

ESEC FORTE TECHNOLOGIES PRIVATE LIMITED

**END USER LICENSE AGREEMENT**

THIS AGREEMENT GOVERNS THE USE OF ESEC FORTE TECHNOLOGIES PRIVATE LIMITED PRODUCTS INCLUDING SOFTWARE-AS-A-SERVICE, CLOUD-DELIVERED SECURITY SERVICES, HARDWARE, AND SOFTWARE. PRODUCT BRANDS INCLUDE, BUT ARE NOT LIMITED TO, NEXT GENERATION SECURITY AUDIT AND MANAGEMENT (NXSAM).

THIS IS A LEGAL AGREEMENT BETWEEN YOU (REFERRED TO HEREIN AS "CUSTOMER", "END USER", "YOU" or "YOUR") AND (A) ESEC FORTE TECHNOLOGIES PRIVATE LIMITED AND ITS AFFILIATES, A-2/10, A-2 BLOCK, ROHINI SECTOR- 5, NEW DELHI – 110085, IF YOU ARE LOCATED IN INDIA.

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This End User License Agreement (the "Agreement") is hereby entered into and agreed upon by you, either an individual or an entity, and its Affiliates ("You" or "Company") and eSec Forte Technologies Private Limited, India for the Software. This Agreement sets forth the obligations of each party.

**1. DEFINITIONS.**

**1.1 Affiliates** means an entity controlled by, under common control with, or controlling such party of the applicable entity. Subject to the terms and conditions of this Agreement, Affiliates may use the license granted hereunder. All references to eSec Forte Technologies Private Limited shall be deemed to be references to eSec Forte Technologies Private Limited Worldwide and its Affiliates, and all references to Company, You, or Your shall be deemed to be references to Company and its Affiliate(s).

**1.2 Computer** means the hardware, if the hardware is a single computer system, whether physical or virtual, or means the computer system with which the hardware operates, if the hardware is a computer system component.

**1.3 Documentation** means the official user documentation prepared and provided by eSec Forte Technologies Private Limited Worldwide to You on the use of the Software. For the avoidance of doubt, any online community site; unofficial documentation, videos, white papers, or related media; or feedback does not constitute Documentation.

**1.4 Personal Data** means information that may be used to readily identify an individual person.

**1.5 Product Addendum(a)** means additional terms and conditions set forth in Section 12 that relate to the applicable Software.

**1.6 Software** means the NxSAM (Next Generation Security Audit and Management) Software, together with the updates, new releases or versions, modifications or enhancements, owned and provided by eSec Forte Technologies Private Limited Worldwide to You pursuant to this Agreement.

**1.7 User(s)** mean an individual authorized by You to use the Software and Documentation. User(s) may include Your employees, consultants, and contractors, and, if applicable, Your customers.

**1.8 Your Data or Data** means data, files, or information, including data, files, or information that include Personal Data, accessed, used, communicated, stored, or submitted by You or Your Users related to Your or Your User's use of the Software.

## **2. GRANT OF LICENSE.**

### **Software Use Grant**

This section applies to Software only. Subject to your compliance with this Agreement, eSec Forte Technologies Private Limited grants you a limited, non-exclusive right to use the Software:

- i. in accordance with Published Specifications for the Product;
- ii. solely within the scope of the license purchased (e.g., number of users);
- iii. solely for your internal use, unless agreed otherwise in a separate written contract with eSec Forte Technologies Private Limited; and
- iv. through your third-party contractor providing IT services solely for your benefit, subject to their compliance with this Agreement.

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**2.1 Software Evaluation or Beta License.** If the Software is provided to You for evaluation, beta, or release candidate purposes, eSec Forte Technologies Private Limited Worldwide grants to You a nonexclusive, limited, royalty-free, nontransferable evaluation license to use the Software solely for evaluation prior to purchase or implementation (an "Evaluation License"). You shall not use the Evaluation License for production use. The Evaluation License shall terminate on the end date of the pre-determined evaluation period or immediately upon notice from eSec Forte Technologies Private Limited at its sole discretion. Notwithstanding any other provision contained herein, Software provided pursuant to an Evaluation License is provided to You "AS IS" without indemnification, support, or warranty of any kind, express or implied. Except to the extent such terms conflict with the specific Evaluation License terms set forth in this Section, all other terms of this Agreement shall apply to Software licensed under an Evaluation License.

