

## LICENSE AGREEMENT

For

### SECURITY INNOVATION SOFTWARE OR SOFTWARE AS A SERVICE

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## **SECURITY INNOVATION SOFTWARE LICENSE AGREEMENT**

### **ARTICLE I - DEFINITIONS**

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

- 1.1 "Affiliate" means any corporation, company, partnership, joint venture, firm and/or entity which controls, is controlled by or is under common control with Licensee.
- 1.2 "Confidential Information" means all materials, trade secrets, or other information regarding a party's technology, products, business information, or objectives which is designated as confidential in writing by the disclosing party, whether by letter or by the use of an appropriate stamp or legend, prior to or at the time any such material, trade secret, or other information is disclosed by the disclosing party to the other party. Notwithstanding the foregoing to the contrary: (a) materials, trade secrets, or other information which is orally, electronically or visually disclosed by a party, or is disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information if the disclosing party, within thirty (30) days after such disclosure, delivers to the other party a written document or document describing the materials, trade secrets, or other information and referencing the place and date of such oral, electronic, visual or written disclosure and the names of the person or persons to whom such disclosure was made; and (b) information obtained by either party while visiting the other party's facility, however obtained, shall constitute Confidential Information of the other Party.
- 1.3 "Deliverables" means the items listed in a Product Order to be delivered by Security Innovation or its representatives or resellers to Licensee pursuant to Article II of this Agreement.
- 1.4 "End-User" means an individual or employee or affiliate of Licensee who consumes paid for Licensed Products, for use within the bounds of the Permitted Use.
- 1.5 "Licensee" means the organization or individual subscribing to or otherwise licensing the Security Innovation Product as well as its respective employees, affiliates and subcontractors.
- 1.6 "Security Innovation Product" means Security Innovation's proprietary multimedia training and reference systems and includes Security Innovation proprietary content and the software delivery system including, but not limited to, TEAM Processor, TEAM Mentor, TEAM Academy and Safelight
- 1.7 "Permitted use" means the following application areas:
- (a) Internal training of Licensee employees
  - (b) Internal training of Licensee affiliates
  - (c) Training of Licensee
- 1.8 "Internal" means within the Licensee organization and not part of a public or external event where the Security Innovation Product is used to train individuals who are not End-Users.
- 1.9 "Subscription" means an annually renewable or fixed term license for a specific number of End-Users and Content for a fixed fee. A subscription includes maintenance and support, but not including installation or customization costs, as part of the annual fixed fee and is hosted by Security Innovation or installed on the Licensee's Learning Management System (LMS).
- 1.10 "On-Site" means an annually renewable or fixed term license for a specific number of End-Users and Content for a fixed fee, not including installation or customization costs, exclusively for use in the Licensee's Learning Management System (LMS). An on-site license does not include maintenance or support after the first year and must be purchased annually on the anniversary of the Effective Date by Licensee.
- 1.11 "Product Order" means a sales order, purchase order, eCommerce transaction or other product order procedure accepted by Security Innovation or its representatives or its resellers employ to execute a product purchase transaction.
- 1.12 "Effective Date" means the day the Product Order takes place.

### **ARTICLE II -- DELIVERABLES**

2.1 Delivery. Within 30 days following the Effective Date and receipt of any agreed upon initial payments by Licensee pursuant to Section 8.1, Security Innovation shall deliver the Deliverables to Licensee.

### **ARTICLE III – LICENSE GRANT**

3.1 Licenses. Subject to the terms and conditions of this Agreement and in the Product Order, Security Innovation hereby grants to the Licensee a worldwide, nonexclusive, non-transferable, license:

(a) to use the Security Innovation Product internally on Licensee's Learning management system (LMS) to train End Users or;

(b) to use the software internally via Security Innovation's secure online LMS to train End Users

3.2 No Other Rights. Licensee hereby acknowledges that it shall have no right to sell, convey, transfer, license, sublicense, modify, or otherwise dispose of Security Innovation Product, except as provided herein. Licensee further acknowledges that its rights are limited to those of a licensee only, and that: (i) Security Innovation retains all title to and intellectual property rights in the Security Innovation Product; (ii) nothing herein shall be construed as granting Licensee any right, title and interest other than as specifically set forth herein; and (iii) nothing herein shall be construed as granting any group, division or Affiliate of Licensee any right, title and interest or license to use Security Innovation Product.

3.3 License Limitations. The licenses granted in Section 3.1 are subject to the following additional limitations:

(a) Licensee may not in any way sell, lease, rent, license, sublicense or otherwise distribute the Security Innovation Product or any part thereof or the right to use any part of the Security Innovation Product to any person or entity

(b) Without Security Innovation's prior written consent, Licensee shall not modify, translate, reverse engineer, decompile, or disassemble the Security Innovation Product or any part thereof, and shall prohibit End Users from doing the same.

(c) The licenses granted herein do not permit Licensee to provide services to third parties utilizing Licensee Products or the Security Innovation Product.

