Data, all improvements, bug-fixes, extensions, updates, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing. For clarity, there will be no work product or works-made-for-hire created under this Agreement, any Order Form or any Statement of Work.

1.15    **“Securonix Partner”** means an authorized reseller, distributor or other partner of Securonix, and includes an online or electronic marketplace operated or controlled by a third party where Securonix has authorized the marketing and distribution of its Products.

1.16    **“Services”** means the generally available Securonix software-as-a-service offering(s) subscribed to by Customer under an Order Form and made available by Securonix, and includes any new releases or maintenance and support updates to such services as Securonix makes generally commercially available during the applicable Subscription Term, as described in the Documentation.

1.17    **“SLAs”** means the service level agreements provided by Securonix for each applicable Service, as described at <https://www.securonix.com/legal-center/>.

1.18    **“Software”** means the generally available Securonix software product(s) subscribed to by Customer under an Order Form and made available by Securonix, whether (a) installed by or on behalf of Customer on its own systems or other designed environments, or (b) by Securonix on a software-as-a-service basis, and includes any new releases or maintenance and support updates to such software as Securonix makes generally commercially available during the applicable Subscription Term, as described in the Documentation.

1.19    **“Statement of Work”** or **“SOW”** means a statement of work mutually agreed upon between Securonix and Customer for Professional Services and governed by this Agreement.

1.20    **“Subscription”** means the provision of Products for the term purchased by Customer as set forth in the applicable Order Form.

1.21    **“Subscription Term”** means the period of time during which Customer is authorized to access the relevant Product and related Support Services, as specified in the applicable Order Form.

1.22    **“Support Services”** means the support services provided by Securonix with respect to each applicable Product, as described at <https://www.securonix.com/securonix-services-support-terms/>.



1.23 **“System Data”** means usage, trends, and operations data in connection with Customer’s and/or its Users’ use of the Products and derivatives thereof, but does not include Customer’s Confidential Information.

1.24 **“User”** means the persons designated and granted access to the Products by or on behalf of Customer, including, as applicable, any of its and its Affiliates’ contractors.

## 2. PRODUCTS AND SERVICES.

### 2.1 Securonix’s Obligations.

2.1.1 **Provision of Products.** Securonix will make the Products available to Customer pursuant to this Agreement and the applicable Order Form, and grants to Customer a limited, revocable, non-transferable, non-assignable (except as set forth in this Agreement), non-sublicensable, non-exclusive right during the applicable Subscription Term to allow its Users to access and use the Products in accordance with the Documentation, up to the Entitlements, solely for Customer’s internal business purposes, provided that Customer is in compliance with the terms of the Agreement. Customer agrees that its purchase of the Products is not contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Securonix with respect to future functionality or features. To the extent Customer’s subscription is for Software to be installed by or on behalf of Customer on its own systems or other designed environments, Securonix grants to Customer and its Users the right to make a reasonable number of copies of the Software for backup or disaster recovery purposes. Securonix will comply with all laws applicable to its provision of the Products.

2.1.2 **Artificial Intelligence Features.** Certain features of the Products may incorporate AI Features (as defined in the AI Terms). Customer’s use of any AI Features is optional. However, any access to or use of the AI Features is governed by Securonix’s AI Terms and Conditions, available at <https://www.securonix.com/legal-center/>, as updated from time to time (the “**AI Terms**”). By enabling or using any AI Features, Customer agrees to the AI Terms, including any updates that apply during the Subscription Term. In the event of a conflict between the AI Terms and this Agreement, the AI Terms will control with respect to the AI Features.

2.1.3 **Support Services and Availability.** During the applicable Subscription Term, Securonix shall provide Support Services to Customer in accordance with the support terms identified in the applicable Order Form. In the event that the level of support is not identified in the Order Form, Customer shall receive a “basic” level of support that is included with the Product at no additional cost. Securonix will make Services available in accordance with Securonix’s then-current SLAs. Any updates or modification to the Support Services and/or the SLAs will not materially diminish Securonix’s responsibilities under the support policy and/or the service level schedules during the applicable Subscription Term.