## **3. LICENSE RESTRICTIONS; OBLIGATIONS.**

### **3.1. License Restrictions.**

**3.1.1 General.** You may not: (i) provide, make available to, or permit other individuals to use the Software or Documentation, except under the terms listed above, either in whole or part; (ii) modify, translate, reverse engineer, decompile, disassemble, create derivative works, or otherwise attempt to derive the source code based upon the Software or Documentation; (iii) copy, reproduce, republish, upload, post, or transmit the Software or Documentation (except for back-up or archival purposes, which will not be used for transfer, distribution, or sale); (iv) license, sell, rent, lease, transfer, sublicense, distribute, or otherwise transfer rights to the Software or Documentation; (v) remove any proprietary notices or labels on the Software or Documentation; (vi) license the Software if You are a direct competitor of eSec Forte Technologies Private Limited or for the purposes of

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**3.1.2 eSec Forte Technologies Private Limited Trademarks.** You may not delete, remove, hide, move or alter any trademark, logo, icon, image or text that represents the company name of eSec Forte Technologies Private Limited, any derivation thereof, or any icon, image, or text that is likely to be confused with the same. All representations of the company name or mark " eSec Forte Technologies Private Limited " or any of its Affiliates' names or marks must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice.

### **3.2 License Obligations.**

**3.2.1** You acknowledge, agree, and warrant that: (i) You will be responsible for Your and Your Users' activity and compliance with this Agreement, and if You become aware of any violation, You will immediately terminate the offending party's access to the Software and Documentation and notify eSec Forte Technologies Private Limited; (ii) You are legally able to process Your Data and provide Your Data to eSec Forte Technologies Private Limited, including obtaining appropriate consents or rights for such processing, as outlined further herein and have the right to access and use Your infrastructure, including any system or network, to obtain or provide the Software and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; (iii) You will keep your registration information, billing information, passwords and technical data accurate, complete, secure and current; and (iv) You shall use the Software and Documentation solely in a manner that complies with all applicable laws in the jurisdictions in which You use the Software and Documentation, including, but not limited to, applicable local, state, federal, and international laws, including intellectual property and privacy and security laws.

#### **3.2.2 Compliance with Laws; Export Control**

You shall comply with all applicable laws in connection with your activities arising from this Agreement. You further agree that you will not engage in any illegal activity and you acknowledge that eSec Forte Technologies Private Limited reserves the right to notify you or appropriate law enforcement in the event of such illegal activity. Both parties shall comply with the Indian Export Administration Regulations, and any other applicable export laws, restrictions, and regulations to ensure that the Product and any technical data related thereto is not exported or re-exported directly or indirectly in violation of or used for any purposes prohibited by such laws and regulations.

## **4. RIGHTS RESERVED. THE SOFTWARE IS LICENSED, NOT SOLD.**

Use herein of the word "purchase" in conjunction with licenses, license keys, or the Software shall not imply a transfer of ownership. Unless as conveyed herein, this Agreement does not grant You any rights, title, or interest in or to Software, Documentation, trademarks, service marks, or trade secrets,

or corresponding intellectual property (including without limitation any images, photographs, animations, video, audio, music, and text incorporated into the Software, the accompanying printed materials, and any copies of the Software) of eSec Forte Technologies Private Limited or its suppliers, and all rights, title, and interest in and to the Software, Documentation, and corresponding intellectual property shall remain the property of eSec Forte Technologies Private Limited, its suppliers, or are publicly available. All rights not expressly granted under this Agreement are reserved by eSec Forte Technologies Private Limited. All title, rights, and interest in and to content, which may be accessed through the Software, is the property of the respective owner and may be protected by applicable laws and treaties, including intellectual property laws. This Agreement gives You no rights to such content, including use of the same. eSec Forte Technologies Private Limited agrees that the Your Data (including without limitation, computer software, computer database, computer software documentation, specifications, design drawings, reports, blueprints, and the like) shall be and remain Your sole property.

