

**Securonix Inc.**  
**5777 West Century Blvd**  
**Suite 360**  
**Los Angeles, CA 90045**  
**www.securonix.com**

**Carahsoft Rider to Manufacturer Agreements**  
**(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Manufacturer Agreement establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
  
- 2. Applicability.** The terms and conditions in the attached Manufacturer Agreement <http://www.securonix.com/gsalicense.com> are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's Agreement's are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
  - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
  
  - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
  
  - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  
  - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours

contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer Agreement referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer Agreement referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer Agreement referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer Agreement are hereby deemed to be deleted.
- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer Agreement are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) **Contractor Indemnities.** All Manufacturer Agreement clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) **Renewals.** All Manufacturer Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All Manufacturer Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer Agreement, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Agreement and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) **Limitation of Liability: Subject to the following:**
- Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) **Public Access to Information.** Manufacturer agrees that the Agreement and this Rider contain no confidential or proprietary information and acknowledges the Agreement and this Rider will be available to the public.

**(u) Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.



## SOFTWARE LICENSE AND SUPPORT AGREEMENT

This Software License and Support Agreement ("Agreement") is made between

**Securionix, LLC**  
5777 West Century Blvd  
Suite 838  
Los Angeles, CA 90045  
("Securionix")

**Customer**  
Address  
City, State Zip Code  
("Customer")

This Agreement shall be effective \_\_\_\_\_, 2014 ("Effective Date"). Securionix and Customer agree that the following terms and conditions will apply to the licenses and services provided under this Agreement and Schedules attached hereto.

### 1. Definitions

- a. **"Confidential Information"** means all information disclosed by one party ("disclosing party") to the other party ("receiving party"), before or after the date of this Agreement, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by the receiving party to the extent that it contains, reflects, or is derived from Confidential Information. Confidential Information of Securionix includes, without limitation, the Software and Documentation. The terms and conditions of this Agreement are Confidential Information; however, the existence of this Agreement is not Confidential Information.
- b. **"Documentation"** means the written documentation relating to the Software delivered by Securionix to Customer with the Software.
- c. **"Implementation Services"** means Software implementation, consulting and installation services provided by Securionix to Customer in accordance with Schedule C.
- d. **"Software"** means the computer software programs specified in Schedule A hereto, in object code format, and their related materials, which include updates, modifications, new releases, and Documentation.
- e. **"Support and Maintenance Services"** means Software support and maintenance services provided by Securionix to Customer in accordance with Schedule B.
- f. **"Training Services"** means Software training services provided by Securionix to Customer in accordance with Schedule A or pursuant to a Securionix Quote.

**2. Grant.** Subject to the terms and conditions of this Agreement, Securionix grants to Customer a non-exclusive, non-transferable license to use (a) the Software in machine readable format solely for internal use and solely for use for the number of identities and resources specified on Schedule A; and (b) the Documentation solely for use with the Software. Customer may also make a reasonable number of copies of the Software in machine-readable form solely for archive or backup purposes in accordance with Customer's standard archive or backup policies and procedures. Customer shall maintain a log of the number and location of all originals and all copies of the Software and Documentation. Securionix shall have access to such log upon request. Use of such Software greater than the number of identities and resources paid for is prohibited and any such use will be subject to additional license and Support and Maintenance fees.

### 3. Title and Proprietary Information

**3.1 Title and Copyright.** This Agreement confers no ownership rights to Customer and is not a sale of any rights in the Software, the Documentation, or the media on which either is recorded or printed. Customer does not acquire any rights, express or implied, in the Software or the Documentation, other than those rights as a licensee specified in this Agreement. All Software and Documentation furnished by Securionix, and all copies thereof made by Customer and all compilations, derivative products, programmatic extensions, patches, revisions, and updates made by either party, and any, patent rights, copyrights, trade secrets, trade marks, trade names, service marks, designs or design marks or proprietary inventions, designs and information included within any of the items described above are and shall remain the property of Securionix or Securionix's licensors, as applicable. Customer agrees not to claim or assert title to or ownership of the Software or the Documentation. Customer will not remove or alter any copyright or proprietary notice from copies of the Software or the Documentation and copies made by or for Customer shall bear all such copyright, trade secret, trademark and any other intellectual property right notices on the original copies.

