

SecureAuth Corporation End User License Agreement

PLEASE READ CAREFULLY BEFORE EXECUTING. This End User License Agreement ("EULA") is a binding legal agreement between (a) the entity for which you are an authorized representative ("You", "Your", "End User" or "Licensee"), and (b) SecureAuth Corporation, a Delaware corporation ("SecureAuth" or "SA"), that governs the use of SecureAuth's IdP software, appliances, and other products and solutions, (collectively, the "Product"), maintenance and support services, professional services packages and training.

BY EXECUTING BELOW, YOU (1) REPRESENT THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF THE END USER LICENSING THE PRODUCT AND MAY ENTER INTO THIS EULA ON ITS BEHALF, AND (2) ON BEHALF OF THE END USER, AGREE THAT END USER WILL BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT ACCEPT THE EULA TERMS ON BEHALF OF THE END USER, DO NOT EXECUTE.

1. LICENSE GRANT. The Product includes (1) software that is owned by SA (and may include associated media, and "online" or electronic documentation), (2) other software provided by third parties and used in conjunction with the Product ("Third Party Software"), and (3) appliances, all of which is detailed at www.secureauth.com/legal/products. SA grants End User the following non-exclusive rights provided End User agrees to, and complies with, all terms and conditions of this EULA.

a. PERMISSIBLE USE. End User may use the Product for the number of user licenses purchased hereby. End User may not use the Product beyond the number of user licenses purchased and End User does not have the right to distribute the Product. End User agrees to only use the Product as expressly permitted herein.

b. RESERVATION OF RIGHTS. The Product is licensed, not sold, to End User by SA. SA owns all right, title and interest in and to the Product and reserves all rights not expressly granted to End User in this EULA. End User agrees to refrain from any action that would diminish such rights.

c. THIRD PARTY SOFTWARE. Notwithstanding the terms and conditions of this EULA, all or any portion of the Product which constitutes Third Party Software, is licensed to End User subject to the terms and conditions of the software license agreements between SA and the third-party licensors. Use of the Third Party Software by End User shall be governed entirely by the terms and conditions of third party licenses.

2. ENTERPRISE SUPPORT; PROFESSIONAL SERVICES PACKAGES. Enterprise support and maintenance for the Product is described in detail and available for review at www.secureauth.com/support/terms. Maintenance and support is included in the license fees for the Product, including upgrades to the latest software release, and the annual fee for continuously upgrading custom appliances to the latest software release is twenty percent of the original development cost of each custom appliance. Support is available 24/7/365 either (i) telephonically at 949-777-6959, ext. 2, or (ii) via e-mail at support@secureauth.com. Professional services shall be provided in accordance with the terms and conditions of the Professional Services Package ("PSP") located at www.secureauth.com/legal/psp. Additional training may be purchased in accordance with the training order form found at www.secureauth.com/legal/training, along with certification courses offered by SecureAuth University.

3. TRANSFER. The Product may only be utilized by entities associated with the End User ("Affiliates"). In the event of the sale or merger of End User to another entity, the resultant entity will be obligated to comply with all of the EULA terms.

4. RESTRICTIONS. End User may not sublicense, assign or transfer the license or Product except as expressly provided in this EULA.

5. PROPRIETARY RIGHTS. All intellectual property rights in the Product and user documentation ("Documentation") are owned by SA and are protected by law, including but not limited to patent, copyright, trade secret, and trademark law, as well as other applicable laws and international treaty provisions.

6. **LIMITATION ON REVERSE ENGINEERING.** End User is not permitted, and agrees not to, reverse engineer, decompile, disassemble or create derivative works of or modify the Product. Nothing contained herein shall be construed, expressly or implicitly, as transferring any right, license or title to End User other than those explicitly granted under this EULA. SA reserves all rights in its intellectual property not expressly agreed to herein. Unauthorized copying of the Product or failure to comply with the restrictions in this EULA (or other breach of the license herein) will result in automatic termination of this EULA and End User agrees that any unauthorized use will constitute immediate, irreparable harm to SA for which monetary damages would be an inadequate remedy, and that injunctive relief will be an appropriate remedy for such breach.

7. **TERM.** This EULA is effective for the term of the license, and shall automatically renew for successive one (1) year terms. End User may terminate this EULA in the event SA materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving notice thereof. SA may terminate End User's license in the event End User materially breaches the terms of this Agreement and End User fails to cure such breach within thirty (30) days of receiving notice thereof. Upon such termination, End User shall promptly return or destroy all copies of the Product and the Documentation. In the case of the latter, End User shall provide written confirmation thereof.

8. **CONSENT TO USE OF DATA.** End User agrees that SA and its affiliates or suppliers may collect and use statistics on End User's use of the Product in performing backup operations and technical information End User provides, solely in relation to support services related to the Product. SA agrees not to use this information in a form that personally identifies End User except to the extent necessary to provide such services.

