

# ZERONORTH

## End User License Agreement

This Agreement is between ZeroNorth, a Delaware corporation, ("ZERONORTH"), and the customer ("Customer") accepting the terms of this Agreement. ZERONORTH is granting to Customer a license to use a ZERONORTH software-based service on the terms set forth herein.

**1. Definitions.** Capitalized terms used and not otherwise defined in this Agreement shall have the following respective meanings:

a. "Agreement" means this agreement and all Orders, exhibits, schedules, amendments, addenda and statements of work with respect hereto, as it may be amended from time to time.

b. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise, and whether in paper, electronic or other written form) regarding the Service that is made available by ZERONORTH to Customer online or in any other manner.

c. "Effective Date" means the date on which Customer accepts the terms of this Agreement.

d. "Order" means an order form, purchase order, sales agreement or similar document, whether in paper or electronic (including online) form, provided by ZERONORTH pursuant to which Customer orders the Service, and including any amendments or additions thereto accepted by the parties from time to time.

e. "Service" means the ZERONORTH software service listed on an Order, including any related Upgrades and Service Software.

f. "Service Software" means any software, apps, or the like comprising or included in the Service, including without limitation software, apps or the like provided by ZERONORTH for installation by Customer to allow Customer to access or use the Service.

g. "Upgrades" means any upgrades, updates, modules, bug fixes or modified versions to or of the Service provided to Customer by ZERONORTH.

**2. License.** Subject to the terms and conditions of this Agreement, ZERONORTH grants to Customer, during the term of this Agreement, a nonexclusive and nontransferable license to use for Customer's internal business purposes the Service and the related Documentation on a subscription basis. Customer's license to use the Service shall be limited (i) as specified on any Order, including without limitation with respect to the number of users or usage (if applicable), and (ii) to the use of the Service for its intended purpose as described in the Documentation and this Agreement. ZERONORTH shall not be required to provide any support services, including without limitation Upgrades, technical support, error correction, or other services, in connection with this license, except as otherwise set forth on an Order or otherwise agreed in writing.

**3. General Limitations.** Except as otherwise expressly provided under this Agreement, Customer shall have no right to, and Customer specifically agrees not to: (i) transfer, assign or sublicense, whether by agreement, operation of law, or otherwise, its license rights or other rights and obligations under this Agreement to any other person or entity, and Customer acknowledges that any such attempted transfer, assignment or sublicense shall be void; (ii) make error corrections to or otherwise modify, change, or adapt the Service, or create derivative works or enhancements based upon or to the Service, or permit third parties to do the same; (iii) decompile, decrypt, reverse engineer, attempt to obtain or modify the source code of, or disassemble any Service Software or otherwise reduce any Service Software to human-readable form, or permit third parties to do the same; or (iv) permit third parties to use or have access to the Service, or use or permit use of the Service for the performance of services for third parties. Customer shall not make any copies or duplicates of any Service Software or Documentation without the prior written permission of ZERONORTH. Customer agrees to maintain and reproduce all

copyright and other proprietary notices on all copies, in any form, of the Service and Documentation in the same form and manner that such copyright and other proprietary notices are included thereon. Customer shall promptly install any Upgrades and Service Software provided by ZERONORTH. The Service is intended for use by Customer only as a cybersecurity service and may not be used for any other purpose. Customer agrees to maintain and protect the confidentiality of all Service passwords and credentials. Customer shall comply with ZERONORTH's password, credential and authentication policies as in effect and made available to Customer from time to time. Customer is responsible for all activity occurring under its account. Customer will promptly report in writing to ZERONORTH any lost or stolen passwords or credentials or any unauthorized activity occurring under its account. ZERONORTH may monitor Customer's use of the Service for the purposes of confirming Customer's compliance with its licensing restrictions or collecting data or information used by ZERONORTH to improve the Service or for any other lawful purpose.

**4. Proprietary Rights.** Customer agrees that the Service and Documentation, including the specific design and structure of programs, and including screen shots and user interfaces, are considered proprietary information, trade secrets or copyrighted materials and Confidential Information of ZERONORTH. The Service may also include proprietary information or other information or property owned by third parties and licensed to ZERONORTH for use or distribution as contemplated hereby. Title to and ownership of all Service and Documentation and all rights therein shall, as between ZERONORTH and Customer, be the exclusive property of ZERONORTH.

