



# End User License Agreement

## -IMPORTANT-

This End User License Agreement ("EULA" or "Agreement") constitutes the terms and conditions on which GoSecure, Inc., a Delaware corporation with offices at 13220 Evening Creek Dr. S, Suite 107, San Diego, CA, 92128 and/or its suppliers/licensors (collectively, as applicable "**GOSECURE**") provide the software licenses, hardware, application-hosting, warranty coverage and other services purchased by an end user or other entity ("**you**" or "**Subscriber**") directly from GOSECURE or through GOSECURE'S authorized distributor or reseller. Your rights and GOSECURE'S and its suppliers/licensors' obligations hereunder are conditioned upon your payment of all applicable license fees, subscription fees, and other payments due in connection with your license and/or purchase and your compliance with the terms and conditions set forth in this and other agreements with GOSECURE.

## **IMPORTANT - PLEASE READ THE TERMS OF THIS EULA CAREFULLY. THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN YOU AND GOSECURE:**

BY CLICKING THE "I ACCEPT", "SUBSCRIBE NOW", "PURCHASE NOW", "BUY NOW", OR "ORDER NOW" BOX OR BY USING ANY SOFTWARE, HARDWARE, OR SERVICES PROVIDED BY GOSECURE, OR BY ACCEPTING OR SIGNING GOSECURE'S QUOTATION OR PURCHASE ORDER, OR WHEN ANY GOSECURE PROVIDED SOFTWARE, SERVICE AND/OR HARDWARE IS "IN USE", YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE FOLLOWING TERMS AND AGREE TO BE BOUND BY AND BECOME A PARTY TO THIS EULA, AND IF YOU ARE ACCEPTING ON BEHALF OF AN ENTITY, THAT YOU ARE AUTHORIZED TO BIND SUCH ENTITY TO THIS EULA. YOU AGREE THAT THIS EULA IS AS ENFORCEABLE AS ANY WRITTEN, NEGOTIATED CONTRACT SIGNED BY YOU AND GOSECURE. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS EULA, GOSECURE IS UNWILLING TO GRANT YOU THIS LICENSE OR TO PERMIT YOU TO ACCESS ITS SOFTWARE, HARDWARE, OR ITS SERVICES AND YOU SHOULD NOT INSTALL OR USE THE SOFTWARE, OR ACCESS THE HARDWARE OR USE THE SERVICES. IF APPLICABLE, AND IF YOU DO NOT ACCEPT ALL OF THESE TERMS AND CONDITIONS PRIOR TO USING THE SOFTWARE, HARDWARE, OR SERVICES, YOU MUST PROMPTLY RETURN THE HARDWARE, SOFTWARE, AND OTHER DELIVERABLES TO THE PLACE OF PURCHASE. IF ANY SOFTWARE HAS BEEN INSTALLED ON YOUR SYSTEM THEN YOU MUST ALSO IMMEDIATELY UNINSTALL THE SOFTWARE.

This EULA, together with the following agreements (all of which are incorporated herein by reference) constitute the entire contract between GOSECURE and Subscriber, and supersede all prior agreements and understandings between GOSECURE and Subscriber, whether written or oral, relating to the subject matter hereof: (i) the quotation that we may have issued to you ("**Quotation**"); (ii) the Services Agreement or Statement of Work that we may have issued to you ("**SOW**"); (iii) the Service Level Agreement located at [www.gosecure.ai/gosecure\\_sla](http://www.gosecure.ai/gosecure_sla); (iv) the Acceptable Use Policy located at [www.gosecure.ai/gosecure\\_aup](http://www.gosecure.ai/gosecure_aup); and (v) any applicable third-party license agreement(s). The effective date of this Agreement is the earlier of the dates which you sign a Quotation, SOW or click your acceptance of this EULA during the installation, upgrade or update of the Software, or when you first use the Software, Hardware or Service. Any purchase orders, statement of work or other document issued by you or any entity other than by GOSECURE shall be valid only for the purpose of identifying this Agreement or the SOW and shall be used for reference purposes only, and any terms included in such purchase orders are void and shall be of no effect. GOSECURE's failure to object to provisions contained in any communication from Subscriber shall not be deemed a waiver of the provisions herein.