**3.2 Restrictions.** Customer will not, nor allow any third party to reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Software. Customer agrees to indemnify Securonix for any damages or loss incurred as a result of any unauthorized access or use of the Software as specified in this Agreement by Customer's agents, contractors, or customers. Except as authorized in accordance with this Agreement, Customer will not, nor allow any third party to modify, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use Software for the benefit of any third party. Customer will not export or re-export any Software or the Documentation without both the written consent of Securonix and the appropriate U.S. and/or foreign government license(s) or license exception(s). Securonix shall have the right to obtain injunctive relief against any actual or threatened violation of these restrictions, in addition to any other available remedies. Customer agrees to promptly report to Securonix any violations of these provisions by Customer's employees, consultants or agents of which Customer is aware. No third party software included within the Software may be used separately from the Software or used with any other software not supplied by Securonix.

**3.3 Software Modification and Discontinuation.** Securonix may modify the Software or Documentation at any time as progress in engineering or manufacturing methods or circumstances may warrant. Securonix will provide support for discontinued Software for twelve (12) months after the date Software is discontinued. Securonix reserves the right to replace discontinued Software with the replacement Software and negotiate with Customer the additional cost, if any, provided that any such additional cost is negotiated in good faith by Securonix and Customer and equitably reflects Customer's need or desire for any additional functionality in the replacement Software.

**3.4 Evidence of Compliance; Right to Audit.** Upon request of Securonix, Customer shall promptly, and in any event within thirty (30) days from the date of request by Securonix, provide Securonix with any and all evidence reasonably necessary to confirm Customer's compliance with the terms of this Agreement. Customer shall allow a third party auditor retained by Securonix to enter its premises to verify Customer's compliance with the provisions of this Agreement upon five (5) business days prior written notice. If Customer is found not to be in substantial compliance with this Agreement, Customer shall pay the reasonable expenses incurred by Securonix associated with such inspection and shall promptly take measures to come into compliance. Such audit shall not be conducted more frequently than once during any twelve (12) consecutive month period unless a violation of this Agreement is found on a prior audit. Securonix's rights under this Section 3.4 shall survive for one year following termination or expiration of this Agreement.

## **4. Orders and Delivery**

**4.1 Software Orders.** This Agreement contemplates the concurrent execution by Customer and Securonix of this Agreement and an initial Schedule A, which shall be attached hereto and incorporated herein by reference. For future orders, Customer shall be entitled to order Software, which includes the Documentation pursuant to a purchase order document accepted by Securonix, in which case, such purchase order shall be deemed to be a new Schedule A to this Agreement. In the event Customer does not issue a purchase order, a new Schedule A shall be executed by Customer and Securonix to evidence such order. Such Software, which includes the Documentation ordered pursuant to a purchase order or a new Schedule A shall be deemed delivered pursuant to the terms of this Agreement. A purchase order issued by Customer shall be in writing and identify the Software, which includes the Documentation being ordered, and the shipping and invoicing locations and shall be subject to acceptance by Securonix. All terms and conditions on a purchase order document that add rights or obligations or otherwise conflict with this Agreement shall be of no contractual effect between the parties and such purchase order document shall be subject to the terms of this Agreement.

**4.2 Delivery.** Securonix shall deliver Customer's Software and Documentation order via electronic download, subject to the receipt of all required documentation, including any required export and import permits. Customer's order shall be considered delivered on the date that Securonix emails instructions for downloading the Software and Documentation to Customer. Thereafter, Customer shall be responsible for and bear all expenses (including taxes) related to making the permitted number of copies and distributing such copies as permitted in this Agreement. Customer will be the importer of record for the Software.