3.5 Contractors. Licensee may grant internal access and use of Security Innovation Product to Licensee's contractors performing services or work related to Licensee's business provided such contractors agree in writing to be bound by the terms of this Agreement, including but not limited to, Article XIII (confidentiality). If Licensee wishes to extend this Agreement to Contractors and other non-employees or non-Affiliates, Licensee shall give Security Innovation written notice of any such arrangement and provide to Security Innovation such information as Security Innovation may reasonably request in order for Security Innovation to review details of the proposed Contractor. Security Innovation shall not withhold its consent unreasonably as long as compensation for additional users is forthcoming as part of the request.

3.6 Affiliates. If Licensee wishes to extend this Agreement to an Affiliate of Licensee, Licensee shall give Security Innovation written notice of any such arrangement and provide to Security Innovation such information as Security Innovation may reasonably request in order for Security Innovation to review details of the proposed Affiliate. Security Innovation shall notify Licensee of its decision within 30 days of receipt of the information from Licensee. Security Innovation shall not withhold its consent unreasonably as long as compensation for additional users is forthcoming as part of the request.

#### **ARTICLE IV – OWNERSHIP OF INTELLECTUAL PROPERTY**

4.1 Ownership. With respect to the intellectual property of Security Innovation and Licensee relating to this Agreement:

(a) any intellectual property developed by Security Innovation or Licensee prior to the Effective Date shall remain the intellectual property of that party.

(b) any intellectual property that is developed solely by Security Innovation, and relevant to the scope of this Agreement (including, without limitation, the Security Innovation Product) shall remain the intellectual property of Security Innovation.

(c) any intellectual property that is developed solely by Licensee, and relevant to the scope of this Agreement shall be owned by Licensee.

#### **ARTICLE V – MARKETING REQUIREMENTS**

Unless otherwise agreed to, there are no marketing requirements.

#### **ARTICLE VI – TRADEMARKS**

6.1 Use of Security Innovation Trademarks. Security Innovation hereby grants to Licensee a non-exclusive, limited license to use the applicable Security Innovation trademarks and logos listed on APPENDIX A ("Trademarks") solely as permitted in this Agreement. Licensee understands and agrees that the use of any

Trademark in connection with this Agreement shall not create any right, title or interest, in or to the use of the Trademark and that all such use and goodwill associated with the Trademark will inure to the benefit of Security Innovation. Licensee agrees not to register or attempt to register any Security Innovation Trademarks. All trademarks, service marks, trade names, logos, or other words or symbols identifying or associated with the Software or the business of Security Innovation ("Marks") remain the exclusive property of Security Innovation and its Licensors. Licensee will not do anything to impair those proprietary rights or seek to acquire or register any rights in the Marks or use any trademarks, service marks, trade names, logos or other words or symbols that are confusingly similar to the Marks in any language.

6.2 Use of Licensee Trademarks. Licensee consents to Security Innovation's reasonable use of its name and logo in Security Innovation marketing materials. Licensee agrees to use Security Innovation's name, web address and logo in a manner consistent with Licensee's partner programs or as may otherwise be agreed between the parties. Security Innovation understands and agrees that the use of any Trademark in connection with this Agreement shall not create any right, title or interest, in or to the use of the Trademark and that all such use and goodwill associated with the Trademark will inure to the benefit of Licensee. Security Innovation agrees not to register or attempt to register any Licensee Trademarks. All trademarks, service marks, trade names, logos, or other words or symbols identifying or associated with the Licensee Products or the business of Licensee ("Marks") remain the exclusive property of Licensees and its Licensors. Security Innovation will not do anything to impair those proprietary rights or seek to acquire or register any rights in the Marks or use any trademarks, service marks, trade names, logos or other words or symbols that are confusingly similar to the Marks in any language.

#### **ARTICLE VII – SUPPORT**

7.1 Internal Technology Support. Support will be provided to Licensee as described in APPENDIX B

7.2 Internal Technology Support Term. After the first year of this Agreement, Licensee shall obtain support for the On-Site license of Security Innovation Product from Security Innovation or its representatives or its resellers for the purpose of Licensee's provision of support to its End Users. For any subsequent years, Licensee may, but shall not be required to, obtain Support Services, provided the Security Innovation still provides such Support Services.

#### **ARTICLE VIII – FEES, ROYALTIES AND PAYMENTS**

In consideration of the licenses granted by Security Innovation and the Support Services provided by Security Innovation to Licensee in this Agreement, Licensee agrees to pay to Security Innovation a license fee as follows:

8.1 License Fee. In consideration of the Deliverables, Licensee agrees to pay to Security Innovation or its representative or its reseller a license fee as defined in the Product Order.

8.2 Taxes. Licensee will pay all government taxes, duties and tariffs not based on either Security Innovation's net income from all sources or Security Innovation's aggregate net worth, including, but not limited to, sales, use, transfer, value-added, privilege, property taxes, import and export duties or tariffs, or amounts levied in lieu thereof, based on charges payable under this Agreement whether such taxes and duties are now or hereafter imposed under the authority of any federal, state, local or other taxing jurisdiction. Customer will comply with all requirements of the laws imposing such taxes and duties, including, without limitation, paying any interest or penalties relating to such taxes and duties. If applicable, Customer will provide Security Innovation with a Certificate of Exemption issued pursuant to such laws.

#### **ARTICLE IX – PAYMENT INSTRUCTIONS**

Payments shall be made to Security Innovation or its representatives or its resellers based on the instructions in the Product Order.