## 1. Services.

**1.1 Subscription Services** – GOSECURE may, if Subscriber is current on all fees to GOSECURE and fully complies with the terms of the Agreement, throughout the Term, provide on a regular basis, modifications to, enhancements, Updates and or Upgrades to the Software. GOSECURE retains the right, at its discretion, to create any modifications to, enhancements, Updates and Upgrades of the Software without notice. "**Updates**" means a minor modification or addition that includes corrections or modifications (other than an Upgrade) to correct errors, provide patches, bug fixes or minor enhancements. "**Upgrades**" means a major revision or modification which changes its utility or efficiency and/or which adds features, functions, applications or modules.

**1.2 Support and Maintenance Services** – During the Term GOSECURE will, if Subscriber is current on all fees to GOSECURE and fully complies with the terms of the Agreement, provide support and maintenance services as detailed in the applicable Quotation, Service Level Agreement ([www.gosecure.ai/gosecure\\_sla](http://www.gosecure.ai/gosecure_sla)) or separate SOW issued by GOSECURE.

**1.3 Other Services** - If agreed to in writing between Subscriber and GOSECURE, GOSECURE may provide Subscriber with other services, such as GOSECURE's ThreatTest services.

**1.4 No Consulting or Advisory Services** – Subscriber acknowledges and agrees that GOSECURE is not providing any consulting or advisory services to Subscriber, unless agreed to otherwise in a Quotation, written agreement or SOW between GOSECURE and Subscriber.

## 2. Definitions.

“**Software**” means any computer program provided by or made available by GOSECURE, including software distributed on demand, software as a service (SAAS), preinstalled on hardware or delivered as a client installation or as part of a Deliverable and may include “open source software”. “**Service**” means, as applicable (please see the applicable Quotation or SOW for the exact scope of your Service), the (i) subscription services licensed to Subscriber, which may include, but not be limited to, the subscription service for the use the Software and other services, (ii) any support and maintenance services, (iii) services related to ThreatTest or (iv) any service provided pursuant to a separate SOW, including implementation service. “**Deliverables**” means any work product delivered to Subscriber pursuant to subsection 2(iii) above. “**Hardware**” refers only to the hardware device or server provided by GOSECURE to Subscriber that will be installed within Subscriber’s network for the purpose of running the Software or receiving/using the Service, and may include, but not be limited to, next generation firewalls.

## 3. Fees and Payment.

Subscriber agrees to pay the fees in the manner as set forth in the Quotation, SOW or directly through GOSECURE’S website. A one and a half percent (1.5%) monthly service charge is payable on all overdue balances that are outstanding past the due date (or the highest rate permitted by applicable law, whichever is lowest). All fees are exclusive of, and Subscriber is responsible for, applicable foreign, federal, state, or local sales, use, excise, value added, export or other applicable taxes other than taxes on the net income of GOSECURE, and all customs, duties and other governmental fees or levies. Subscriber shall pay or reimburse GOSECURE for any such taxes and GOSECURE may add any such taxes to invoices submitted to Subscriber by GOSECURE. GOSECURE shall be entitled to any costs of collecting any amount past due hereunder, including reasonable attorneys’ fees. Unless otherwise agreed in the Quotation or SOW, all payments are to be in United States dollars. Additional terms and conditions may apply if Subscriber licenses Software, Hardware and/or purchases Services through the GOSECURE website (“**Web Purchase**”) using a credit card.

