



## MAIN SERVICES AGREEMENT

**THIS MAIN SERVICES 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 SERVICES AND PROFESSIONAL SERVICES BY CUSTOMER. IN ORDER TO USE OR RECEIVE THE BENEFITS OF ANY SERVICE, CUSTOMER MUST PURCHASE THE APPLICABLE SERVICE 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 SERVICE, 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/master-software-as-a-service-agreement/>. 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 Service 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 “Client Software” means any desktop client software that is made available to Customer by Securonix for installation on Users’ computers to be used in connection with the applicable Service.
- 1.3 “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.
- 1.4 “Customer Materials” means all information, data, content, and other materials, in any form or medium, that is submitted, posted, collected, transmitted, or otherwise provided by or on behalf of Customer through the Services or to Securonix in connection with Customer’s use of the Services, 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 Services.
- 1.5 “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 Services, which may be updated by Securonix from time to time.
- 1.6 “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 the Service in any manner, as applicable.
- 1.7 “Entitlements” means the limits, volume, or other measurement or conditions of permitted use for the applicable Service as set forth in the applicable Order Form.
- 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 Services and 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 “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. Each Statement of Work is hereby incorporated into and governed by this Agreement by reference. Professional Services shall not include the Services.
- 1.12 “Securonix Data Processing Addendum” means the data processing addendum available at [Securonix Data Processing Addendum](#).
- 1.13 “Securonix IP” means the Services, the underlying Software provided in conjunction with the Services, 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 Services 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.
- 1.14 “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 Services.
- 1.15 “Services” means the products and/or services subscribed to by Customer under an Order Form and made available online by Securonix, as described in the Documentation. Services exclude Professional Services. A Service is deemed delivered upon the start date set forth in the Order Form.
- 1.16 “SLAs” means the service level agreements provided by Securonix for each applicable Service, as described at <https://www.securonix.com/wp-content/uploads/2022/02/WEBSITE-Exhibit-C-2.28.2022.pdf>.
- 1.17 “Software” means a specific and unique instance of the Securonix software product that is made available to Customer as a Service or a part thereof and includes any new releases or maintenance and support updates to such software as Securonix makes generally commercially available during the applicable Subscription Term. Securonix Software does not include Customer Materials.
- 1.18 “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.
- 1.19 “Subscription” means the provision of Services for the term purchased by Customer as set forth in the applicable Order Form.
- 1.20 “Subscription Term” means the period of time during which Customer is authorized to access the relevant Securonix Service, as specified in the applicable Order Form.
- 1.21 “Support Services” means the support services provided by Securonix with respect to each applicable Service, as described at <https://www.securonix.com/securonix-services-support-terms/>.
- 1.22 “System Data” means usage, trends, and operations data in connection with Customer’s and/or its Users’ use of the Services and derivatives thereof, but does not include Customer’s Confidential Information.
- 1.23 “User” means the persons designated and granted access to the Services by or on behalf of Customer, including, as applicable, any of its and its Affiliates’ contractors.