9. **WARRANTIES.** The Product will perform in substantial accordance with the Documentation. The Product, and any updates or upgrades thereto provided by SA, will not, at the time SA delivers it to End User, contain any viruses, worms, spyware, time bombs or other malware or programming devices that are designed to modify, delete, damage, disable or deactivate any software, hardware, data or systems of End User. SA shall not be responsible for any infections to the Product by viruses, worms, spyware, time bombs or other malware that occur after the Software has been delivered to End User. SA will monitor data security industry information to identify any systemic threats to the authentication architecture used by SA, will immediately notify End User of any such threats, and will use commercially reasonable efforts to modify the Product as required to eliminate such threats. SA has implemented disaster recovery procedures to ensure that all Software-related services provided to End User under this Agreement will resume with full functionality within 48 hours following any disaster. If the Product does not perform as warranted, SA shall promptly use commercially reasonable efforts to correct the Product, or if the correction of the Product is not reasonably possible, replace all applicable portions of the Product, free of charge, with replacement software that contains at least the equivalent performance and functionality of the affected Product. If neither of the foregoing is commercially practicable or if neither have been achieved within 30 days after the earlier of the date on which either SA or End User identifies the performance deficiency, either party may, in its sole discretion, terminate this Agreement with respect to the non-conforming program or programs, and in such event SA shall refund the monies paid by End User attributable to such non-conforming Product. The foregoing are the sole and exclusive remedies of End User for breach of the warranty set forth in this Section 9. The warranties set forth above are made to and for the benefit of End User and its Affiliates and will be enforceable against SA only if the Product has been used at all times in substantial accordance with the instructions for such use set forth in the Documentation and, except as authorized by SA in writing, End User has not made or caused to be made modifications, alterations or additions to the Product that cause it to deviate from the Documentation in a manner that causes the breach of the warranty.

10. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE EXPRESSLY WARRANTED IN THIS EULA, SA DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EVEN IF SA HAD BEEN INFORMED OF SUCH PURPOSE), OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT IN EACH JURISDICTION IN WHICH ANY SUCH DISCLAIMER IS UNENFORCEABLE, THE DURATION OF ANY SUCH IMPLIED SOFTWARE PERFORMANCE WARRANTIES IS LIMITED TO THIRTY (30) DAYS FROM THE DELIVERY DATE OF THE PRODUCT; PROVIDED, HOWEVER, THAT THE SOLE REMEDY OF LICENSEE FOR BREACH OF ANY SUCH IMPLIED SOFTWARE PERFORMANCE WARRANTY SHALL BE THAT SA

WILL, AT ITS OPTION, REPAIR OR REPLACE THE COPY OF THE PRODUCT HELD BY LICENSEE, OR TERMINATE THIS AGREEMENT AND REFUND AMOUNTS ALREADY PAID THEREFOR BY LICENSEE. IN ADDITION, SECUREAUTH PROVIDES NON-SECUREAUTH PRODUCTS WITHOUT WARRANTIES OF ANY KIND, UNLESS SECUREAUTH SPECIFIES IN WRITING OTHERWISE; PROVIDED, HOWEVER, THE NON-SECUREAUTH MANUFACTURERS, SUPPLIERS, OR PUBLISHERS MAY PROVIDE THEIR OWN WARRANTIES, AND SECUREAUTH AGREES TO INFORM LICENSEE, UPON REQUEST (1) WHICH PRODUCTS ARE NON-SECUREAUTH PRODUCTS, (2) THE MANUFACTURER OR SUPPLIER WHO IS RESPONSIBLE FOR WARRANTY (IF ANY) RELATING THERETO, AND (3) THE PROCEDURE TO OBTAIN ANY WARRANTY SERVICE THEREON.

11. LIMITATION OF LIABILITY. EXCEPT FOR ANY CLAIMS ARISING UNDER SECTIONS 9 (WARRANTIES) OR 12 (INDEMNIFICATION), OR WHICH ARE BASED UPON GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, TO THE EXTENT PERMITTED BY THE LAW OF THE JURISDICTION IN WHICH END USER PROCURED THIS LICENSE: (A) SA AND END USER (INCLUDING ANY AFFILIATES OF END USER) WILL NOT BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OF ANY CHARACTER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR COMPUTER MALFUNCTION, LOSS OF INFORMATION, LOST PROFITS AND BUSINESS INTERRUPTION, AND THE COST TO OBTAIN A SUBSTITUTE PRODUCT, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE USE OF (OR INABILITY TO USE) THE PRODUCT, HOWEVER CAUSED, AND WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SA OR END USER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) IN NO EVENT WILL SA'S TOTAL LIABILITY TO END USER RELATING TO THIS AGREEMENT OR THE USE (OR INABILITY TO USE) THE PRODUCT EXCEED THE LARGER OF THE SUM OF ONE MILLION DOLLARS (\$1,000,000.00) OR THE CUMULATIVE AMOUNT PAID BY END USER UNDER THIS AGREEMENT; AND (C) IN NO EVENT WILL END USER'S TOTAL LIABILITY TO SA RELATING TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY END USER UNDER THIS AGREEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO END USER; PROVIDED, HOWEVER, SA IS LICENSING THE SOFTWARE TO END USER ON THE EXPRESS CONDITION THAT END USER AGREES TO THE "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" PROVISIONS IN THIS AGREEMENT. NO EMPLOYEE, AGENT, REPRESENTATIVE OR AFFILIATE OF SA HAS THE AUTHORITY TO BIND SA TO ANY ORAL REPRESENTATIONS OR WARRANTY CONCERNING THE PRODUCT. ANY WRITTEN REPRESENTATIONS OR WARRANTY NOT EXPRESSLY CONTAINED IN THIS AGREEMENT ARE UNENFORCEABLE.