2.1.4 **Protection of Customer Data.** Without limitation of its general confidentiality obligations in this Agreement, Securonix further represents, warrants and covenants to Customer that it will employ industry standard technical, administrative, and physical security measures to protect Customer Materials and Customer Confidential Information and use reasonable care and skill in the access, collection, transmission, processing, and use thereof, including without limitation by implementing and maintaining an information security and destruction policy in accordance with or exceeding industry standards that includes, at a minimum, (a) managing and changing passwords and security parameters for Securonix’s computers and networks on an ongoing basis, (b) logging all successful and unsuccessful log-in attempts to Securonix’s computers and networks, including, without limitation, the originating address (e.g., the IP address or media access control address), and (c) establishing and maintaining sufficient controls to meet the standards stated in either ISO ISO27001:2022 or ISO27001:2013, as applicable, and SOC 2, Type II + HiTrust. Securonix and Customer agree that the terms contained in the Securonix Data Processing Addendum govern Securonix’s processing of Customer Personal Data pursuant to this Agreement.

2.1.5 **Trial Products and Beta Products.** Securonix may offer Customer certain Products or specific features and functions for limited periods solely for evaluation and non-production purposes (each, a “**Trial Product**”) and/or a preview, limited release, alpha, beta, or other pre-release version or feature of the Service for non-production use (each, a “**Beta Product**”). The Trial Product and/or Beta Product will be for the term and scope of use as specified in the Order Form and/or SOW. TRIAL PRODUCTS AND/OR BETA PRODUCTS ARE PROVIDED “AS IS” AND SECURONIX DOES NOT OFFER ANY WARRANTIES FOR SUCH PRODUCTS AND NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRIAL PRODUCTS AND/OR BETA PRODUCTS ARE PROVIDED WITHOUT ANY WARRANTY OR ANY SUPPORT SERVICE (INCLUDING ANY UPDATES OR UPGRADES).



2.1.6 **Third-Party Products.** Separate or third-party data, services, offerings, functionalities or applications (and other consulting services related thereto) (collectively, “**Third-Party Products**”) are made available by Customer or to Customer that interoperate with the Products but are not part of the Products. Third-Party Products are subject to an independent agreement. Securonix does not provide any aspect of the Third-Party Products and is not responsible for any compatibility issues, errors, or bugs in the Products or Third-Party Products caused in whole or in part by the Third-Party Products or any update or upgrade thereto. At Customer’s request, Securonix may provide interconnectivity between the Products and the Third-Party Products. Notwithstanding the foregoing, Customer is solely responsible for procuring, using and maintaining the Third-Party Products, obtaining any associated licenses and consents necessary for Customer to use the Third-Party Products in connection with the Products and the performance and results of the Third-Party Products.

## 2.2 **Customer Obligations.**

2.2.1 **Use Restrictions.** Customer will not at any time and will not permit any Person (including, without limitation, Users) to, directly or indirectly: (i) use the Products in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the Products or Documentation, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or discover source code, object code or underlying structures, ideas or algorithms or otherwise attempt to derive or gain improper access to any software component of the Products, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease use of the Products to any other Person, or otherwise allow any Person to use the Products for any purpose other than for the benefit of Customer in accordance with this Agreement; (v) use the Products or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law; (vi) use the Products for timesharing or service bureau purposes; (vii) interfere with, or disrupt the integrity or performance of, the Products or any data or content contained therein or transmitted thereby; (viii) access or search the Products (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism other than Product features provided by Securonix for use expressly for such purposes; or (ix) use the Products or Documentation or any other Securonix Confidential Information for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Products.

2.3 **Customer Affiliates.** Customer Affiliates may purchase and use the Products and Professional Services subject to the terms of this Agreement by executing Order Forms or Statements of Work hereunder that incorporate by reference the terms of this Agreement, and in each such case, all references in this Agreement to Customer shall be deemed to refer to such Customer Affiliate for purposes of such Order Forms or Statements of Work. A Customer Affiliate agrees to be bound by this Agreement and the applicable Order Forms or Statements of Work executed by Customer Affiliate.