#### **ARTICLE X– RECORDS, REPORTS AND AUDIT RIGHTS**

10.1 Records. Licensee shall keep all records of account as are necessary to demonstrate compliance with its obligations under Article VIII for a period of three years from the due date for the payment of such sums as are payable in accordance with Article VIII (the "Audit period.").

10.2 Audit Rights. To assure compliance with the payment and reporting requirements of this Agreement, Security Innovation or an independent auditor of its choosing may examine, inspect and audit the applicable records of Licensee and its Affiliates from time to time, but no more frequently than twice per year. In the event any such audit of Licensee's records indicates an underpayment of an amount equal to or greater than five percent (5%) of any amounts due hereunder, Licensee shall promptly reimburse Security Innovation for the costs of such audit. Licensee and its Affiliates shall also immediately pay any underpayment in the amounts due to Security

Innovation ascertained from such audit. The provisions of this Section shall survive expiration or termination of this Agreement.

#### **ARTICLE XI – CONTRACT ADMINISTRATIVE CONTACTS**

11.1 Notices. Any notice or other communication pursuant to this Agreement (other than payments pursuant to Section 9.1) shall be sent to such party by overnight courier, or regular mail, addressed to it at its address below or as it shall designate by written notice given to the other party. Any such communication shall be effective upon receipt by the party to whom it is addressed.

Notices to Security Innovation shall be addressed to:

SECURITY INNOVATION, Inc.  
187 Ballardvale St, Suite A202  
Wilmington, MA 01887  
Attn: Ombudsman

Notices to Licensee shall be addressed to:

Licensee as specified in the Product Order

#### **ARTICLE XII – ASSIGNMENT**

12.1 Assignment. This Agreement and the license contained herein are personal to Licensee and may not be assigned or transferred by Licensee, without the prior written consent of Security Innovation. For purposes hereof, an “assignment” shall include any change in control of Licensee whereby another person or entity acquires 50% or greater ownership of Licensee.

#### **ARTICLE XIII – CONFIDENTIALITY**

13.1 Treatment of Confidential Information. Each party hereto shall maintain the Confidential Information of the other party in confidence, and shall not disclose, divulge, or otherwise communicate such Confidential Information, including but not limited to the terms of this Agreement, to others, or use it for any purpose, except pursuant to, and in order to carry out, the terms and objectives of this Agreement or the written consent of the other party. Each party hereby agrees to exercise every reasonable precaution to prevent and restrain the unauthorized disclosure of such Confidential Information by any of its directors, officers, employees, consultants, subcontractors, licensees, or agents.

13.2 Release from Restrictions. The provisions of Section 13.1 shall not apply to Confidential Information disclosed hereunder which;

- (a) was known or used by the receiving party prior to its date of disclosure to the receiving party; or
- (b) either before or after the date of disclosure to the receiving party is lawfully disclosed to the receiving party by sources rightfully in possession of such Confidential Information other than the disclosing party; or
- (c) either before or after the date of disclosure to the receiving party, becomes published or generally known to the public, through no fault of the receiving party, its Affiliates or sub-licensees; or
- (d) is required to be disclosed by the receiving party to comply with applicable laws or applicable rules of any securities exchange on which the receiving party’s securities are traded, to defend or prosecute litigation, or to comply with governmental regulations, provided however that the receiving party provides prior written notice of such disclosure to the other party and takes reasonable and lawful actions to avoid and/or minimize the degree of such disclosure.

#### **ARTICLE XIV – WARRANTIES**

14.1 Representations and Warranties of Security Innovation.

(a) Security Innovation represents and warrants to Licensee that all corporate action on the part of Security Innovation, its officers, directors and stockholders necessary for: (i) the authorization, execution and delivery of this Agreement and (ii) the performance of all obligations of Security Innovation hereunder has been taken and this Agreement constitutes the legal and binding obligation of Security Innovation, enforceable against Security Innovation in accordance with its terms.

(b) Security Innovation further represents and warrants to Licensee that: (i) it has sufficient right, title and interest in the Security Innovation Product to enter into this Agreement; and (ii) the Security Innovation Product is the original work of Security Innovation and its licensors and was developed without unauthorized access to or knowledge of any third party confidential materials.

(c) THE SECURITY INNOVATION PRODUCT AND THE DELIVERABLES ARE PROVIDED AS IS. SECURITY INNOVATION DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED WITH RESPECT TO THE SECURITY INNOVATION PRODUCT OR THE DELIVERABLES, INCLUDING, WITHOUT LIMITATION, WHETHER THE LICENSEE PRODUCTS CAN BE SUCCESSFULLY DEVELOPED OR MARKETED, THE ACCURACY, PERFORMANCE, SECURITY, UTILITY, RELIABILITY, TECHNOLOGICAL OR COMMERCIAL VALUE, COMPREHENSIVENESS, INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WHATSOEVER OF THE LICENSEE PRODUCTS AND VALIDITY OF PATENT RIGHTS, ISSUED OR PENDING.