12. INDEMNIFICATION. End User agrees to indemnify and hold SA and its officers, directors, employees, agents, representatives and licensors harmless from any claim or demand (including but not limited to reasonable legal fees) made by a third party due to or arising out of or related to End User's violation of the terms and conditions of this Agreement, End User's violation of any laws, regulations or third party rights or End User's gross negligence or willful misconduct. SA agrees to indemnify, defend and hold End User and its Affiliates harmless, at SA's expense, from any claims, demands, actions, suits, damages, losses, liabilities, costs or expenses of any nature, including, without limitation, reasonable attorneys' fees, incurred by End User or its Affiliate(s) as a result of any breach of this Agreement by SA or any of the representations or warranties contained in this Agreement. In the event of an infringement claim, SA shall have no obligation pursuant to this Section 12 to the extent the claim is caused by the modification of the Product by End User or its agents, without SA's prior written consent, that cause it to deviate from the Documentation, or to the extent the infringement is caused by the use of other than the most current version of the Product if the current version would be non-infringing, has been made available in a timely manner to End User at no additional charge, and End User has had sufficient time to install, execute and operate such current version without impacting its business operations. If the unmodified Product becomes, or in SA's opinion is likely to become, the subject of a claim of infringement or misappropriation, SA shall, at its option and expense, promptly either: (i) modify or replace the Product to be non-infringing while giving equivalent performance and functionality, or (ii) obtain for End User the right to continue using the Product under terms substantially similar to those then in effect under this Agreement.

13. **AUDIT.** SecureAuth may, at its expense, upon reasonable prior written notice to End User and during standard business hours, audit End User with respect to its compliance with the terms of this Agreement no more than once per year. You understand and acknowledge that SecureAuth utilizes a number of methods to verify and support software use by its customers. These methods may include technological features of the Product that prevent unauthorized use and provide software deployment verification. Upon reasonable request, you will provide a system-generated report verifying your deployment of the Product, including the number of unique users of the Product. The foregoing request shall not occur more than once per year, and SecureAuth will not unreasonably interfere with the conduct of your business in connection with any audit.

14. **U.S. GOVERNMENT CUSTOMERS.** The Product is a "Commercial Item" as that term is defined in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable, Commercial Computer Software and Commercial Computer Software Documentation are licensed to the U.S. Government users (i) only as Commercial Items and (2) only with those rights granted to other users under this EULA. Unpublished rights are reserved under the copyright laws of the United States.

15. **EXPORT CONTROLS.** You acknowledge that the Product is subject to U.S. and, when applicable, European Union and other export regulations. You shall comply with applicable export and import laws and regulations for the jurisdiction in which the Product will be imported and/or exported. You shall not export the Product to any individual, entity or country prohibited by applicable law or regulation. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Product.

16. **APPLICABLE LAW.** This EULA is governed by the laws of the State of Delaware exclusive of conflict of law provisions and End User agrees to the jurisdiction of the courts of Dover County, State of Delaware, with respect to any proceedings arising from this EULA. The parties hereby agree that this Agreement is not governed by the United Nations Convention on Contracts for the International Sale of Goods.

17. **MISCELLANEOUS.** This EULA, along with the quote provided by SA and executed by End User, is the entire agreement between End User and SA relating to the Product and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Product or any other subject matter covered by this EULA. If any provision of this EULA is held by a court of competent jurisdiction to be contrary to law, such provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provision of the EULA will remain in force and effect. If you issue an order to a reseller of SecureAuth or to SecureAuth directly and the terms and conditions of the order conflict with the terms and conditions of this Agreement, then the terms and conditions specified in this Agreement shall control. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of SecureAuth. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by SecureAuth. All notices, requests, demands and determinations for SecureAuth under this Agreement (other than routine operational communications) shall be sent to: SecureAuth Corporation, 8965 Research Dr., Irvine, CA 92618, Attn: General Counsel. Sections 3, 4, 5, 6, 9, 10, 11, 12, 14 and 15 shall survive termination of this EULA.

The only warranties for the Product are set forth herein. Nothing herein should be construed as constituting an additional warranty. SA shall not be liable for technical or editorial errors or omissions contained herein. Portions of the Product include technology used under third party license.

Name of Entity: _____

Date: _____

By: _____

Name: _____

Title: _____