## **5. CONFIDENTIALITY; PERSONAL DATA.**

**5.1 Confidential Information** means any nonpublic or proprietary information, in tangible or intangible form, that a party to this Agreement ("Disclosing Party") designates as being confidential by legends or other markings or in a separate writing provided contemporaneous with the disclosure to the party that receives such information ("Receiving Party"). Confidential Information includes the Software, Documentation and any other intellectual property or proprietary rights thereto, as well as Personal Data.

Confidential Information may also include confidential or proprietary information disclosed to a disclosing party by a third party.

Confidential Information shall not include any information, excluding Personal Data, however designated, that: (i) is (or subsequently becomes through no fault of the Receiving Party) publicly available; (ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (iii) was lawfully received by the Receiving Party from a third party without such restrictions; or (iv) is independently developed by Receiving Party without breach of this Agreement or access to, reference to, or use of the Confidential Information.

**5.2 Protection of Confidential Information.** Receiving Party may use Confidential Information of Disclosing Party to exercise its rights and perform its obligations under this Agreement; in connection with the parties' ongoing business relationship; or as otherwise set forth herein. Receiving Party will not use any Confidential Information of Disclosing Party for any purpose not permitted by this Agreement and will disclose the Confidential Information of Disclosing Party only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality respecting the protection of Confidential Information substantially similar to those of this Agreement. Receiving Party will utilize commercially reasonable efforts to protect Confidential Information from unauthorized or unlawful processing by maintaining appropriate technical and organizational measures that help to provide an appropriate level of security for Confidential Information. The parties will each be responsible for any breach of this Agreement by their consultants or agents. Confidential Information shall remain at all times the property of the Disclosing Party. No rights to use, license

or otherwise exploit the Confidential Information are granted to the Receiving Party or its agents, by implication or otherwise.

## **6. LIMITED WARRANTY**

eSec Forte Technologies Private Limited Worldwide warrants to You that, for the support period subscribed/purchased by you. The Software will perform substantially in conformance with the Documentation. eSec Forte Technologies Private Limited Worldwide does not warrant that the Software will meet all of Your requirements or that the use of the Software will be uninterrupted or error-free. The foregoing warranty applies only to failures in operation of the Software that are reproducible in standalone form and does not apply to: (i) Software that is modified or altered by You or any third party that is not authorized by eSec Forte Technologies Private Limited Worldwide; (ii) Software that is otherwise operated in violation of this Agreement or other than in accordance with the Documentation; or (iii) failures that are caused by other software or hardware products. To the maximum extent permitted under applicable law, as eSec Forte Technologies Private Limited ' and its suppliers' entire liability, and as Your exclusive remedy for any breach of the foregoing warranty, eSec Forte Technologies Private Limited Worldwide will, at its sole option and expense, promptly repair or replace any Software that fails to meet this limited warranty or, if eSec Forte Technologies Private Limited Worldwide is unable to repair or replace the Software, refund to You the applicable license fees paid upon return, if applicable, of the nonconforming item to eSec Forte Technologies Private Limited Worldwide. The warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software under this limited warranty will be warranted for the remaining support period subscribed/purchased by you.