## **5. Price and Payment**

**5.1 Price.** The fees for Software, Documentation and Support and Maintenance Services are set forth in Schedule A and/or in a purchase order. The fees required to be paid hereunder do not include any amount for taxes, duties or import/export fees. Customer shall reimburse Securonix and hold Securonix harmless for all sales, use, VAT, excise, property, or other taxes or levies, duties or import/export fees which Securonix is required to collect or remit to applicable tax authorities (including any interest or penalties thereon). Unless Customer provides Securonix a valid exemption certification from the applicable taxing authority, Customer shall pay to Securonix or its agents the amount of any such tax.

**5.2 Payment.** Unless otherwise stated in Schedule A, all fees due hereunder are payable net thirty (30) days in U.S currency. Customer obligations to pay all accrued charges shall survive the expiration or termination of this Agreement.

## **6. Implementation, Training, Support and Maintenance and Other Services**

**6.1 Implementation and Training Services.** Securonix will provide Implementation Services and Training Services on a per-quote basis as requested by Customer. Customer shall approve Securonix's quote prior to the commencement of Implementation Services and Training Services. Securonix will invoice Customer for such Implementation Services and Training Services monthly as such services are provided. Unless otherwise stated, such Implementation and Training Services shall exclude travel and living expenses. The initial Implementation Services and Training Services fees are listed on Schedule A and are approved by Customer.

**6.2 Support and Maintenance Services.** Subject to Customer payment of the applicable fees, Securonix shall provide annual Support and Maintenance Services to Customer in accordance with the terms and conditions set forth in Schedule B. The fees for initial Support and Maintenance Services are set forth in Schedule A. Support and Maintenance Services and associated documentation will be provided in the English language.

**6.3 Other Services.** Upon Customer's request, Securonix will provide other services to Customer pursuant to a mutually agreed upon Statement of Work ("SOW").

**7. Software Warranty and Conditions.** Securonix warrants that the Software, standing alone without use in combination or conjunction with any third party software or apparatus, will perform in substantial accordance with the operating specifications contained in the accompanying Documentation for a period of ninety (90) days from the delivery date of the Software. Securonix's entire liability and Customer's exclusive remedy under this provision will be for Securonix to use commercially reasonable efforts to remedy defects covered by this warranty and condition within a timely basis or, at Securonix's option, either to replace the defective Software or to refund the amount paid by Customer to license the use of the defective Software and the license for such defective Software shall be terminated and the defective Software shall be returned to Securonix. Securonix does not warrant that the operation of the Software will be uninterrupted or error free, or that all software defects can be corrected. This warranty shall be null and void if: (a) the Software is not used in accordance with Securonix's instructions; (b) the Software defect has been caused by any of Customer's malfunctioning equipment; (c) any other cause within the control of Customer causes the Software to malfunction; or (d) Customer has made modifications to the Software not expressly authorized in writing by Securonix. No employee, agent or representative of Securonix has authority to bind Securonix to any oral representations, warranties or conditions concerning the Software. Any written representation, warranty or condition not expressly contained in this Agreement shall not be enforceable. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND IS THE ONLY WARRANTY GRANTED BY SECURONIX WITH RESPECT TO THE SOFTWARE, DOCUMENTATION OR THE SERVICES. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THIS AGREEMENT OR ANY SOFTWARE LICENSED HEREUNDER. REGARDLESS OF ANY COURSE OF DEALING, PROMOTIONAL LITERATURE OR OTHER ACTIONS APPARENTLY CREATING A WARRANTY, SECURONIX MAKES NO WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS DETAILED IN THIS AGREEMENT, RESPECTING THE FUNCTIONAL CHARACTERISTICS OR PERFORMANCE OF THE SOFTWARE, DOCUMENTATION OR SERVICES OR OF THE PROFITABILITY OR OTHER BENEFITS TO BE OBTAINED BY CUSTOMER FROM THE USE OF THE SOFTWARE, DOCUMENTATION OR SERVICES.**

**8. Intellectual Property Indemnification.** Securonix shall hold Customer harmless from liability to third parties resulting from infringement by the Software standing alone without use in combination or conjunction with any third party software or apparatus, of any United States patent issued sixty (60) days or more before delivery of such Software or any copyright or misappropriation of any trade secret, provided Securonix is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. Securonix will not be responsible for any settlement it does not approve in writing.