## 3. INTELLECTUAL PROPERTY.

3.1 **Securonix Ownership of Products.** Subject to the limited rights expressly granted hereunder, Securonix reserves and, as between the parties will solely own, the Securonix IP and all rights, title and interest in and to the Securonix IP. No rights are granted to Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein. For the avoidance of doubt, Securonix may collect and use System Data to develop, improve, support, and operate its products and services. Securonix may not share any System Data that includes Customer’s Confidential Information with a third party, except (a) in accordance with the “Confidential Information” section of this Agreement, or (b) to the extent the System Data is aggregated and anonymized such that Customer and Customer’s Users cannot be identified.

3.2 **Feedback.** From time to time, Customer or its Users may provide Securonix with suggestions, comments, feedback, enhancement requests, recommendations, corrections, or the like with regard to the Products (collectively, “**Feedback**”). Customer hereby grants Securonix a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Securonix’s business purposes, including, without limitation, the testing, development, maintenance and improvement of the Products.

3.3 **Trademarks.** Customer hereby grants Securonix a limited, non-exclusive, royalty-free license to use and display Customer’s name, designated trademarks and associated logos (the “**Customer Marks**”) during the Subscription Term in connection with (i) the hosting, operation and maintenance of the Products; and (ii) Securonix’s marketing and promotional efforts for its products and services, including by publicly naming Customer as a customer of Securonix and in case studies. Securonix will use the Customer Marks in the form stipulated by Customer and will conform to and observe such standards as Customer prescribes from time to time in connection with the license granted



hereunder. Upon Customer's written request, Securonix will promptly remove the Customer Marks from its website and, to the extent commercially feasible, Securonix's marketing materials.

#### 3.4 **Customer Materials.**

- 3.4.1 Securonix acknowledges that, as between Customer and Securonix and except as set forth in Section 3.4.2, Customer owns and retains all right, title, and interest in and to all Customer Materials. Customer shall be responsible for the accuracy, quality and legality of the Customer Materials and the means by which Customer acquired the Customer Materials.
- 3.4.2 Customer hereby grants Securonix a non-exclusive, worldwide, royalty-free right, and license to use, reproduce, display, perform, modify the Customer Materials solely for the purpose of hosting, operating, improving, providing, and preventing or addressing service technical problems with the Products and/or Professional Services or as may be required by law during the Subscription Term.

#### 4. **ENTITLEMENTS.**

- 4.1 **General.** Products are subject to usage limits specified in the applicable Order Forms and Securonix Licensing Guidelines. Securonix will monitor Customer's use of the Products on a monthly basis in order to ensure that such usage complies with the Entitlements. If Customer exceeds its usage limit, Customer will execute an Order Form for additional quantities of the applicable Products promptly upon Securonix's request, and/or pay any invoice for excess usage at the overage rates set forth in the applicable Order Form, or if not set forth in the Order Form, at Securonix's then-current overage rates, in accordance with the "Fees and Payments" section below. Securonix shall have the right to directly invoice Customer for overages regardless of whether Customer purchased the Products from a Securonix Partner. If Customer's usage continues to exceed the Entitlements and Customer's payment for such overuse is not received in a timely fashion, Securonix may terminate or suspend Customer's use of such Products in accordance with Section 10.3.1 below. In parallel, Securonix may work with Customer to seek to reduce Customer's usage so that it complies with the Entitlements.

#### 5. **FEES AND PAYMENT.**

- 5.1 **Fees.** Securonix will invoice Customer in accordance with the applicable Order Form during the Subscription Term, and Customer will pay all amounts set forth on any such invoice no later than thirty (30) days of the invoice date in accordance with the terms in the applicable Order Form ("Fees"). Except as otherwise provided herein, all Fees are non-refundable and non-cancelable. If Customer issues a purchase order upon executing an Order Form, then: (i) any such purchase order submitted by Customer is for its internal purposes only and any terms contained in such purchase order will have no effect; (ii) it shall be without limitation to Securonix's right to collect Fees owing hereunder; (iii) it shall be for the total Fees owing under the applicable Order Form; and (iv) on request, Securonix will reference the purchase order number on its invoices (solely for administrative convenience), so long as Customer provides the purchase order at least ten (10) business days prior to the invoice date.
- 5.2 **Payments.** Payments due to Securonix under this Agreement must be made in U.S. dollars by check, wire transfer or immediately available funds to an account designated by Securonix or such other payment method mutually agreed by the parties. All payments are non-refundable and Customer shall not have the right to set off, discount or otherwise reduce or refuse to pay any amounts due to Securonix under this Agreement. If Customer fails to make any payment when due, late charges will accrue at the rate of 1.5% per month or, if lower, the highest rate permitted by applicable law and, in addition to any other rights or remedies it may have under this Agreement or by matter of law, Securonix may suspend Services until all payments are made in full. Customer will reimburse Securonix for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any late payments or interest.