EXCEPT AS EXPRESSLY STATED IN THIS SECTION, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ESEC FORTE TECHNOLOGIES PRIVATE LIMITED IS PROVIDING AND LICENSING THE SOFTWARE TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

## **7. INTELLECTUAL PROPERTY INDEMNIFICATION.**

eSec Forte Technologies Private Limited Worldwide will indemnify and hold You harmless from any third party claim brought against You that the Software, as provided by eSec Forte Technologies Private Limited Worldwide to You under this Agreement and used within the scope of this Agreement, infringes or misappropriates, copyright, trademark, trade secret, or other intellectual property rights of a third party, provided (i) use of the Software by You is in conformity with the Agreement and Documentation; (ii) the infringement is not caused by modification or alteration of the Software or Documentation; and/or (iii) the infringement was not caused by a combination or use of the Software with products not supplied by eSec Forte Technologies Private Limited. eSec Forte Technologies Private Limited World wide's indemnification obligations are contingent upon You: (i) promptly notifying eSec Forte Technologies Private Limited Worldwide in writing of the claim; (ii) granting eSec Forte Technologies Private Limited Worldwide sole control of the selection of counsel, defense, and settlement of the claim; and (iii) providing eSec Forte Technologies Private Limited Worldwide with reasonable assistance, information and authority required for the defense and settlement of the claim. This Section states eSec Forte Technologies Private Limited' entire liability (and shall be Company's sole and exclusive remedy) with respect to indemnification to Company.

## **8. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ESEC FORTE TECHNOLOGIES PRIVATE LIMITED', ITS DIRECTORS, OFFICERS, AGENTS, SUPPLIERS AND LICENSORS, BE LIABLE TO YOU (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) (I) FOR MORE THAN THE AMOUNT OF LICENSE FEES THAT YOU HAVE PAID TO ESEC FORTE TECHNOLOGIES PRIVATE LIMITED' IN THE PRECEDING (12) TWELVE MONTHS FOR THE APPLICABLE SOFTWARE, OR (II) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF YOUR DATA, LOST SAVINGS, OR OTHER ECONOMIC DAMAGE, ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, EVEN IF ESEC FORTE TECHNOLOGIES PRIVATE LIMITED' OR A DEALER AUTHORIZED BY ESEC FORTE TECHNOLOGIES PRIVATE LIMITED' HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. THIRD-PARTY PROGRAMS.**

To the extent the Software is bundled with third-party software programs; these third-party software programs are governed by their own license terms, which may include open source or free software licenses, and these terms will prevail over this Agreement as to Your use of the third-party programs. Nothing in this Agreement limits an end user's rights under, or grants the end user rights that supersede, the terms of any such third-party software.

## **10. CHOICE OF LAW AND VENUE.**

This agreement shall be governed by the laws of India and Indian Courts shall have exclusive Jurisdiction.

## **11. GENERAL.**

**11.1 Notices.** All notices must be in writing and shall be mailed by registered or certified mail to Legal Department, A-2/10, A-2 Block, Rohini Sector- 5, New Delhi – 110085, or sent via email to [esec-accounts@esecforte.com](mailto:esec-accounts@esecforte.com) (with evidence of effective transmission).

**11.2 Counterparts and Email Signature.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties may exchange signature pages by email and such signatures shall be effective to bind the Parties.

**11.3 Modifications.** This Agreement shall not be amended or modified except in a writing signed by authorized representatives of each party.

**11.4 Severability.** If any provision of this Agreement is held to be unenforceable, illegal, or void, that shall not affect the enforceability of the remaining provisions. The parties further agree that the unenforceable provision(s) shall be deemed replaced by a provision(s) that is binding and

enforceable and that differs as little as possible from the unenforceable provision(s), with considerations of the object and purpose of this Agreement.

**11.5 Waiver.** The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of that right.

**11.6 Force Majeure.** eSec Forte Technologies Private Limited will not be liable for any delay or failure to perform obligations under this Agreement due to any cause beyond its reasonable control, including acts of God; labor disputes; industrial disturbances; systematic electrical, telecommunications or other utility failures; earthquakes, storms, or other elements of nature; blockages; embargoes; riots; acts or orders of government; acts of terrorism; and war.

**11.7 Construction.** Paragraph headings are for convenience and shall have no effect on interpretation.

**11.8 Third Party Rights.** Other than as expressly provided herein, this Agreement does not create any rights for any person who is not a party to it, and no person not a party to this Agreement may enforce any of its terms or rely on an exclusion or limitation contained in it.

**11.9 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.