The foregoing obligations do not apply with respect to Software or portions or components thereof (i) not supplied by Securonix, (ii) made in whole or in part in accordance to Customer specifications, (iii) that are modified by Customer after delivery (iv) combined with other products, processes or materials where the alleged infringement relates to such combination which were unauthorized by Securonix, (v) where Customer continues the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of such Software is not strictly in accordance with this Agreement. Customer will indemnify and hold harmless Securonix from all damages, settlements, attorneys' fees and reasonable

expenses related to any claim of infringement or misappropriation excluded from Securonix's indemnity obligation by the preceding sentence.

In the event of such a claim, action or allegation being brought or threatened or in the event an injunction is issued or threatened, Securonix may, at its option and expense, either procure for Customer the right to continue to use the Software, modify or replace the Software so as to avoid infringement, or terminate Customer' rights to the infringing Software and return license fees paid to Securonix for such infringing Software.

THE PROVISIONS OF THIS SECTION SET FORTH SECURONIX'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND/OR PROPRIETARY RIGHTS OF ANY KIND.

## 9. Limitation of Liability

**9.1 Liability Limit.** IN NO EVENT SHALL EITHER PARTY (INCLUDING SUCH PARTY'S SUBCONTRACTORS, AGENTS, SUPPLIERS, DIRECTORS OR EMPLOYEES) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, RELIANCE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) WHETHER ARISING FROM CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL SECURONIX'S TOTAL CUMULATIVE LIABILITY PURSUANT TO THIS AGREEMENT EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO SECURONIX UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT WHICH GAVE RISE TO SUCH DAMAGES HEREUNDER.

**9.2 Exceptions.** NOTWITHSTANDING THE FOREGOING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, OR (II) DAMAGES ARISING FROM INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## 10. Confidentiality

**10.1 Treatment of Confidential Information.** Customer acknowledges that the Software and the Documentation (and any information incorporated therein or related thereto) is the Confidential Information of Securonix. The receiving party shall retain the Confidential Information of the disclosing party in confidence and shall use and disclose it solely for the purpose of, and in accordance with, this Agreement. The receiving party shall only disclose Confidential Information of the disclosing party to those of its employees with a need to know such Confidential Information and who have been informed of the obligations of confidence and have agreed in writing to preserve the confidentiality of such information under terms and conditions no less restrictive than those set forth herein. The receiving party shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, including, without limitation, securing all servers, drives or media on which the Confidential Information, Software and Documentation are installed or maintained to prevent the unauthorized use or disclosure of Confidential Information.

**10.2 Exclusions.** The receiving party shall not be bound by any obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information, or any part thereof, which:

- (a) was known to the receiving party prior to disclosure;
- (b) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Agreement;
- (c) was disclosed to the receiving party by a third-party, provided that such third-party is not in breach of any confidentiality obligation in respect of such information; or
- (d) is independently developed by the receiving party.

**10.3 Required Disclosure.** If the receiving party is compelled pursuant to legal, judicial, or administrative proceedings, or otherwise required by law, to disclose Confidential Information, the receiving party shall use reasonable efforts to (i) seek confidential treatment for such Confidential Information, and (ii) provide prior notice to the disclosing party to allow the disclosing party to seek protective or other court orders.

## 11. Term and Termination

**11.1 Term.** This Agreement shall commence on the Effective Date and shall continue in effect unless terminated as set forth herein.

**11.2 Termination for Breach.** Notwithstanding the foregoing, this Agreement may be terminated as follows: (a) at any time upon mutual written agreement of Customer and Securonix; or (b) by Securonix, by written notice to Customer if Customer (i) breaches a material obligation under this Agreement and such breach continues uncorrected thirty (30) days after Customer's receipt of such written notice, (ii) by Securonix, if Customer fails to pay an amount due hereunder and continues to be delinquent for 30 days (iii) by Securonix, if Customer becomes insolvent or is adjudged as bankrupt; makes an assignment for the benefit of creditors; has a receiver appointed; or files a petition of bankruptcy, or (iv) by Customer, by written notice to Securonix if Securonix breaches a material obligation under this Agreement and such breach continues uncorrected thirty (30) days after Securonix's receipt of such written notice.