## 4. License.

Subject to Subscriber’s payment of all applicable fees to GOSECURE and Subscriber’s acceptance of and compliance with all the terms and conditions of the Agreement, GOSECURE hereby grants to Subscriber, during the Term, and for Subscriber’s internal business purposes only, a limited, revocable, personal, non-sub-licensable, non-transferable, non-assignable and non-exclusive license (the “License”) to (a) install, where applicable,

and/or use one copy of the Software (unless the Quotation permits multiple copies) for Subscriber's internal use only and only for its intended purpose(s) in accordance with GOSECURE's user documentation and the Agreement; and (b) use the Service, Deliverables and Hardware only for Subscriber's internal use, and only for its intended purpose(s) in accordance with GOSECURE's user documentation and the Agreement. The Software, Service and any Deliverables are licensed, not sold, to Subscriber for use only under the terms of the Agreement; ownership of the Software, Service and Deliverables remains at all times with GOSECURE or its suppliers/licensors. The terms of the EULA will govern any Upgrades and Updates provided by GOSECURE that replace and/or supplement the original Software, Service, Deliverables and/or Hardware, unless such upgrade or update is accompanied by a separate license in which case the terms of that license will govern. The Software and access to the Service and/or Deliverables are limited to the number of personal computers, licensed workstations, subscriptions, mailboxes users, seats or any other device that accesses the internet, number of servers, or IP addresses, as reflected in the Quotation, SOW or Web Purchase (collectively the "Seats" or "Users"), as well as the functionality, term periods, applications, modules, the amount of data or data capture rates, and/or special options paid for by Subscriber and authorized by GOSECURE as reflected in the Quotation, SOW or Web Purchase. Subscriber will notify GOSECURE in advance of having actual Seats that exceeds the maximum number of Seats permitted in the Quotation, SOW or Web Purchase and GOSECURE will charge Subscriber for the additional Seats. Upon termination or Subscriber's breach of the license or the Agreement, Subscriber no longer has any right to use the Software and/or Service.

## **5. License Restrictions and Ownership.**

(a) GOSECURE reserves all rights not expressly granted to Subscriber in this Agreement. Other than the rights expressly granted to Subscriber in this Agreement, GOSECURE and its suppliers/licensors retain all of their rights to their respective trademarks, logos, trade names, and service marks, website(s), technologies, patents, copyrights, trade secrets, know-how, and other intellectual property and proprietary rights. Without limiting the generality of the foregoing, GOSECURE or its suppliers/licensors shall at all times solely and exclusively own all worldwide rights, title, and interest in and to the Software, Service and Deliverables, and all worldwide intellectual property rights therein. No implied licenses are granted herein. To the extent you provide any suggestions or comments related to the Software, Service, Deliverables or Hardware to GOSECURE, GOSECURE shall have the right to retain and use any such suggestions or comments in current or future products, deliverables, or services, without your approval or further compensation to you. Subscriber may not (i) use any reverse compilation, reverse engineering, decompilation or disassembly techniques or similar methods to determine any design structure, concepts and construction method of the Software, Service, Hardware or Deliverables or replicate the functionality of the Software, Service, Deliverables or the Hardware for any purpose; (ii) remove, modify, or obscure any

GOSECURE or other copyright, trademark, and other proprietary notices affixed to or displayed on or in the Software, Service, Deliverables or the Hardware, and shall not allow any third party to take any such action; (iii) transfer, distribute, sublicense, rent, lease, modify, translate, make any attempt to create derivative works from, and/or assign or otherwise make available the Software, Service, Deliverables or Hardware or any portion thereof to a third party; (iv) transfer the Software from the Hardware through a network or other data transmission channels to another hardware appliance or computer; (v) use the Software, Service, or Deliverables in connection with more Seats or Users than the number of Seats or Users approved in the Quotation or SOW or otherwise use the Software, Service, Deliverables or Hardware in any manner contrary to any restrictions set forth in the Quotation, SOW or Web Purchase; or (vi) use the Software, Service, Deliverables or Hardware for purposes of performance comparison to other competitive offerings for the purpose of publishing or otherwise making available the results to a third party without GOSECURE'S prior written consent.