**5. Confidentiality.** Any information of a party that is either (a) identified by such party to the other party as confidential or proprietary or (b) that should be understood by the other party to be of a confidential or proprietary nature (collectively, "Confidential Information") constitutes the first party's proprietary and confidential information. Without limiting the generality of the foregoing, the Service Software, Service screen shots, Service user interfaces, and Documentation constitute the Confidential Information of ZERONORTH, and the terms of this Agreement and discussions between the parties relating to this Agreement constitute the Confidential Information of each party. Each party hereto agrees that it shall not disclose Confidential Information of the other party hereto to any third party or use such Confidential Information for any purpose other than its intended purpose hereunder; provided, however, that (i) subject to any other restrictions contained in this Agreement, a party may disclose Confidential Information of the other party to the first party's affiliates, representatives, advisors and consultants in connection with their performance of services for or on behalf of such first party or the other party, provided that such first party shall be jointly and severally responsible for any disclosure or use by any such affiliate, representative, advisor or consultant not permitted by the terms hereof, and (ii) a party may make any disclosure that such party reasonably believes is required by law or regulation if the disclosing party notifies the other party in advance of such disclosure and takes reasonable steps to minimize such disclosure and allows the other party to do the same. Each party shall implement reasonable security measures to protect the Confidential Information of the other party from unauthorized disclosure or use. Because the unauthorized use, transfer or dissemination of any Confidential Information may substantially diminish its value and irreparably harm a party, if the other party breaches this Section, the first party shall, without limiting its other rights or remedies, be entitled to equitable relief, including but not limited to injunctive relief, without the necessity of posting any bond.

**6. Intellectual Property Indemnification.**

a. ZERONORTH shall defend or, at its option, settle, any claim or proceeding brought against Customer by a third party based on or alleging that the Service infringes any patent, copyright, or other intellectual property right of any third party, and ZERONORTH shall indemnify Customer against all costs, damages and expenses finally awarded against Customer that result from any such claim

or proceeding; provided that ZERONORTH shall have no liability hereunder unless Customer notifies ZERONORTH promptly in writing of any such claim or proceeding, gives ZERONORTH full and complete authority, information and assistance to defend such claim or proceeding, and gives ZERONORTH sole control of the defense of any such claim or proceeding and all negotiations for its compromise or settlement.

b. Should the Service become, or in ZERONORTH's opinion be likely to become, the subject of a claim of infringement, ZERONORTH shall, at ZERONORTH's option and expense, (i) procure for Customer the right to continue using the Service, (ii) replace or modify the Service with a noninfringing version of substantially equivalent function and performance, or (iii) failing the above notwithstanding commercially reasonable efforts, terminate this Agreement and the Service license and refund to Customer a pro rata portion of the subscription fees for the then-current term.

c. The provisions of this Section 6 are in lieu of all other obligations, and state the sole, exclusive and entire liability of ZERONORTH and its affiliates, suppliers and licensors, and the sole, exclusive and entire remedy of Customer, with respect to any actual or alleged patent, copyright, or other intellectual property infringement with respect to the Service.

#### **7. Limitation of Liability.**

a. Neither ZERONORTH nor its affiliates, suppliers or licensors shall have any liability or obligation to Customer for any actual or alleged infringement, indemnification claim, or other claim or damages, under Section 6 hereof or otherwise, to the extent based upon or attributable to (i) the combination or interfacing of the Service with any software or other product(s) or service(s) not produced or approved in writing by ZERONORTH (including in the Documentation), (ii) the alteration, repair or maintenance of Service Software, except by ZERONORTH, (iii) Customer's failure to install and use any Upgrade, (iv) Customer's use of third party software in connection with the Service that is no longer supported by such third party, (v) any installation, operation or use of the Service, including Service Software, in a manner not in compliance with this Agreement or the Documentation, or any other breach of this Agreement by Customer, or (vi) subjection of Service Software to abnormal physical or electrical stress, misuse, negligence, or accident not caused by ZERONORTH.

b. ZERONORTH does not warrant that use of the Service will be uninterrupted or error-free. Except for the express warranties contained in this Agreement, the Service is provided "AS IS," and all express or implied conditions, representations, and warranties with respect to the Service and Documentation or any other matter relating to this Agreement, including without limitation any implied warranty or condition of merchantability, fitness for a particular purpose, non-infringement, satisfactory quality or arising from a course of dealing, usage, or trade practice, are, to the full extent allowed by applicable law, hereby excluded and expressly disclaimed by ZERONORTH and its affiliates, suppliers and licensors. Except in the case of willful breach of this agreement, in no event will Customer or ZERONORTH or its affiliates, suppliers or licensors be liable for any lost revenue or profit, lost or damaged data, or for special, indirect, consequential, incidental, or punitive damages however caused and regardless of the theory of liability or whether arising out of Customer's use of or inability to use the Service or otherwise and even if Customer or ZERONORTH or its affiliates, suppliers or licensors have been advised of the possibility of such damages. Except in the case of a party's willful breach of this Agreement, breach of Section 3 (General Limitations), Section 5 (Confidentiality), Section 6 (Intellectual Property Indemnification) or Section 9 (Export), or breach of Customer's payment obligations, Customer's or ZERONORTH's and its affiliates', suppliers' or licensors' aggregate liability related to this Agreement, whether in contract, tort (including negligence), or otherwise, shall be limited to the aggregate amount of the fees actually received by ZERONORTH from Customer pursuant to this Agreement during

the 12-month period prior to the event first giving rise to the claim.