**11.3 Effect of Termination.** Upon termination of this Agreement, (a) all license rights granted under this Agreement shall terminate immediately and Customer shall immediately cease using the Software and Documentation, Securonix's intellectual property and any other Securonix Confidential Information; (b) Customer shall pay any and all undisputed sums then owing to Securonix hereunder within ten (10) business days from the effective date of termination; (c) Customer shall, at Securonix's option, either (i) return to Securonix all Software, Documentation and other Securonix Confidential Information (including all copies thereof) then in its possession, custody or control or (ii) destroy all such Software, Documentation and Securonix Confidential Information (including all copies thereof) and certify in writing such destruction to Securonix; and (d) Customer shall not be entitled to any refund of any payments made by Customer unless explicitly provided for herein.

**11.4 Survival.** Upon termination of this Agreement, all of the parties' respective rights and obligations hereunder shall cease, except that Sections 3, 5.2, 7, 8, 9, 10, 11.3, 11.4 and 12 shall survive such termination.

## **12. General**

**12.1 U.S. Government Restriction Rights.** The Software is provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in applicable laws and regulations. Use of the Software by the U.S. Government constitutes acknowledgment of Securonix's proprietary rights in it.

**12.2 Regulatory/Export Compliance.** The export and re-export of the Securonix Software is controlled for export purposes by the U.S. Government. By accepting delivery of the Software, Customer agrees to comply, at its own expense, with all U.S. and foreign export laws and regulations as they relate to software and related documentation and all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with this Agreement. Customer will not export or reexport outside the United States Software or Documentation, whether directly or indirectly, to any Prohibited Party and will not cause, approve or otherwise intentionally facilitate others in so doing. A "Prohibited Party" includes: a party in a U.S. embargoed country or country the United States has named as a supporter of international terrorism; a party involved in proliferation; a party identified by the U.S. Government as a Denied Party; a party named on the U.S. Government's Entities List; a party prohibited from participation in export or reexport transactions by a U.S. Government General Order; a party listed by the U.S. Government's Office of Foreign Assets Control as ineligible to participate in transactions subject to U.S. jurisdiction; or any party that Customer knows or has reason to know has violated or plans to violate U.S. or foreign export laws or regulations. Customer shall indemnify Securonix against any claims, losses, liability, or damages suffered or incurred by Securonix arising out of or related to any violation by Customer of any U.S. or foreign export laws or regulations. Customer shall ensure that each of its software users complies with U.S. and foreign export laws and regulations as they relate to software and related documentation. Customer will furnish to Securonix any information required to enable Securonix to comply with applicable laws and regulations related to the Software.

**12.3 Severability.** Should any provision of this Agreement be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**12.4 Notice.** Notices to either Party shall be in writing to the address indicated in this Agreement (or as later amended) and deemed effective when received.

**12.5 Assignment.** Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, and any such prohibited assignment shall be null and void. Notwithstanding the foregoing, (a) either party may assign this Agreement to any party that acquires all or substantially all of its related business by merger, sale of stock or assets, or a similar transaction, and (b) Securonix

may subcontract its obligations hereunder to a third party, provided that Securonix shall remain liable for any breach thereof.

**12.6 Entire Agreement.** This Agreement and the Schedules hereto constitute the entire agreement between the parties on the subject matter hereof and supersede all prior agreements, communications and understandings of any nature whatsoever, oral or written including any shrink wrap license included with the Software. This Agreement may not be modified or waived orally and may be modified only in writing signed by duly authorized representatives of each party.

**12.7 Governing Law.** This Agreement shall be governed by the laws of the State of California without regard to conflicts of law principles.

**12.8 Injunctive Relief; Attorneys' Fees.** Customer acknowledges and agrees that Securonix will suffer irreparable damage in the event of a breach by Customer of the terms of Section 10 of this Agreement and that Securonix will be entitled to injunctive relief (without the necessity of posting a bond) in the event of any such breach. In addition to any other relief awarded, in any action arising out of this Agreement (including any collection action), Securonix will be entitled to its reasonable attorneys' fees and costs.