**(b)** Subscriber agrees that all ideas, know-how, processes, information, drawings, documents, designs, models, inventions, copyrightable material and other tangible and intangible materials authored, prepared, created, made, developed, delivered, conceived or reduced to practice, in whole or in part, by GOSECURE in the course of providing the Service and/or the Deliverables, including, without limitation, computer programs, data and documentation (collectively, the "**Works**") are and will be the sole and exclusive property of GOSECURE, and Subscriber hereby irrevocably, expressly and automatically assigns, in perpetuity, all right, title and interest in and to such Works to GOSECURE, including, without limitation, all copyrights, patent rights, trade secrets, trademarks, moral rights and all other applicable proprietary and intellectual property rights throughout the world. If Subscriber has any rights to the Works that cannot (as a matter of law) be assigned to GOSECURE in accordance with the foregoing, Subscriber unconditionally and irrevocably: (i) waives the enforcement of such rights; and (ii) grants to GOSECURE an exclusive, irrevocable, perpetual, worldwide, royalty-free license (a) to reproduce, create derivative works of, distribute, publicly perform, publicly display, digitally perform, and otherwise use and exploit such Works, (b) to use, make, have made, sell, offer to sell, import, and otherwise exploit any product or service based on, embodying, incorporating, or derived from the Works, and (c) to exercise any and all other present or future rights not yet known in the Works, in each case with the right to sublicense such rights through multiple levels of sublicensees. Subscriber agrees to render all reasonably required assistance to GOSECURE to protect GOSECURE's rights under this Section 5. In the event that GOSECURE is unable to secure Subscriber's signature on any documents deemed necessary by GOSECURE to carry out the purposes of this Section 5, Subscriber hereby irrevocably designates and appoints GOSECURE or its designee(s) as Subscriber's agent and attorney-in-fact, which appointment is coupled with an interest, to act for and in Subscriber's behalf to execute, verify and file any such documents.

## 6. Term.

The initial term of the Service shall be for the initial duration set forth in the Quotation or SOW (the “**Initial Term**”). The Agreement may be terminated in the manner provided in Section 7. Absent termination of this Agreement in accordance with Section 7, or contrary provisions in the Quotation or SOW, the Service shall automatically renew for successive rollover terms (each a “Rollover Term”) for the same duration as the Initial Term, with each such Rollover Term commencing on the applicable anniversary date of the commencement of the previous Initial Term or Rollover Term and any (the Initial Term and any applicable Rollover Term are collectively referred to in this Agreement as the “Term”). By way of example, if the original Term was for three (3) years and had an effective date on June 1, 2016, then unless the Agreement is terminated in the manner provided in Section 7, the first Rollover Term shall commence on June 1, 2019 for a three-year term and Subscriber shall be required to pay the then current fees. GOSECURE shall endeavor to provide Subscriber with written notice at least 60 days prior to the expiration of the Term and each Rollover Term. This Section 6 shall not apply to Web Purchases that shall be governed by different terms and conditions.

## 7. Termination.

Either party may terminate this Agreement:

- (a) Without cause at any time with written notice. Such termination shall be effective at the conclusion of the Term during which such termination occurred;
- (b) At any time upon written notice in the event Subscriber has committed a breach of this Agreement which remains uncured forty-five (45) days after written notice of such breach, GOSECURE may terminate this Agreement, except that GOSECURE may terminate this Agreement immediately upon written notice for a breach by Subscriber of Section 4, 5 or 9; or
- (c) Automatically and without providing written notice at the expiration of an evaluation period.