- 5.3 **Taxes.** Customer is responsible for paying all taxes associated with its purchase of Products hereunder, including, without limitation, all sales, use, value-added, goods and services, ad valorem and excise withholding and similar taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by Customer to Securonix hereunder, other than any taxes imposed on Securonix's income. Without limiting the foregoing, in the event that Customer is required to deduct or withhold any taxes from the amounts payable to Securonix hereunder, Customer will pay an additional amount, so that Securonix receives the amounts due to it hereunder in full, as if there were no withholding or deduction. Customer shall provide Securonix with official receipts or other documentation evidencing such withholding or deduction, sufficient for Securonix to claim any available tax credit, refund or relief.



5.4 **Orders Placed through Securonix Partner.** Customer may procure Products through a Securonix Partner pursuant to a separate agreement between Customer and the Securonix Partner. To the extent Customer places the Order through a Securonix Partner, the terms in this Section 5 (Fees and Payment) and the Order Form related to fees, payment, taxes and other related terms shall be between Customer and the Securonix Partner including any Fees accrued pursuant to Section 4 (Entitlements) which will be processed through such Securonix Partner. Securonix will be obligated to provide the Products to Customer in connection with a purchase through a Securonix Partner only to the extent Securonix and the Securonix Partner have executed an Order Form and remitted payment for such purchase. Customer acknowledges and agrees that, solely in connection with the purchase by Customer through a Securonix Partner: (a) Securonix may share information with the Securonix Partner related to Customer's use of the Products; (b) this Agreement governs Customer's use of the Products, notwithstanding anything to the contrary in any agreements between Customer and the Securonix Partner; and (c) the Securonix Partner is not authorized to make any changes to this Agreement or otherwise authorized to make any warranties, representations or commitments on behalf of Securonix.

## 6. CONFIDENTIAL INFORMATION.

6.1 The Receiving Party will maintain the Disclosing Party's Confidential Information in strict confidence and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement; provided that Securonix may use and modify Confidential Information of Customer in deidentified form for purposes of developing and deriving System Data. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (i) to those employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such Confidential Information to perform under this Agreement and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement, or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.

6.2 Confidential Information will not include any information or materials that: (i) was, at the date of disclosure, or has subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party; (ii) was rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party; (iii) is rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the Disclosing Party; or (iv) is independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party.

## 7. REPRESENTATIONS AND WARRANTIES.

7.1 Each party hereby represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; and (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such party and have been duly authorized by all necessary corporate action on the part of such party, and constitute a valid and binding agreement of such party.

7.2 **Product Warranty.** Securonix warrants that: (a) for a period of ninety (90) days from the purchase date the Software shall perform substantially in accordance with the Documentation; and (b) during the Subscription Term, it shall provide the Services and Support Services using commercially reasonable skill and care, and the Services shall perform materially in accordance with the applicable Documentation. Securonix shall use commercially reasonable efforts to correct any non-conforming Product at no additional charge to Customer. The remedy set forth in this subsection will be Customer's sole remedy and Securonix's entire liability for breach of this warranty unless the breach of warranty constitutes a material breach of this Agreement and Customer elects to terminate this Agreement in accordance with Section 10.2 entitled "Termination of Agreement." The warranty set forth in this subsection shall apply only if the applicable Product has been utilized in accordance with the Documentation, this Agreement and applicable law.

7.3 **Professional Services Warranty.** Securonix warrants that Professional Services will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of five (5) days from the completion of any Professional Services, except as otherwise agreed to between the parties in the applicable Statement of Work for such Professional Services. As Customer's sole and exclusive remedy and Securonix's entire liability for any breach of the foregoing warranty, Securonix will promptly re-perform any Professional Services that fail to meet this limited warranty.