**12.9 Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, each party hereto warrants and represents that this Agreement has been executed by a duly authorized representative of such party and this Agreement constitutes the legal, valid and binding obligation of such party.

Accepted by:

**SECURONIX, LLC**  
("Securonix")

**CUSTOMER**  
("Customer")

By \_\_\_\_\_  
Authorized Signature

By \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name (Type or Print)

\_\_\_\_\_  
Name (Type or Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**SCHEDULE A  
SOFTWARE & PRICE SCHEDULE**

This Schedule A documents the software licenses and services being purchased by Customer from Securonix under the terms and conditions of the Agreement. In the event of a conflict between the Agreement and this Schedule, the terms of this Schedule shall control.

<b>Software:</b> as described below	<b>License:</b> Includes use with up to _____ identities and _____ resources	<b>Term:</b> 12 month Subscription	<b>Price:</b> \$
<b>Support &amp; Maintenance Services</b>	Gold Support & Maintenance (8am-6pm CT, M-F)	<b>Term:</b> 12 months	<b>Price:</b> Included at no charge
<b>Implementation Services</b>	___ days Implementation Services		<b>Price:</b> \$
<b>Training Services</b>	___ days Training Services		<b>Price:</b> \$
<b>Software, Support and Maintenance, Implementation and Training Services</b>		<b>TOTAL PRICE:</b>	<b>\$</b>

**Description of the Licensed Software**

Customer shall receive a subscription license to use the Software with up to \_\_\_\_\_ identities and \_\_\_\_\_ resources except if terminated in accordance with Section 11 of the Agreement.

The Securonix Security Intelligence Software shall include the following:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- Unlimited use in development, test, and backup environments to support the production environment
- Includes all currently available Securonix Connectors

**Implementation Services**

\_\_\_ days of Implementation Services for work as defined in the Statement of Work attached as Schedule C are included in the price above. Reasonable, necessary and documented travel and living expenses ("T&E") are not included. Securonix will invoice Customer for such actual T&E on a monthly basis as the services are performed.

Additional Implementation Services are available per quote on a time and material basis. Securonix will invoice for such services and T&E on a monthly basis as such services are performed.

**Training Services**

\_\_\_\_\_ days of Training Services are included in the price above. Reasonable, necessary and documented T&E are not included. Securonix will invoice Customer for such Training Services and actual T&E on a monthly basis as the services are performed.

\_\_\_ seats for Customer personnel in a regularly scheduled Securonix implementation training class to be held at Customer location are included in the price above. Customer will be responsible for the cost of travel and accommodations for Securonix personnel delivering such implementation training class.

**Support and Maintenance Services**

The initial term of Standard Support and Maintenance shall be twelve (12) months from the Effective Date. Support and Maintenance is offered on an annual subscription basis thereafter at the rates specified in Schedule B. Support and Maintenance Service may increase in subsequent years but will increase no more per annum than 5% or the CPI rate, whichever is the lesser of the two.

**Notes**

All pricing is in U.S. Dollars and is strictly Customer/Securonix confidential.

## SCHEDULE B

### SUPPORT AND MAINTENANCE

#### 1. Support and Maintenance Services

Customer shall receive Support and Maintenance Services with the renewal of annual subscription licenses. Support and Maintenance Services entitles Customer to the following:

- (a) Telephone or electronic support in order to help Customer locate and correct problems with the Software.
- (b) Bug fixes and code corrections to correct Software malfunctions in order to bring such Software into substantial conformity with the operating specifications.
- (c) All extensions, enhancements and other changes that Securonix, at its sole discretion, makes or adds to the Software and which Securonix furnishes, without charge, to all other licensees of the Software who are enrolled in Software Support and Maintenance.
- (d) Replacement of the Software at no charge if the media becomes destroyed or damaged so that the Software becomes unusable.
- (e) Up to three (3) dedicated contacts designated by Customer in writing that will have access to support services.