## 8. Effect of Termination.

Upon termination of this Agreement for any reason, (a) Subscriber shall cease all use of the Software, Deliverable, Hardware and Service and destroy all copies, full or partial, of the Software and Deliverable, (b) all accrued rights to payments shall survive and Subscriber shall promptly pay in full to GOSECURE all outstanding and unpaid fees, (c) in the event the

Agreement is terminated by GOSECURE for breach by Subscriber or by Subscriber under Section 7(a), Subscriber will be required to promptly pay in full all outstanding and unpaid fees, as well as the fees detailed in the Quotation, including, without limitation, all fees payable through the end of the then current Term, (d) any emails that you archive with GOSECURE will be deleted without further notice from GOSECURE'S servers thirty (30) days after the expiration or termination of your email archiving agreement (unless terminated for your breach, in which case GOSECURE may delete the emails sooner) and you acknowledge and agree that it is your responsibility to backup all of your emails or to transfer (at your cost) all of the emails to another archiving solution, (e) upon termination for cause, the Subscriber's right to access or use Subscriber's data or emails may immediately cease, and GOSECURE shall have no obligation to maintain or forward any data or emails to the Subscriber.

## **9. Confidential Information.**

**9.1 Definition of Confidential Information.** GOSECURE and Subscriber understand and agree that in the performance of this Agreement, each party may have access to or may be exposed to, directly or indirectly, proprietary or confidential information of the other party, and third parties such as GOSECURE's suppliers/licensors, including, but not limited to, trade secrets, product plans, names, business or marketing plans, manufacturing processes, business opportunities, technical data, computer programs, software source or object codes, machinery and equipment, systems, products, projects, price lists, research and development data, business materials, website usage statistics, and technical information ("Confidential Information").

**9.2 Protection of Confidential Information.** Each party agrees that it shall not, during the Term of this Agreement and after its termination, use (except as expressly authorized by this Agreement or by GOSECURE) or disclose Confidential Information of another party without the prior written consent of that party, unless the receiving party can prove such Confidential Information (i) was known to the receiving party prior to the Effective Date of this Agreement, or (ii) becomes publicly available without breach of this Agreement, or (iii) becomes known to the receiving party after rightful disclosure from a third party not under an obligation of confidentiality; or (iv) was disclosed to the minimum extent necessary to comply with a lawful court order or government regulation, provided that the party making such disclosure provides the other party with advance written notice thereof, and reasonably cooperates with the other party to seek confidential or protective treatment of such information. In addition, each party agrees to take all reasonable measures to protect and maintain in confidence the Confidential Information received from the other party.

**9.3 Data Integrity.** The Subscriber, not GOSECURE, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property

ownership or right to use of all Subscriber data or emails stored in the Hardware and Software, and GOSECURE shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store or back up any such Subscriber data or emails. It is your responsibility at all times to backup your data. GOSECURE reserves the right to withhold, remove and/or discard Subscriber's data without notice for any breach, including, without limitation, Subscriber's non-payment. Any emails that you archive with GOSECURE will be deleted without further notice from GOSECURE'S servers thirty (30) days after the expiration or termination of your email archiving agreement (unless terminated for your breach, in which case GOSECURE may delete the emails sooner) and you acknowledge and agree that it is your responsibility to backup all of your emails or to transfer (at your cost) all of the emails to another archiving solution. Upon termination for cause, the Subscriber's right to access or use Subscriber's data or emails may immediately cease, and GOSECURE shall have no obligation to maintain or forward any data or emails to the Subscriber.

**9.4 Disclosure.** GOSECURE's privacy and security policies may be viewed at [www.gosecure.ai/privacy-notice/](http://www.gosecure.ai/privacy-notice/). GOSECURE reserves the right to modify or amend its privacy and security policies in its discretion from time to time. GOSECURE may occasionally need to notify all Subscribers, whether or not they have opted out of email notifications, of important announcements regarding the operation of the Software.

## 10. Warranties.

**10.1 Warranties by Both Parties.** Each party represents and warrants to the other party that it has the right to enter into this Agreement and perform its obligations hereunder in the manner contemplated by this Agreement.