14.2 Representations and Warranties of Licensee. Licensee represents and warrants to Security Innovation that all corporate action on the part of Licensee, its officers, directors and stockholders necessary for: (i) the authorization, execution and delivery of this Agreement and (ii) the performance of all obligations of Licensee hereunder has been taken and this Agreement constitutes the legal and binding obligation of Licensee, enforceable against Licensee in accordance with its terms. The execution of this Agreement and the performance of the transactions contemplated by this Agreement by Licensee will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or require a consent under its Certificate of Incorporation or Bylaws (as amended or restated to date) or any agreement or other instrument to which Licensee is a party or by which it or any of its property is bound.

#### **ARTICLE XV – INDEMNITIES**

15.1 Infringement Indemnification by Security Innovation. Security Innovation agrees that it shall, at its own expense, defend, or at its option settle, any action or claim instituted against Licensee, and pay any award or damages assessed or settled upon against Licensee resulting from such action or claim, insofar as the same is based upon a claim that the Security Innovation Product as delivered to Licensee infringes any United States patent, trademark, copyright or trade secret of a third party or a claim that Security Innovation has no right to license the Security Innovation Product to Licensee hereunder. Such obligation is subject to the following conditions: (i) Licensee shall notify Security Innovation in writing immediately after Licensee first becomes aware of a claim; (ii) Security Innovation shall have the right to control and direct the investigation, preparation, defense and settlement of the action; and (iii) Licensee shall give Security Innovation all reasonably available information, assistance and authority. The foregoing indemnity shall not apply if the alleged infringement claim arises from use of other than the current unaltered release of the Security Innovation Product, or combination of the Security Innovation Product with other software or hardware not provided by Security Innovation, if such action would have been avoided but for such use or combination.

15.2 Infringement Indemnification by Licensee. Licensee agrees to indemnify and hold Security Innovation harmless from and against all damages, costs and expenses (including legal fees) incurred by Security Innovation to the extent they arise out of a claim that the Licensee Product infringes a patent, copyright, trademark or trade secret or other intellectual property right of a third party. Such obligation is subject to the following conditions: (i) Security Innovation shall notify Licensee in writing immediately after the date Security Innovation first becomes aware of a claim; (ii) Licensee has sole control of the settlement, compromise, negotiation and defense of any such action; and (iii) Security Innovation gives Licensee all reasonably available information, assistance and authority, at Licensee's expense, to enable Licensee to do so. THE FOREGOING STATES THE ENTIRE AND EXCLUSIVE OBLIGATION OF LICENSEE TO SECURITY INNOVATION RELATING TO ANY ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

15.3. Exclusive Sole Remedy. If as a result of any binding settlement among the parties or a final determination by a court of competent jurisdiction, the Security Innovation Product is held to infringe a third party's United States patent, trademark, copyright or trade secret and its use is enjoined, or if Security Innovation reasonably determines in its sole discretion that the Software may become subject to an injunction, Security Innovation shall have the option to: (a) obtain for Licensee the right to continued use of the Security Innovation Product; (b) replace or modify the Security Innovation Product so it is no longer infringing and is substantially similar in functionality to the enjoined Security Innovation Product; or (c) refund the license fees paid by Licensee hereunder less depreciation for use assuming straight line depreciation over a five year useful life and terminate this Agreement. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE FOREGOING STATES SECURITY INNOVATION'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO CLAIMS OF INFRINGEMENT OF THIRD PARTY PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS OF ANY KIND, AND Security Innovation EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT.

## **ARTICLE XVI – LIMITATIONS**

### 16.1. Limitation of Liability.

(a) Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the failure of a party to exercise reasonable care in the performance of its obligations under this Agreement.

(b) THE AGGREGATE LIABILITY OF EITHER Security Innovation UNDER ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THEIR OBLIGATIONS UNDER THIS AGREEMENT (WHETHER IN CONTRACT, TORT, NEGLIGENCE, WARRANTY OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT THEN PAYABLE TO Security Innovation BY LICENSEE UNDER THIS AGREEMENT.

16.2 Limitation of Damages. IN ANY EVENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY ECONOMIC LOSS OR FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **ARTICLE XVII – TERM OF AGREEMENT**

This Agreement shall be effective as of the Effective Date. Unless earlier terminated upon the mutual agreement of the Parties or in accordance with the provisions of Article XVIII, this Agreement shall continue in force for one (1) year from the Effective Date unless otherwise specified in the Product Order.

## **ARTICLE XVIII– TERMINATION**

18.1 Termination for Insolvency. If Licensee shall cease to carry on its business for any reason, be liquidated or dissolved, become insolvent, enter into an agreement for the benefit of its creditors, or file any petition or case under any bankruptcy law or if any such petition or case is filed against it which remains undismissed after sixty (60) days, then this Agreement and all rights, privileges and license granted hereunder shall terminate upon written notice by Security Innovation.

18.2 Termination for Breach. Upon any material breach or default of this Agreement by either party, the non-breaching party shall have the right to terminate this Agreement upon forty-five (45) days' written notice to the breaching party, unless the breaching party shall have cured any such breach or default prior to the expiration of such sixty (60) day period.

## **ARTICLE XIX– EFFECT OF TERMINATION**

19.1 Consequences of Termination. Upon termination of this Agreement for any reason, all rights, privileges and licenses granted hereunder shall immediately cease, provided, however, that nothing herein shall be construed to release either party from any obligation that accrued or matured prior to the effective date of such termination. Upon termination of this Agreement for any reason, Licensee agrees to immediately cease use of all Security Innovation Product and to cease use of all Confidential Information of Security Innovation, and to return all Confidential Information of Security Innovation to Security Innovation.