## 2. SERVICES.

### 2.1 Securonix's Obligations.

- 2.1.1 **Provision of Services.** Securonix will make the Services available to Customer pursuant to this Agreement and the applicable Order Form, and grants to Customer a limited, non-transferable, non-assignable (except as set forth in this Agreement), non-exclusive right during the applicable Subscription Term to allow its Users to access and use the Services in accordance with the Documentation, solely for Customer's internal business purposes. Customer agrees that its purchase of the Services 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 installs Client Software in connection with its use of the Services, Securonix grants to Customer and its Users a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to use the object code form of the Client Software internally in connection with Customer's and its Affiliates' use of the Services, subject to the terms and conditions of this Agreement and the Documentation. Securonix will comply with all laws applicable to its provision of the Services.
- 2.1.2 **Support and Availability.** During the applicable Subscription Term, Securonix shall provide Support Services to Customer in accordance with Securonix's then-current support policy, and as 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 in the Service at no additional cost. Securonix will make the Service 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.
- 2.1.3 **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 ISO 27001:2013 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 (as defined therein) pursuant to this Agreement.
- 2.1.4 **Data Hydration.** Upon request by Customer, Securonix may Hydrate Customer data for a mutually agreed upon fee. "Hydrate" means the act of restoring archived (cold) data in order to make such data searchable.
- 2.1.5 **Trial Use; Beta Service.** Securonix may offer Customer certain Services or specific features and functions for limited periods solely for evaluation and non-production purposes (each, a "Trial") 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 Service"). The Trial and/or Beta Service will be for the term and scope of use as specified in the Order Form and/or SOW. SERVICES ACQUIRED FOR TRIAL AND/OR BETA SERVICE PURPOSES ARE PROVIDED "AS IS" AND SECURONIX DOES NOT OFFER ANY WARRANTIES FOR SUCH SERVICES AND NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT SERVICES PROVIDED UNDER A TRIAL AND/OR BETA SERVICE ARE PROVIDED WITHOUT ANY WARRANTY OR ANY SUPPORT SERVICE (INCLUDING ANY UPDATES OR UPGRADES).
- 2.1.6 **Third-Party Services.** Separate or third-party data, services, offerings, functionalities or applications (and other consulting services related thereto) (collectively, "Third-Party Services") are made available by Customer or to Customer that interoperate with the Services but are not part of the Services. Third-Party Services are subject to an independent agreement. Securonix does not provide any aspect of the Third-Party Services and is not responsible for any compatibility issues, errors, or bugs in the Services or Third-Party Services caused in whole or in part by the Third-Party Services or any update or upgrade thereto. At Customer's request, Securonix may provide interconnectivity between the Services and the Third-Party Services. Notwithstanding



the foregoing, Customer is solely responsible for procuring, using and maintaining the Third-Party Services, obtaining any associated licenses and consents necessary for Customer to use the Third-Party Services in connection with the Services and the performance and results of the Third-Party Services.

## 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 Services in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the Services, Software, 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 Services and Software, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease use of the Services to any other Person, or otherwise allow any Person to use the Services for any purpose other than for the benefit of Customer in accordance with this Agreement; (v) use the Services 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) the Services, Software, for timesharing or service bureau purposes; (vii) interfere with, or disrupt the integrity or performance of, the Services or any data or content contained therein or transmitted thereby; (viii) access or search the Services (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 Software or Services features provided by Securionix for use expressly for such purposes; or (ix) use the Services or Documentation or any other Securionix 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 Services.

2.3 **Customer Affiliates.** Customer Affiliates may purchase and use the Service 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 **Securionix Ownership of Service.** Subject to the limited rights expressly granted hereunder, Securionix reserves and, as between the parties will solely own, the Securionix IP and all rights, title and interest in and to the Securionix 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, Securionix may collect and use System Data to develop, improve, support, and operate its products and services. Securionix may not share any System Data that includes Customer's Confidential Information with a third party, except (a) in accordance with the "Confidentiality" 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 Users may provide Securionix with suggestions, comments, feedback, enhancement requests, recommendations, corrections, or the like with regard to the Services (collectively, "Feedback"). Customer hereby grants Securionix a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Securionix's business purposes, including, without limitation, the testing, development, maintenance and improvement of the Services.

3.3 **Trademarks.** Customer hereby grants Securionix 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 Services; and (ii) Securionix's marketing and promotional efforts for its products and services, including by publicly naming Customer as a customer of Securionix and in case studies. All goodwill and improved reputation generated by Securionix's use of the Customer Marks inures to the exclusive benefit of Customer. Securionix 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.



### 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 Services and/or Professional Services or as may be required by law during the Subscription Term.

## 4. **ENTITLEMENTS.**

- 4.1 **General.** Services are subject to usage limits specified in the applicable Order Forms and Documentation. Securonix will monitor Customer's use of the Services 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 Services 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 Service 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 shall terminate or suspend Customer's use of such Services 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 from 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 of 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 neither party will have the right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other party 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 Services hereunder, including, without limitation, all sales, use, ad valorem and excise 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.
- 5.4 **Orders Placed through Securonix Partner.** Customer may procure Services 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 Services 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 Services; (b) this Agreement governs Customer's use of the Services, 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 However, 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.
- 6.3 Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three (3) years from the date first disclosed to the Receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

## 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 **Services Warranty.** Securonix warrants that during the applicable Subscription Term the Services shall perform materially in accordance with the applicable Documentation. Securonix shall use commercially reasonable efforts to correct any non-conforming Service 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 these 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 Service 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 SERVICES, 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 SERVICES, 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 SERVICES OR PROFESSIONAL SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

## 8. INDEMNIFICATION.

8.1 **Securonix Indemnification.** Subject to Section 8.1.1, 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 Services infringes or misappropriates such third party's Intellectual Property Rights, and will indemnify and hold harmless Customer against any damages and costs awarded against Customer or agreed in settlement by Securonix (including reasonable attorneys' fees) resulting from 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 Services that have been provided by Securonix; (iv) modifications to the Services by anyone other than Securonix; or (v) combinations of the Services with software, data or materials not provided by Securonix.