**10.2 Warranties by Subscriber.** Subscriber represents, warrants, and covenants that it shall comply with all applicable laws, rules, ordinances, and regulations of the United States of America, any State thereof, all applicable foreign jurisdictions, and any other applicable laws, rules, ordinances, and regulations in connection with the performance of Subscriber's obligations under this Agreement and any use of the Software, Hardware and/or Service, including, but not limited to, the U.S. Export Administration Regulations, as well as end user, end use, and destination restrictions issued by U.S. and other governments (for additional information on U.S. export controls see [www.bis.doc.gov](http://www.bis.doc.gov)). Subscriber may not export or re-export, or allow the export or re-export of any product, technology or information you obtain or learn pursuant to this Agreement in violation of any law, restriction or regulation. Subscriber agrees to hold GOSECURE and its suppliers/licensors harmless from and against any claims arising out of, or relating to your violation of any export control law or other applicable law.



**10.3 GOSECURE Warranties.** Subscriber acknowledges that on the basis of today's technologies it is not possible to manufacture computer software, hardware or provide services that performs its functionality error-free in all applications and combinations. Subject to (i) Subscriber's compliance with all the terms of the Agreement, (ii) Subscriber obtaining the Software or Hardware directly from GOSECURE or from an GOSECURE authorized distributor or reseller and (iii) the proper installation and use of the Hardware and Software, GOSECURE warrants that the Software will substantially conform with GOSECURE's then current functional specifications as set forth in the applicable documentation for three (3) months from the date of shipment and the Hardware will be free from defects in material and workmanship for one (1) year from the date of shipment (collectively, the "Warranty"). GOSECURE's sole obligation with respect to a breach of the Warranty, during the Term, shall be to repair or replace the defective GOSECURE Hardware or Software at no charge to you. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement products may consist of new or remanufactured or reconditioned parts or products. GOSECURE shall not be responsible for Subscriber's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Hardware returned to GOSECURE for repair or upon termination, whether under warranty or not. In the event Subscriber fails to return a defective Hardware or Software within 30 days of receiving a replacement Hardware or Software, Subscriber will be required to pay for the then current price of replacing the Hardware or Software with no right to receive a credit in the event the defective Hardware or Software is received by GOSECURE later than the 30-day grace period. If GOSECURE replaces the Hardware or Software, and if at the time of such replacement GOSECURE has launched a new version of the Software, then GOSECURE retains the right to replace the Software with the new version, at GOSECURE's sole discretion. All Hardware shall remain the property of GOSECURE.

#### **10.4 Limitation of Liability.**

**(a)** The above limited warranty does not apply and is voidable by GOSECURE, at its discretion, if the Hardware or Software (i) has been altered, except by GOSECURE or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by GOSECURE, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (iv) is licensed for beta, evaluation, testing or demonstration purposes or for which GOSECURE does not charge a purchase price or license fee. This Warranty is also voidable by GOSECURE, at its discretion, if the Hardware or Software is used for any other purpose other than for its intended purpose or if Subscriber has in any way violated the terms of the Agreement.

**(b)** GOSECURE explicitly disclaims any and all other warranties, conditions or representations, expressed or implied including, but not limited to, the absence of defects, flaws or malfunctions of the Hardware, Software or Service, AND NON-INFRINGEMENT. In