Any termination or expiration of this Agreement shall not affect any accrued rights or liabilities of either party. The obligations of each party under Sections 4, 6, 8, 10, 13, 14, 15, 16, 18, 19 and 20 shall survive termination or expiration of this agreement.

## **ARTICLE XX – GENERAL PROVISIONS**

20.1 Governing Law. This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. without giving effect to any conflict of laws principles.

20.2 Injunctive Relief. It is expressly agreed that a material breach of this Agreement will cause irreparable harm to Security Innovation and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Security Innovation and/or Security Innovation Licensors shall be entitled to seek injunctive relief against Licensee in the event of any threatened or actual violation of any or all provisions in this Agreement.

20.3 Severability. The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

20.4 No Waiver. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.

20.5 Export Controls.

(a) The Security Innovation Products are eligible for (and are being exported under) License Exception ENC of the Export Administration Regulations C.F.R. 740.17 and Security Innovation have submitted all notifications required to establish such eligibility. Licensee agrees to make only such uses of the Security Innovation Products, as are in compliance with that status. Without limiting the foregoing, Licensee agrees: (i) not to develop any foreign products using the [Security Innovation Product(s)]; and (ii) not to modify the Security Innovation Products, in such a way as to add or substitute cryptographic algorithms or otherwise modify the encryption functionality of such products.

(b) Licensee shall not re-export an Security Innovation Product to any destination or end user in violation of any acceptable laws or regulations of the United States government. Licensee shall be solely responsible for compliance with all such laws and regulations and for obtaining any and all export or import licenses or permits that may be required from Licensee to lawfully conduct its business with respect to the Security Innovation Products,

(c) Licensee shall obtain all necessary licenses and authorizations for governments or other relevant bodies to enable Licensee to fulfill its obligations under this Agreement, which shall include, but not be limited to, customs clearances, registration of the Agreement if appropriate, export licenses, exchange control clearances, trading permits and registration for Value Added Tax (VAT) or its equivalent.

20.6 No Use of Names. Except as expressly permitted by this Agreement, neither party shall use the name of the other party or any of its employees nor any adaptation thereof in any advertising, promotion or sales literature without the prior written consent of the other party.

20.7 No Agency. Nothing herein shall be deemed to constitute Security Innovation, on the one hand, or Licensee, on the other hand, as the agent or representative of the other, or as joint venturers or partners for any purpose.

20.8 Headings. The headings contained in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.

20.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

20.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of such together shall constitute one and the same instrument.

20.11 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, failure of suppliers, riots, insurrection, fires, floods, storms, earthquakes, acts of God, war, governmental action, labor conditions, or any other cause which is beyond the reasonable control of such party. If such failure or delay continues for at least ninety (90) days, the party not subject to the force majeure shall be entitled to terminate this Agreement by notice in writing to the other.

20.12 Entire Agreement. The parties acknowledge that this Agreement, together with its Appendices, sets forth the entire Agreement and understanding of the parties as to the subject matter hereof and this Agreement shall not be subject to any change or modification except by the execution of a written instrument executed by both parties.



## **APPENDIX A**

### Security Innovation Trademarks

Security Innovation

TeamProfessor

TeamMentor

Safelight

Aerolink

## **APPENDIX B**

### **Security Innovation Product Maintenance and Support**

Security Innovation will provide maintenance and technical support for the subscribed to or licensed content and will act as the primary contact for any issues with the hosting vendor's Learning Management System (LMS). Technical support is provided for issues related to the use of the content and includes, but is not limited to:

- Questions regarding the content, testing or general use of an eLearning module
- Questions regarding the content and use of the eGuidance system
- Questions regarding the availability and function of the hosted LMS
- Bug reports for both content and hosted LMS
- Repairs to content or hosted LMS

Maintenance is provided for all content in eKnowledge products as part of a normal subscription or as purchased as part of an on-site license on an "as available" basis. Updates include improvements and/or additions, and/or other changes to subscribed to or licensed content.

Technical support and maintenance do not include the following:

- Modifications to content required by LICENSEE owned LMS
- Consulting/technical work needed to integrate with LICENSEE LMS
- Modifications to content required by LICENSEE to meet internal requirements
- Technical or other support for LICENSEE LMS

Technical support is available business days from 09:00 am to 06:00 pm at the following:

support@securityinnovation.com  
+1.978.694.1008, Option 2

### **HOSTING VENDOR SERVICE LEVEL AGREEMENT**

Following is the unfiltered service level agreement (SLA) from the current LMS hosting provider. Support calls should be directed to Security Innovation, representative or reseller and who will manage the interface with the hosting vendor.