#### 2. Response and Resolution Goals

- "Problem" means a defect in Software as defined in Securonix's standard Software specification which significantly degrades such Software.
- "Fix" means the repair or replacement of Software component to remedy Problem.
- "Workaround" means a change in the procedures followed or data supplied by Customer to avoid a Problem without substantially impairing Customer's use of the Software.
- "Respond" means acknowledgement of Problem received containing assigned support engineer name, date and time assigned, and severity assignment.

<b><i>Problem Severity</i></b>	<b><i>Response Goals</i></b>	<b><i>Resolution Goals</i></b>
<b>1.</b> The production system is creating a significant impact to the Customer's business function preventing that function from being executed.	Securonix will Respond within 4 business hours.	Upon confirmation of receipt, Securonix support personnel begin continuous work on the Problem, and a customer resource must be available at any time to assist with problem determination. Customer Support will provide reasonable effort for Workaround or Fix within 24 hours, once the Problem is reproducible or once we have identified the Software defect. Securonix may incorporate Fix in future release of software.
<b>2.</b> The production system or application is moderately affected. There is no workaround currently available or the workaround is cumbersome to use.	Securonix will Respond within 12 business hours.	Customer Support will provide reasonable effort for Workaround or Fix within 7 business days, once the Problem is reproducible. Securonix may incorporate fix in future release of software.
<b>3.</b> The production system or application issue is not critical: no data has been lost, and the system has not failed. The issue has been identified and does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround.	Securonix will Respond within 48 business hours.	Customer Support will provide reasonable effort for Workaround or Fix within 10 business days, once the Problem is reproducible. Securonix may incorporate Fix in future release of software.
<b>4.</b> Non-critical issues, general questions, enhancement requests, or the functionality does not match documented specifications.	Securonix will Respond within 5 business days.	Resolution of Problem may appear in future release of software.

**Gold Support & Maintenance**

Business Hours Coverage  
(Monday-Friday, 9am-8pm ET, except holidays)

**Platinum Support & Maintenance**

Coverage 24 hours per day, 7 days a week including holidays; 5% of net subscription fee

**3. Accessing Support**

Customer Support offers several ways to resolve any technical difficulties. In addition to online help in the Software, which can be accessed by clicking the "Help" tab when logged into the Software, function-specific help information can also be accessed throughout the Software using the '?' option.

The online support center ([www.securonix.com/support](http://www.securonix.com/support)) is available 24x7 for self-service technical assistance including:

- Downloading software updates and patches
- Logging tickets and viewing status of previously submitted tickets
- Viewing updates to supported platforms and hardware
- Accessing product documentation, technical articles, and FAQs

The support email address is [support@securonix.com](mailto:support@securonix.com).

The support phone number is 855.732.6649.

**4. Annual Support and Maintenance Services Prices**

The initial term of Standard Support and Maintenance Services shall be twelve (12) months from the Effective Date. Support and Maintenance Services are included with the renewal of annual subscription licenses.

**5. Scope of Coverage.** The same level of Support and Maintenance Services shall apply to all licensed Software at the installation site and Customer shall keep all licensed Software it has acquired at an installation site under current contracted Support and Maintenance Services in order to receive the maintenance update services.

**This doesn't apply to a subscription license**

**7. Cancellation.** Customer may cancel its annual subscription licenses as of the next anniversary by written notice received thirty (30) days prior to the annual renewal date.

**8. Reinstatement.** Customer may reinstate Support and Maintenance Services at a later time by paying the annual subscription license fee current at the time of reinstatement plus a fee equal to the then current subscription license fees for the Software times the number of annual periods the subscription was interrupted.

**9. Additional Support Contacts.** Gold and Platinum Support and Maintenance Services include three (3) Customer designated support contacts. These support contacts must utilize support in one geographic time zone and must be seeking support for a common instance of the Software. Two (2) additional support contacts may be purchased for a fee of Thirty Thousand US Dollars (\$30,000 USD) per year. Additional support contacts must be purchased if: i) support contacts are required in more than one geographic time zone or ii) additional production instances of the Software are deployed for an affiliate, business unit, division or other group as allowed under the license.

**SCHEDULE C**  
**STATEMENT OF WORK**