7.4 **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PRODUCTS, PROFESSIONAL SERVICES AND OTHER SECURONIX IP ARE PROVIDED ON AN "AS IS" BASIS, AND SECURONIX MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ITS USERS OR TO ANY OTHER PARTY REGARDING THE SECURONIX IP, THE PRODUCTS, PROFESSIONAL SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SECURONIX HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, SECURONIX HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE PRODUCTS OR PROFESSIONAL SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

## 8. INDEMNIFICATION.

8.1 **Securonix Indemnification.** Subject to Sections 8.1.1 and 8.3, Securonix will defend Customer against any claim, suit or proceeding brought by a third party (each a "**Claim**") alleging that Customer's use of the Products infringes or misappropriates such third party's Intellectual Property Rights, and will indemnify and hold harmless Customer against the final judgment entered by a court of competent jurisdiction after exhaustion of any subsequent appeals, or paid to a third party in accordance with a settlement agreement approved by Securonix that resolves such Claim.

8.1.1 **Exclusions.** Securonix's obligations under this Section 8.1 will not apply if the underlying Claim arises from or as a result of: (i) Customer's breach of this Agreement, negligence, willful misconduct or fraud; (ii) any Customer Materials; (iii) Customer's failure to use any enhancements, modifications, or updates to the Products that have been provided by Securonix; (iv) modifications to the Products by anyone other than Securonix; or (v) combinations of the Products with software, data or materials not provided by Securonix.

8.1.2 **IP Remedies.** If Securonix reasonably believes the Products (or any component thereof) could infringe any third party's Intellectual Property Rights, Securonix may, at its sole option and expense use commercially reasonable efforts to: (i) modify or replace the Products, or any component or part thereof, to make it non-infringing; (ii) procure the right for Customer to continue use; or (iii) terminate this Agreement, in its entirety or with respect to the affected component, by providing written notice to Customer and refunding the pro-rata amounts pre-paid to Securonix by Customer from the date Customer ceases use of the Products. The rights and remedies set forth in this Section 8.1.2 will constitute Customer's sole and exclusive remedy for any infringement or misappropriation of Intellectual Property Rights in connection with the Products.

8.2 **Customer Indemnification.** Subject to Section 8.3, Customer will defend Securonix from any third-party claim brought against Securonix alleging a violation of a third party's rights that is based on or results from Customer's provision or use of the Customer Materials or use of the Products in a manner that is contrary to law. Customer will indemnify Securonix against the final judgment entered by a court of competent jurisdiction, or paid to a third party in accordance with a settlement agreement approved by Customer that resolves such claim.

8.3 **Indemnification Procedures.** The party seeking defense and indemnity (the "**Indemnified Party**") will promptly (and in any event no later than thirty (30) days after becoming aware of facts or circumstances that could reasonably give rise to any Claim) notify the other party (the "**Indemnifying Party**") of the Claim for which indemnity is being sought and will reasonably cooperate with the Indemnifying Party in the defense and/or settlement thereof. The Indemnifying Party will have the sole right to conduct the defense of any Claim for which the Indemnified Party is responsible hereunder (provided that the Indemnifying Party may not settle any Claim without the Indemnified Party's prior written approval unless the settlement is for a monetary amount, unconditionally releases the Indemnified Party from all liability without prejudice, does not require any admission by the Indemnified Party, and does not place restrictions upon the Indemnified Party's business, products or services). The Indemnified Party may participate in the defense or settlement of any such Claim at its own expense and with its own choice of counsel or, if the Indemnifying Party refuses to fulfill its obligation of defense, the Indemnified Party may defend itself and seek reimbursement from the Indemnifying Party.

## 9. LIMITATIONS OF LIABILITY.

9.1 **EXCLUSION OF DAMAGES.** EXCEPT FOR EXCLUDED CLAIMS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE PRODUCTS OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SECURONIX IP OR THE PROVISION OF THE PRODUCTS AND PROFESSIONAL SERVICES,



WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2 **TOTAL LIABILITY.** EXCEPT FOR EXCLUDED CLAIMS, IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY TO THE OTHER OR ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER TO SECURONIX OR SECURONIX PARTNER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.3 **BASIS OF THE BARGAIN.** THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN SECURONIX AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

## **10. TERM, TERMINATION AND SUSPENSION.**

10.1 **Term.** The term of this Agreement begins on the Effective Date and shall continue until the stated term in all Order Forms have expired or have otherwise been terminated. A Subscription Term shall continue until expiration or termination as defined in an Order Form or as permitted by this Agreement.