8.1.2 **IP Remedies.** If Securonix reasonably believes the Services (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 Services, 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 Services. 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 Services.

8.2 **Customer Indemnification.** Customer will defend Securonix against Claims arising from (i) any Customer Materials, including, without limitation, (A) any Claim that the Customer Materials infringe, misappropriate or otherwise violate any third party's Intellectual Property Rights or privacy or other rights; or (B) any Claim that the use, provision, transmission, display or storage of Customer Materials violates any applicable law, rule or regulation; (ii) any of Customer's products or services; and (iii) use of the Services by Customer or its Users in a manner that is a breach of the license restrictions in Section 2.2.1, and in each case, will indemnify and hold harmless Securonix against any damages and costs awarded against Securonix or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from 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 Indemnifying 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: (I) ANY INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (II) FRAUD OR WILLFUL MISCONDUCT BY EITHER PARTY, (III) BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS, OR (IV) CUSTOMER'S EXPRESS OBLIGATIONS UNDER SECTION 8.2, 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 SERVICES OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SECURONIX IP OR THE PROVISION OF THE SERVICES 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: (I) ANY INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (II) FRAUD OR WILLFUL MISCONDUCT BY EITHER PARTY, OR (III) BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS, 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 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. Except as otherwise specified in an Order Form, subscription to the Services will automatically renew for additional terms equal to the expiring Subscription Term, unless and until either party gives the other notice of non-renewal at least ninety (90) days prior to the end of the then-current Subscription Term. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior Subscription Term will result in re-pricing at renewal without regard to the prior Subscription Term's per-unit pricing.
- 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 Services, will be deemed a material breach of this Agreement.
- 10.3 **Suspension.**
- 10.3.1 Securonix may, at its discretion, terminate or suspend Customer's access to or use of the Services if Customer is in default with any payment obligations relating to the Services due to Securonix or any Securonix Partner.
- 10.3.2 In addition to the termination rights set forth herein, Securonix reserves the right to suspend Customer's access to or use of the Services if Securonix reasonably believes that Customer's use of the Services represents an imminent threat to Securonix's network and/or is likely to cause harm to Securonix or a third





party. In such cases, Securonix will (i) suspend such Services only to the extent reasonably necessary to prevent the anticipated harm; (ii) use its reasonable efforts to promptly contact Customer and give Customer the opportunity to promptly resolve the issues causing suspension of the Services; and (iii) reinstate any suspended Services immediately after such issues are resolved.

- 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 Service. No expiration or termination will 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 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 Services.
- 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 10.5 and the Sections titled "Definitions", "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, 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 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 and to an officer of Customer, or as otherwise provided by Customer to Securonix for the purpose of effectuating written notices; (b) for Securonix to 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 DALLAS COUNTY, TEXAS 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 Securionix'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.
- 11.5.3 The parties expressly agree that neither the Uniform Computer Information Transactions Act ("UCITA"), nor the United Nations Convention for the International Sale of Goods will apply to this Agreement. Notwithstanding anything to the contrary in this Agreement, Securionix may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of intellectual property or other proprietary rights of Securionix, its Affiliates, or any third party.
- 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.** Securionix 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 Securionix remains responsible for the performance of each such Subcontractor.
- 11.10 **Export Regulation.** Customer affirms that it is not named on, owned by, or acting on behalf of any U.S. government denied-party list, and it agrees to comply fully with all relevant export control and sanctions laws and regulations of the United States ("Export Laws") to ensure that neither the Services, Software, any Customer Materials, nor any technical data related thereto is: (i) used, exported or re-exported directly or indirectly in violation of Export Laws; or (ii) used for any purposes prohibited by the Export Laws, including, but not limited to, nuclear, chemical, or biological weapons proliferation, missile systems or technology, or restricted unmanned aerial vehicle applications. Customer will complete all undertakings required by Export Laws, including obtaining any necessary export license or other governmental approval.
- 11.11 **U.S. Government End Users.** The Services, 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.