**8. Third Party Service Providers.** The Service (other than Service Software provided by ZERONORTH for installation by Customer to allow Customer to access or use the Service) will be hosted by ZERONORTH or its designee(s). Customer acknowledges and agrees that (i) Customer will be required to access the Service remotely via an internet connection or otherwise through services provided by a third party service provider, and Customer and not ZERONORTH is responsible for such access, and (ii) ZERONORTH shall not be responsible for nor have any liability or obligation with respect to any disruption to, failure of, or failure to access the Service attributable to any third party service provider, including without limitation any interruption or failure of telecommunications or digital transmissions links, internet slow-downs or failures, or the slow-down or failure of any other service provided by a third party service provider. Factors outside of ZERONORTH's control, such as internet congestion and network latency, can impact the overall performance of the Service. Certain aspects of the Service are currently hosted by Amazon Web Services ("AWS") for Amazon EC2, and Customer agrees that Customer is subject to, and agrees to comply with and not cause ZERONORTH to be in breach of, any applicable terms of service, privacy policy, or other terms or policies of AWS or any other third party service providers engaged by ZERONORTH to provide or host Services that are provided or made available to Customer at any time, and any amendments thereto, including without limitation the AWS Customer Agreement (currently available at [aws.amazon.com/agreement/](http://aws.amazon.com/agreement/)) and any terms or policies referred to and made available therein, and the AWS Service Terms (currently available at [aws.amazon.com/service-terms/](http://aws.amazon.com/service-terms/)) and any terms or policies referred to and made available therein.

**9. Export.** The Service and Documentation, or elements thereof, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, or export or import laws in other countries. Customer agrees to comply with such laws and agrees not to import, export or reexport any element of the Service or Documentation, including any Service Software, in violation of any law. Customer agrees that it will install any Service Software, and will not use or allow use of the Service, by any person or in any country that is on an applicable U.S. sanctions list.

**10. Term and Termination.** The term of this Agreement shall commence on the Effective Date and continue for the initial term set forth in the Order. The term shall automatically renew for successive 12-month periods unless terminated by written notice from one party to the other party at least 30 days prior to the expiration of the then-current term. In addition, at any time, whether during or after the initial term, either party may terminate this Agreement immediately upon written notice if the other party (a) fails to comply with any payment requirement or material provision of this Agreement or any other agreement between the parties and fails to cure such noncompliance within 15 days following written notice from the terminating party of such noncompliance or (b) becomes insolvent, or becomes the subject of a bankruptcy, receivership or similar action or proceeding that is not dismissed within 30 days. Promptly upon termination, at any time for any reason, of this Agreement, Customer shall cease use of the Service and Documentation and either (i) destroy all copies of the Service Software and Documentation in its possession or control and provide written certification to ZERONORTH of such destruction or (ii) return all Service Software and Documentation to ZERONORTH.

#### **11. Miscellaneous.**

a. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to principles of conflict of laws, and the United Nations Convention on the International Sale of Goods shall not apply. Courts located in the Commonwealth of Massachusetts shall

be the exclusive forum for any claim regarding this Agreement or the Service, and each party consents to the jurisdiction of such courts.

**b.** No modification or waiver of, or consent under, this Agreement shall be binding unless it is in writing and signed by the parties or an Order provided by ZERONORTH and accepted by Customer.

**c.** The provisions of this Agreement set forth in Section 1 and Sections 3 through 11 inclusive, and any Customer payment obligations accruing prior to termination, shall survive termination of this Agreement.

**d.** The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any conflicting or additional terms contained in any Customer-provided purchase order or elsewhere, all of which other terms are excluded.

**e.** If any provision of this Agreement is held to be unenforceable, such provision and all other provisions shall nevertheless continue in full force and effect to the fullest extent permitted by law.

**f.** Except as otherwise expressly set forth in this Agreement, remedies specified herein are non-exclusive and are in addition to any other rights and remedies.

**g.** Any notice hereunder from one party to the other shall be in writing and either personally delivered or sent via certified mail, postage prepaid and return receipt requested, addressed to such other party at the address specified herein or in an Order or such other address as either party may from time to time designate in writing to the other party; and notice sent by any other method is valid only if actually received.

**h.** ZERONORTH may include Customer on its customer list, including on its website and in its marketing materials.

**i.** A party shall not be liable in the event that such party is unable to perform any of its obligations (other than payment obligations) under this Agreement due to an unavoidable event beyond its control, provided that the party so affected promptly gives notice to the other party and uses commercially reasonable efforts to promptly resume performance.

**j.** This Agreement may be executed in counterparts or by manual or electronic signature, including without limitation by signature on an Order incorporating or referring to this Agreement or by click-through or other electronic acceptance.

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