BLATENT

**Technical Support Service Levels.** On receiving a request for technical support, Blatant gathers the support request information, categorizes the support request and creates a retrievable record of the request. All timelines for resolution are from the time that Blatant becomes aware of the error. Each party will notify the other promptly upon becoming aware of any error. Upon becoming aware of an error, Blatant will respond or escalate its support in accordance with the following levels of severity (“Severity Levels”):

275, 1011 9th Ave SE Calgary,  
AB T2G 0H7  
Canada  
[www.absorblms.com](http://www.absorblms.com)

- Level A: your operations that use the Service are significantly and adversely impacted because of the error. The Service is not available to Users, or functions or features are unavailable or the production system is down or significantly impaired and requires immediate attention. For example, course content does not load, or Users cannot log in.
- Level B: the Service is functioning, but with impairment. For example, not all menus load, reports do not generate and browser specific issues.
- Level C: your operations that use the Service are not significantly impacted by the error, but there continues to be a problem that is a nuisance. For example, graphics are missing, certificates do not print, or a small number of learners are affected.
- Level D: any error that is not a severity A, B, or C error is a severity D error. In the event you report an error with low severity that becomes more critical, you may contact Blatant’s technical support and request that the severity level for the error be upgraded. For example, spelling errors or errors not related to recording of learner data.

**Technical Support Action Times.** Blatant will respond or escalate its support in accordance with the following response times:

<u>Severity Level</u>	<u>First Response*</u>	<u>First Update</u>	<u>Subsequent Update</u>
<u>A</u>	<u>2 hours</u>	<u>4 hours</u>	<u>8 hours</u>
<u>B</u>	<u>4 hours</u>	<u>8 hours</u>	<u>End of next business day</u>
<u>C</u>	<u>8 hours</u>	<u>Next business day</u>	<u>2 business days</u>
<u>D</u>	<u>Next business day</u>	<u>2 business days</u>	<u>3 business days</u>

\* Calculated as hours during primary business hours of operation, being 9:00 am – 5:00 pm MST.

## SUPPLEMENTARY LICENSE AGREEMENT

For

### SECURITY INNOVATION SOFTWARE OR SOFTWARE AS A SERVICE

#### **\* IMPORTANT INFORMATION – PLEASE READ CAREFULLY \***

This Security Innovation (“Security Innovation”) software or software application contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this License (the “License”).

This License is a legally binding document between you (meaning the individual person or the entity that the individual represents that has obtained the Software for its internal productive use and not for outright resale) (the “Customer”) and Security Innovation. Unless agrees otherwise in writing, this License governs Customer's use of the software or software application.

By proceeding with the installation, downloading, use or reproduction of this software or software application, or authorizing any other person to do so, you are representing to RSA and Security Innovation that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of this License shall govern your relationship with Security Innovation with regard to the subject matter in this License and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this License.

As used herein “RSA” means (i) RSA Security LLC, if Customer is located in the United States, Mexico or South America; (ii) the local EMC Corporation sales subsidiary, if Customer is located outside the United States, Mexico or South America and in a country in which EMC Corporation has a local sales subsidiary; and (iii) EMC Information Systems International (“EISI”), if Customer is located outside United States, Mexico or South America and in a country in which EMC Corporation does not have a local sales subsidiary). Unless RSA agrees otherwise in writing duly signed by RSA, this License solely governs Customer's use of the software or software application, except to the extent all or any portion of the software or software application is: (a) the subject of a separate written agreement set forth in a quotation issued by RSA; or (b) governed by Security Innovation’s terms and conditions.

**CUSTOMER ACKNOWLEDGES THAT RSA IS LICENSING THE SECURITY INNOVATION SOFTWARE OR SOFTWARE APPLICATION TO CUSTOMER AS A PASS THROUGH RESELLER AND THAT RSA ASSUMES NO LIABILITY FOR ANY SECURITY INNOVATION SOFTWARE, PRODUCTS, SERVICES AND/OR THE USE THEREOF.**

**IF YOU DO NOT HAVE AUTHORITY TO AGREE TO THE TERMS OF THIS LICENSE ON BEHALF OF THE CUSTOMER, OR DO NOT ACCEPT THE TERMS OF THIS LICENSE ON BEHALF OF THE CUSTOMER, IMMEDIATELY CEASE ANY FURTHER ATTEMPT TO INSTALL, DOWNLOAD OR USE THIS SOFTWARE OR SOFTWARE APPLICATION FOR ANY PURPOSE, AND REMOVE ANY PARTIAL OR FULL COPIES MADE THEREOF.**



This software application contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of these terms and conditions (the “**Agreement**”). This Agreement is a legally binding contract between SECURITY INNOVATION, INC., a Delaware corporation having its principal place of business at 187 Ballardvale St, Suite A202, Wilmington, MA 01887 (hereinafter “**ThreatSim**”) and the entity or individual agreeing to these terms (“**Customer**”). It is dated as of the date Customer signs an applicable statement of work, which will represent the start of Customer’s one year subscription.

CUSTOMER ACKNOWLEDGES THAT RSA / EMC IS PROVIDING THE THREATSIM'S SERVICE TO CUSTOMER AS A PASS THROUGH RESELLER AND THAT RSA / EMC ASSUMES NO LIABILITY FOR ANY SECURITY INNOVATION SOFTWARE, PRODUCTS, SERVICES AND/OR THE USE THEREOF.

1) **WEB-BASED SECURITY SOFTWARE SERVICE.** This Agreement provides Customer access to a proprietary web-based security software service as described at: <http://www.threatsim.com>.