particular, Subscriber acknowledges that except as provided above, the Hardware, DELIVERABLE, Service or Software is provided "as is" AND "AS AVAILABLE", WITH ALL FAULTS AND without warranty of any kind. GOSECURE DOES NOT WARRANT THAT the Hardware, DELIVERABLE, Service or Software WILL MEET SUBSCRIBER'S REQUIREMENTS OR THAT THE OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT NO SOFTWARE, SERVICE, HARDWARE OR DELIVERABLE CAN EVER BE 100% ERROR FREE AND THAT THERE IS THEREFORE NO SUBSTITUTE FOR USING COMMON SENSE. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, GOSECURE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, AND STATUTORY, CONCERNING THE SOFTWARE, DELIVERABLE, HARDWARE, OR SERVICE OR OTHERWISE RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY STATUTORY WARRANTIES OF NON-INFRINGEMENT. The entire responsibility in connection with the consequences resulting from the use of the SERVICE, Hardware, DELIVERABLE or Software as well as the intended or achieved results resulting from the use of the SERVICE, Hardware, DELIVERABLE or Software lies entirely with Subscriber. If Subscriber has acquired the SERVICE, Hardware, DELIVERABLE or Software THROUGH an authorized distributor or reseller of GOSECURE, GOSECURE shall not be held responsible for any additional promises or warranties made by such distributor or reseller.

(c) Notwithstanding anything in this agreement to the contrary, TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL GOSECURE OR ITS SUPPLIERS/LICENSORS BE LIABLE FOR PERSONAL INJURY, PROPERTY DAMAGE, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, DATA BREACH, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE SERVICE, SOFTWARE, DELIVERABLE OR HARDWARE, ANY WARRANTY OR ARISING OUT OF ANY BREACH OF WARRANTY, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF GOSECURE OR ITS SUPPLIERS/LICENSORS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING IN THIS EULA (OR ANY OTHER AGREEMENT BETWEEN SUBSCRIBER AND GOSECURE) TO THE CONTRARY, GOSECURE'S AND ITS SUPPLIERS/LICENSORS' LIABILITY SHALL IN NO EVENT AND UNDER ANY THEORY OF RECOVERY EXCEED THE TOTAL AMOUNT RECEIVED BY GOSECURE (UNDER THE APPLICABLE SOW, WEB PURCHASE or Quotation GIVING RISE TO THE CLAIM) DURING THE PRECEDING THREE (3) MONTHS PERIOD. THE SOLE REMEDY FOR A BREACH OF ANY APPLICABLE LIMITED WARRANTY set forth in this EULA IS, AT THE OPTION OF GOSECURE, REPAIR OR REPLACEMENT OF THE DEFECTIVE OR NONCONFORMING Hardware, Service or Software. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL GOSECURE OR ITS SUPPLIERS/LICENSORS BE LIABLE FOR PERSONAL INJURY. The foregoing is SUBSCRIBER'S sole and exclusive remedy and states GOSECURE'S entire liability.

## **11. Indemnity.**

Subscriber agrees to indemnify, defend and hold GOSECURE and GOSECURE's suppliers, licensors, affiliates, officers, directors, employees and agents harmless from all expenses, losses, damages or liabilities (including reasonable legal fees) arising out of or relating to any third party claims, demands, or suits, in connection with (i) a breach of Subscriber's warranties, representations, covenants, or obligations set forth herein; and (ii) a violation by Subscriber of any laws, rules or regulations or third party patent, copyright, trademark, trade secret or privacy rights; or (iii) any data or content included in or used in conjunction with the Software or Hardware by Subscriber.

## **12. Force Majeure.**

GOSECURE and its suppliers/licensors shall not be liable to Subscriber or any other person or entity for any delay or failure in the performance of this Agreement or for loss or damage of any nature whatsoever suffered by such party due to disruption or unavailability of communication facilities, utility or Internet service provider failure, acts of war, acts of God, acts of vandalism, terrorism, lightning, fire, flood, riots, strikes or any other causes beyond GOSECURE's reasonable control.

## **13. Verification.**

GOSECURE may, at its expense, automatically audit (or have audited by an auditor engaged by GOSECURE) Subscriber's use of the Software, Hardware, Deliverable and/or Service to confirm compliance with this Agreement and accuracy of payments made by Subscriber. In addition, GOSECURE shall be permitted to conduct automated audits at its discretion, provided that such automated audits take place without accessing Subscriber's internal information technology networks and do not materially interfere with Subscriber's use of the Software or Hardware. If an audit reveals that Subscriber has underpaid fees to GOSECURE, Subscriber shall pay GOSECURE such underpaid fees based upon the charging methodology set forth on the Quotation or SOW.