10.2 **Termination of the Agreement.** Either party may terminate this Agreement for cause (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In order for Customer to exercise the termination rights hereunder, Customer must notify Securonix of its intent to terminate within thirty (30) days of the event giving rise to such termination right. For the avoidance of doubt, any nonpayment, whether by Customer or a Securonix Partner, through which Customer has purchased the Products, will be deemed a material breach of this Agreement.

10.3 **Suspension.** Securonix may, at its discretion, terminate or suspend Customer's access to or use of the Services if (a) Securonix believes there is a significant and immediate threat to the functionality, security, integrity and/or availability of the Service to Customer or to other customers; (b) Customer breaches Section 2.2.1 (Use Restrictions), Section 4 (Entitlements); and/or Section 11.10 (Export Compliance); or (c) Customer is in default with any payment obligations relating to the Services due to Securonix or any Securonix Partner. In each case, Securonix will (i) use its reasonable efforts to promptly contact Customer and give Customer the opportunity to promptly resolve the issues causing suspension of the Services; (ii) reinstate any suspended Services immediately after such issues are resolved; and (iii) in the case where Services are suspended due to Securonix's reasonable belief that Services pose a significant threat to Customer or others, Securonix shall suspend Services only to the extent reasonably necessary to prevent the anticipated harm.

10.4 **Effect of Termination.** Upon expiration or termination of this Agreement all rights and subscriptions granted to Customer (including all Order Forms) will immediately terminate and Customer will cease using the Products. No expiration or termination will (a) affect Customer's obligation to pay all Fees that may have become due or otherwise accrued through the effective date of expiration or termination, or (b) entitle Customer to any refund. Notwithstanding any termination, expiration or anything to the contrary in this Agreement or any Order Form, Customer shall be responsible for and shall pay for all of its use of the Products.

10.5 **Return of Customer Materials.** Upon request by Customer made before the effective date of termination of a Subscription Term, Securonix may assist Customer with the transition of Customer Materials for a mutually agreed upon fee. Thirty-one (31) days following expiration or termination of Customer's Subscription Term for a Service, Securonix will have no obligation to maintain or provide any Customer Materials relating to such Service, and Customer hereby authorizes Securonix thereafter to delete all Customer Materials relating to such Service that is in Securonix's possession or under its control, unless Securonix is otherwise legally prohibited from doing so.

10.6 **Survival.** This Section 10.6 and the Sections titled "Definitions", "Representations and Warranties", "Confidential Information", "Intellectual Property", "Fees and Payment", "Disclaimer", "Indemnification", "Limitations of Liability", "Term and Termination" and "General" shall survive any termination or expiration of this Agreement.

## 11. GENERAL.

11.1 **Entire Agreement.** This Agreement, together with the Order Forms and SOWs, is the complete and exclusive agreement between the parties with respect to its subject matter and supersedes any and all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to its subject matter. The parties agree that any term or condition stated in Customer's purchase order or in any other Customer's order documentation is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form or SOW between Securonix and Customer, (2) this Agreement, and (3) the Documentation. No modification, amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties hereto. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision.

11.2 **Notices.** All notices shall be in writing and delivered: (a) for Customer, to the email address set forth on the Customer's website, or as otherwise provided by Customer to Securonix for the purpose of effectuating written notices; (b) for Securonix to [legal@securonix.com](mailto:legal@securonix.com); or (c) for either party, by overnight delivery service or by certified mail sent to the address published on the respective party's websites or the address specified on the relevant order document (attention: Legal Department), and in each instance will be deemed given upon receipt.

11.3 **Waiver.** Either party's failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party granting the waiver.

11.4 **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the parties, and the remaining provisions of this Agreement will remain in full force and effect.