The ThreatSim service enables Customer to send simulated phishing messages to Customer employees to test their susceptibility to phishing attacks and provide training on how to identify and avoid phishing getting compromised by phishers.

ThreatSim is provided as an annual subscription in a “Software-as-a-Service” (SaaS) model. Customer will be granted access to the ThreatSim portal for as many ThreatSim administrators as necessary. A ThreatSim administrator is defined as the Customer staff responsible for managing Customer’s phishing awareness program.

Customer is granted the ability to send phishing exercises to no more than the number of unique emails approved on the Customer’s Service Order Form. ThreatSim subscriptions are based upon unique email addresses; any quantity of unique emails greater than the subscription limit will require additional fees.

ThreatSim will provide this functionality through a URL within a hosted server environment under the terms below (“**Service**”). Customer’s use of the Service is governed by the terms of this Agreement.

2) **USE OF SERVICE.**

- **ThreatSim Responsibilities.** ThreatSim must provide customer support for the Service. Support requests are submitted via the ThreatSim Support Portal. Customer personnel will be granted access upon Service initiation. ThreatSim shall respond to all submitted requests for customer support within 2 hours from the receipt of such requests, between the hours of 8:00 AM – 8:00 PM EDT.
- **Customer Responsibilities.** Customer (i) is solely responsible for activity in its account in the Service, (ii) must use commercially reasonable efforts to prevent unauthorized access to its account, and will notify ThreatSim promptly of any such unauthorized access, and (iii) may use the Service only in accordance with guidance within the Customer Support Portal and applicable law.
- **Restrictions:** Customer *may not* (i) sell, resell, rent or lease the Service, (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights, (iii) interfere with or disrupt the integrity or performance of the Service, or (iv) attempt to gain unauthorized access to the Service or their related systems or networks.
- **Employee Access.** Customer may allow the designated administrator to use the Service, and it may only use the Service with its employees. Notwithstanding the foregoing, Customer’s end users of the Service, including without limitation Customer’s third party independent contractors who have been granted electronic access by Customer into its systems, may utilize any material or content provided with or derived from the Service, including but not limited to, all training materials included with any simulated phishing emails sent by Customer to its employees and independent contractors.
- **Phishing Testing.** Customer may only conduct simulated phishing emails to domains owned by the Customer, and recipients for which Customer has authorization or express consent. Customer may

**not use logos, trademarks, or copyrighted material that Customer does not own or have license to use.**

- **Customer Information.** All information, images, and other files uploaded by Customer remains the sole property of Customer or its licensor, as between ThreatSim and Customer (“**Customer Information**”). Customer grants ThreatSim the right to use the Customer Information solely for purposes of performing under this Agreement. This includes logos, company names, and any other identifying information whether pertaining to the Customer or another entity.
- 3) **PAYMENT TERMS.** Customer must pay all undisputed fees as specified on the Order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all applicable sales, use, withholding, VAT and other similar taxes (except for taxes based on the net income of ThreatSim).
- 4) **SERVICE LEVEL AGREEMENT/WARRANTIES and REMEDY.**
- a) **Service Availability Warranty and Warranty Against Infringement.** ThreatSim warrants to Customer that: (i) the functionality or features of the Service may change but such functionality, features, and capabilities of the Service will not materially decrease during a paid Term, (ii) that the customer support pursuant to the CSP may change but will not materially degrade during any paid Term, (iii) the Service and the Licensed Software and Documentation (as defined in Section 6 below) do not infringe or otherwise violate any third party’s intellectual property rights, and (iv) ThreatSim has the right to enter into this Agreement and has sufficient rights to the Service and the Licensed Software and Documentation to make grants and commitments made in this Agreement.
  - b) **Remedy.** In the event of any breach of the warranties set forth in Section 4 (a) (i) or (ii) above, Customer shall notify ThreatSim, and ThreatSim shall promptly repair or replace the relevant functionality or features of the Service, or the Licensed Software and Documentation giving rise to, or causing the Service to materially decrease, or the customer support under the CSP to be materially degraded at no additional cost to Customer.

THREATSIM DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. THE SERVICE MAY BE INTERRUPTED OR CONTAIN AN ERROR. THREATSIM DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED.

5) **MUTUAL CONFIDENTIALITY.**

- a). **Definition of Confidential Information.** Confidential Information means all information disclosed by a party (“**Discloser**”) to the other party (“**Recipient**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (“**Confidential Information**”). ThreatSim’s Confidential Information includes without limitation the Service, and Licensed Software and Documentation, and each of their parts and pricing (including without limitation the Service user interface design and layout).
- b). **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.
- c). **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information.
- d). **Disclosure Required by Law.** The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6) **PROPRIETARY RIGHTS.**

- a). **Reservation of Rights by ThreatSim.** The software, workflow processes, user interface, designs, know-how, Licensed Software and Documentation (defined below), and other technologies provided by ThreatSim as part of the Service are the proprietary property of ThreatSim and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with ThreatSim. ThreatSim reserves all rights unless expressly granted in this Agreement.
- b). **Customer Restrictions.** Customer *may not*
  - i. Reverse engineer the Service or the Licensed Software and Documentation;