## **14. Independent Contractor.**

The relationship of GOSECURE and Subscriber is solely that of independent contractors. Nothing contained in this Agreement shall be construed to give either party the power to direct or control the activities of the other or constitute either party as the other's partner, joint venturer, co-owner, agent, franchisee or employee. Neither party is authorized or

empowered to transact business, incur obligations, or make representations on behalf of the other party.

## **15. Miscellaneous.**

This Agreement, as may be amended by GOSECURE from time to time, represents the complete and final agreement concerning the license granted, and the Hardware, Software and/or Services offered hereunder and replaces any and all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter contained herein. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by Subscriber without GOSECURE's prior written consent, such consent not to be unreasonably withheld. Any such assignment without GOSECURE's prior written consent shall be null and void. GOSECURE may assign, delegate and/or subcontract any or all of its rights or obligations hereunder. All notices and consents required or permitted to be given under this Agreement shall be in writing to the parties at the addresses designated at time of order or renewal to the other by written notice, and shall be effective upon receipt. Written notice shall be made in the form of a certified letter, confirmed facsimile transmission or acknowledged receipt of electronic mail. Receipt shall be deemed to have occurred: four days following mailing of a certified letter; upon receipt of confirmation of fax; and upon receipt of confirmation of receipt of e-mail. Sections, 5, 8, 9, 10.4, 11, 13, 15 and 16 will survive the termination of this Agreement. It shall be Subscriber's responsibility to periodically check [www.gosecure.ai/gosecure\\_eula](http://www.gosecure.ai/gosecure_eula) for changes and/or amendments to this Agreement and Subscriber acknowledges that GOSECURE shall not be required to provide Subscriber with written notice of any such change(s) or amendments.

## **16. Governing Law, Dispute Resolution and Exclusive Jurisdiction**

(a) This Agreement shall be governed by and interpreted exclusively in accordance with the internal laws of the State of California, U.S.A., without reference to conflict of laws principles or international law, including, without limitation, the United Nations Convention on Contracts for the International Sale of Goods, as revised, or to the Uniform Computer Information Transactions Act, as adopted in any jurisdiction, and to the maximum extent permitted under applicable law, Subscriber expressly waives any rights to the application of any other law or regulation on the effect thereof. Sole and exclusive venue for any disputes will be in San Diego County, California. The parties hereby irrevocably waive any objection to the jurisdiction of such courts based on any ground, including, without limitation, improper venue or forum non conveniens.

(b) In the event of any dispute arising out of or related in any way to this Agreement (except for non-payment by Subscriber), the parties agree to first attempt, in good faith, to settle such disputes informally through direct discussions and direct negotiations. If a resolution cannot be reached informally, the parties agree to submit such disputes to non-binding mediation before a mutually acceptable mediator. Informal dispute resolutions and mediation must be attempted in good faith before the filing of any lawsuit. For purposes of the procedures set forth in this paragraph, a “dispute” shall mean any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to this Agreement. No formal proceedings for the judicial resolution of any dispute, except for the seeking of equitable or injunctive relief, may begin until the dispute resolution procedure hereunder is completed.

(c) Subscriber acknowledges that any breach of Subscriber’s obligations under this Agreement that relates to the proprietary rights (including breach of Section 5), or that is otherwise not subject to remedy by monetary damages, will cause GOSECURE irreparable harm, and that GOSECURE accordingly will be entitled to injunctive and other equitable relief in addition to all other remedies provided by this Agreement or available at law, in any court of competent jurisdiction.

## **SUBSCRIBER HAS READ AND AGREES TO BE BOUND BY THE ABOVE TERMS AND CONDITIONS**

Version 11 – 8/15/2019

Version 12 – 6/12/2024