11.5 **Governing Law; Jurisdiction.**

11.5.1 For Customers domiciled in the United States, Canada, Mexico, or a country in Central or South America or the Caribbean (the "Americas"), this Agreement will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THIS AGREEMENT WILL BE BROUGHT EXCLUSIVELY IN THE FEDERAL OR STATE COURTS LOCATED IN NEW CASTLE COUNTY, DELAWARE AND THE PARTIES IRREVOCABLY CONSENT TO THE PERSONAL JURISDICTION AND VENUE THEREIN.

11.5.2 For Customers domiciled outside the Americas, this Agreement will be governed by and construed in accordance with the laws of England and Wales. For such Customers, any legal action or proceeding arising under this Agreement shall be referred to and finally resolved exclusively by arbitration in London by a panel of one (1) arbitrator in accordance with the Arbitration Rules of the London Court of International Arbitration ("LCIA Rules") for the time being in force, which rules are deemed to be incorporated by reference to this clause. English shall be the official language for the arbitration. The arbitrator shall be appointed jointly by both parties and if the parties cannot agree on the identity of the arbitrator within thirty (30) days of a request for arbitration, the arbitrator shall be selected in accordance with the LCIA Rules. The award rendered by the arbitrator shall be final and binding on the parties and may include costs, including a reasonable allowance for attorney/solicitors' fees, and judgment thereon may be entered in any court having competent jurisdiction. Notwithstanding anything to the contrary in this Section, neither party will be required to arbitrate any dispute relating to actual or threatened (i) unauthorized disclosure of Confidential Information or (ii) violation of Securonix's proprietary rights. Either party will be entitled to receive in a court of competent jurisdiction injunctive, preliminary or other equitable relief, including court costs and fees of attorneys and other professionals, to remedy any actual or threatened violation of its rights.

11.6 **Assignment.** Neither party may assign or transfer this Agreement, by operation of law or otherwise, without the other party's prior written consent. Any attempt to assign or transfer this Agreement without such consent will be void. Notwithstanding the foregoing, either party may assign or transfer this Agreement to a third party that succeeds to all or substantially all of the assigning party's business and assets relating to the subject matter of this Agreement, whether by sale, merger, operation of law or otherwise. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the parties and their respective successors and permitted assigns.

11.7 **Equitable Relief.** Each party agrees that a breach or threatened breach by such party of any of its obligations under Section 6 (Confidential Information) or, in the case of Customer, Section 2.2.1 (Use Restrictions), would cause the other party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

11.8 **Force Majeure.** Neither party will be responsible for any failure or delay in the performance of its obligations under this Agreement (except for any payment obligations) due to causes beyond its reasonable control.

11.9 **Subcontracting.** Securonix may use subcontractors, and other third-party providers (“**Subcontractors**”) in connection with the performance of its own obligations hereunder as it deems appropriate, provided that Securonix remains responsible for the performance of each such Subcontractor.

11.10 **Export Compliance.** Each party agrees to comply with all applicable export control and economic sanctions laws and regulations of the United States and any other jurisdiction applicable to its activities under this Agreement (“**Export Laws**”). Customer represents and warrants that it (a) is not located in, organized under the laws of, or ordinarily resident in any country or territory subject to comprehensive U.S. sanctions or embargoes, and (b) is not identified on, owned or controlled by, or acting on behalf of any person or entity on any U.S. government restricted-party list, including the Specially Designated Nationals List, the Entity List, or the Denied Persons List. Customer further agrees that it will not, directly or indirectly, export, re-export, transfer, or allow access to the Products, Software, or any technical data in violation of Export Laws, or for any prohibited end use, including nuclear, chemical, or biological weapons proliferation, missile technology, or other military end uses prohibited by Export Laws. Customer is solely responsible for obtaining any required governmental authorizations related to its use of the Products. Securonix may suspend performance of the Service if Securonix reasonably believes that the provision or use of the Products would violate Export Laws.

11.11 **U.S. Government End Users.** The Products, Software and Documentation are “commercial computer software” and “commercial computer software documentation,” respectively, as such terms are used in FAR 12.212 and other relevant government procurement regulations. Any use, duplication, or disclosure of the Software or its documentation by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement.

11.12 **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing in this Agreement will be construed to establish any partnership, joint venture or agency relationship between the parties. Neither party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other party's prior written consent.

11.13 **No Third-Party Beneficiaries.** No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties and their respective successors and assigns.

11.14 **WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.