- ii. Remove or modify any proprietary marking or restrictive legends in the Service or Licensed Software and Documentation; or
  - iii. Access the Service or use the Licensed Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c). **Licensed Software and Documentation.** All software provided by ThreatSim as part of the Service, marketing materials, training material and other material provided through and with the Service or by ThreatSim ("**Licensed Software and Documentation**") are licensed to Customer as follows: ThreatSim grants Customer a non-exclusive, license during the Term, to such Licensed Software and Documentation, for use solely with the Service.
- 7) EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.**
- a). **EXCLUSION OF CERTAIN DAMAGES.** THREATSIM IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICE).
  - b). **LIMITATION OF LIABILITY.** EXCEPT FOR THREATSIM'S INDEMNITY OBLIGATIONS, THREATSIM'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT.
- 8) TERM, TERMINATION, RETURN OF DATA AND SUSPENSION OF SERVICE.**
- a). **Term.** This Agreement shall commence on the Effective Date and shall continue for the duration specified on the Order ("**Term**").
  - b). **Mutual Termination for Material Breach.** If either party is in material breach of this Agreement, the other party may terminate this Agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.  
 Actions upon Termination for Material Breach.
    - (i) *Upon any termination as provided in Section 8(b) above by Customer, ThreatSim must refund any prepaid and unused fees covering the remainder of the Term.*
    - (ii) *pon any termination as provided in Section 8(b) above by ThreatSim, Customer must pay any undisputed and unpaid fees and fees covering the remainder of the Term. The Service will also be terminated.*
  - c). **Return or Destroy ThreatSim Property Upon Termination.** *Upon termination or expiration of this Agreement for any reason, Customer must pay ThreatSim for any undisputed amounts owed through the date of termination or expiration, and destroy or return all property of ThreatSim. Customer will confirm its compliance with this destruction or return requirement in writing upon request of ThreatSim.*
  - d). **Return of Customer Information.**
    - i. *Within 60-days after termination, upon request ThreatSim will make the Service available for Customer to export the Customer Information as described in Section 2(f).*
    - ii. *After such 60-day period, ThreatSim has no obligation to maintain the Customer Information and may destroy it.*
  - e). **Suspension of Service for Violations of Law.** ThreatSim may immediately suspend the Service and remove applicable Customer Information if it in good faith believes that, as part of using the Service, Customer may have violated a law. ThreatSim may try to contact Customer in advance, but it is not required to do so.
- 9) GOVERNING LAW AND FORUM.** This Agreement is governed by the laws of the State of Virginia without regard to conflict of law principles. Any dispute arising out of or related to this Agreement may only be brought in the state and federal courts for Fairfax County, VA. Both parties consent to the personal jurisdiction of such courts and waive any claim that it is an inconvenient forum. Nothing in this Agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any arbitration or litigation is entitled to recover its attorneys' fees and costs from the other party.
- 10) INDEMNITY.**
- a). **By ThreatSim For Infringement.** If a third-party claims that Customer's use of the Service (other than related to the Customer Information) infringes that party's patent, copyright or other proprietary right, ThreatSim will defend Customer against that claim at ThreatSim's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by ThreatSim, provided that Customer:
    - i. promptly notifies ThreatSim in writing of the claim; and
    - ii. allows ThreatSim to control, and cooperates with ThreatSim in, the defense and any related settlement.

If such a claim is made, ThreatSim could continue to enable Customer to use the Service or to modify it. If ThreatSim determines that these alternatives are not reasonably available, ThreatSim may terminate the Service (without any liability to Customer) upon notice to Customer and with the return of any prepaid and unused fees.

- b). **By Customer For Infringement.** If a third-party claims against ThreatSim that any part of the Customer Information infringes or violates that party's patent, copyright, trademark, or other intellectual property right, if a third party makes claim relating to Customer's use of the Service (including without limitation, any illegal use or use with other than employees or independent contractors of Customer with electronic access privileges into Customer's systems), or in the event of any breach by Customer of Section 5, Customer will defend ThreatSim against such claim(s) at Customer's expense and pay all costs, damages, and attorney's fees arising out of or related to such claim(s), including but not limited to, all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by Customer, provided that ThreatSim:
- i. promptly notifies Customer in writing of the claim; and
  - ii. allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

#### 11) MISCELLANEOUS OTHER TERMS.

- a). **Money Damages Insufficient.** Any breach by a party of this Agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- b). **Entire Agreement and Changes.** This Agreement and the order constitute the entire Agreement between the parties, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. No modification of this Agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.
- c). **No Assignment.** Neither party may assign or transfer this Agreement or an order to a third party, except that this Agreement with all orders may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party.
- d). **Independent Contractors.** The parties are independent contractors with respect to each other.
- e). **Enforceability.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect.
- f). **No Additional Terms.** ThreatSim rejects additional or conflicting terms of any Customer form-purchasing document.
- g). **Order of Precedence.** If there is an inconsistency between this Agreement and an Order, this Agreement prevails.
- h). **Survival of Terms.** Any terms that by their nature survive termination or expiration of this Agreement, will survive.
- i). **CISG and UCITA Do Not Apply.** The Convention on Contracts for the International Sale of Goods, and the Virginia Uniform Computer Information Transactions Act, do not apply.

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