



## SOFTWARE AS A SERVICE AGREEMENT (v09062023)

This Software as a Service (SaaS) Agreement (this “**Agreement**”), effective as of the date of last signature below (the “**Effective Date**”), is by and between SecureReview, Inc. DBA SessionGuardian (“SessionGuardian”) and \_\_\_\_\_ (“**Customer**”). SessionGuardian and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**”.

### RECITALS

WHEREAS, SessionGuardian operates the SaaS Services (as defined below) and provides access to its customers;

and

WHEREAS, Customer desires to access and use the SaaS Services, and SessionGuardian is willing to provide such access, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. DEFINITIONS.

“**Affiliates**” means, with respect to any Party, any entity that directly or indirectly controls, is controlled by, or is under common control with a Party. For purposes of this definition, “control” means having ownership of more than fifty percent (50%) of the equity securities entitled to vote for the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority). An entity will be deemed to be an “Affiliate” only for so long as such control exists.

“**Aggregate Data**” means any data that is derived or aggregated in deidentified form from (i) any Customer Materials; or (ii) Customer’s and/or its Authorized Users’ Use of the SaaS Services, including, without limitation, any usage data or trends with respect to the SaaS Services.

“**Authorized User**” means an employee, contractor, of Customer whom Customer has authorized to Use the SaaS Services on Customer’s behalf.

“**Customer Materials**” means all information, data, content, and other materials, in any form or medium, that is submitted, posted, collected, transmitted, or otherwise provided by or on behalf of Customer through the SaaS Services or to SessionGuardian in connection with Customer’s Use of the SaaS Services, but excluding, for clarity, Aggregate Data and any other information, data, data models, content, or materials owned or controlled by SessionGuardian and made available through or in connection with the SaaS Services.

“**Documentation**” means the operator and user manuals, training materials, specifications, minimum system configuration requirements, compatible device and hardware list and other similar materials in hard copy or electronic form (including materials found at [SessionGuardian.com](https://sessionguardian.com)) as provided by SessionGuardian to Customer (including any revised versions thereof) relating to the use and operation of the SaaS Services, which may be updated by SessionGuardian from time to time upon notice to Customer.

“**Entitlements**” means the limits, volume, or other measurement or conditions of permitted Use for the SaaS Services as set forth in the applicable Order Form.

“**Professional Services**” means the implementation, installation, configuration, consulting, and/or other professional services, if any, to be provided by SessionGuardian to Customer in accordance with a mutually executed Statement of Work, which will be executed separately between the Parties. Each Statement of Work is hereby incorporated into and governed by this Agreement by reference. Professional Services are not available or provided on a work-for-hire basis. The terms as outlined in the Statement of Work Exhibit set forth herein as Exhibit B shall also apply to the Professional Services.

“**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), inventions, copyrights, trade secrets, know-how, data and database rights, mask work rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

“**Order Form**” means a (i) mutually executed order form as set forth in Exhibit A or other mutually agreed upon ordering document by which Customer (or a Reseller on Customer’s behalf) orders services governed by this Agreement; or (ii) quote issued by SessionGuardian and accepted by Customer, in each case which references this Agreement and sets forth the applicable SaaS Services, Support Services, Training Services and Professional Services to be provided by SessionGuardian to Customer.

“**Person**” means any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity.

“**Reseller**” means a reseller partner or distributor that has an agreement with SessionGuardian that authorizes the Reseller to resell the SaaS Services, Support Services, Training Services and Professional Services.

“**SessionGuardian IP**” means the SaaS Services, the underlying Software provided in conjunction with the SaaS Services, source code, threat models, use cases, behavior models, machine learning models, dashboards, algorithms, rulesets, report interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the SaaS Services or any Professional Services, and Documentation and Aggregate Data, all improvements, updates, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing.

“**SaaS Service**” means the SessionGuardian Software as a Service hosted by SessionGuardian or its service providers and provided and maintained by SessionGuardian and more particularly described or identified in the applicable Order Form, and any updates, patches, bug fixes, and upgrades that SessionGuardian elects to provide to Customer.

“**Software**” means a specific and unique instance of the SessionGuardian Software product that is made available to Customer as a Service or a part thereof and includes any new releases or maintenance and support updates to such Software as SessionGuardian makes generally commercially available during the applicable Term. SessionGuardian Software does not include Customer Materials.

“**Statement of Work**” or “**SOW**” means a statement of work mutually agreed upon between SessionGuardian and Customer for Implementation, Training or other professional services and governed by this Agreement.

“**Support Services**” means SessionGuardian’s support and maintenance services for SaaS Services as described in, and provided in accordance with, the SessionGuardian Support Policy.

“**Training Services**” means SessionGuardian’s courses and other product-related training available online via a SessionGuardian provided website, as agreed by the parties.

“**Use**” means to use and/or access the SaaS Services in accordance with this Agreement and the Documentation.

## **2. SAAS SERVICES; ACCESS AND USE.**

**2.1 SaaS Services.** Subject to the terms and conditions of this Agreement, including Customer’s obligations under Section 4 (Fees and Payment), SessionGuardian hereby grants Customer a limited, non-exclusive, non-transferable (except in compliance with Section 12.6 (Assignment)), non-sublicensable right to Use the SaaS Services in accordance with the Documentation during the Term, solely for Customer’s internal business purposes in accordance with, and subject to, the Entitlement.

**2.2 Use Restrictions.** Customer will not at any time and will not permit any Person (including, without limitation, Authorized Users) to, directly or indirectly: (i) use the SaaS Services in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the SaaS Services or Documentation, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to the SaaS Services or any software component of the SaaS Services in whole or in part; (iv) frame, mirror, sell, resell, rent or lease use of the SaaS Services to any other Person, or otherwise allow any Person to use the SaaS Services for any purpose other than for the benefit of Customer in accordance with this Agreement; (v) use the SaaS Services, or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates an Intellectual Property Right or other right of any Person, or that violates any applicable law including offensive, harassing or otherwise unlawful material in connection with the SaaS Services; (vi) interfere with, or disrupt the integrity or performance of, the SaaS Services or any data or content contained therein or transmitted thereby; (vii) access or search the SaaS Services (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than Software or SaaS Services features provided by SessionGuardian for use expressly for such purposes; (viii) remove, modify, or obscure any copyright, trademark, or other proprietary notices contained in the SaaS Services or Documentation; (ix) send or store viruses, spyware, ransomware, timebombs, Trojan horses, or other harmful or malicious code, or files to or in connection with any services provided by SessionGuardian; (x) send or store any Customer sensitive or personal data in the SaaS Services that is not necessary for SessionGuardian to provide SaaS Services to Customer or is in violation of laws; or (xi) use the SaaS Services, or Documentation or any other SessionGuardian Confidential Information for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the SaaS Services.

**2.3 Authorized Users.** Customer will not allow any Person other than Authorized Users to Use the SaaS Services. Customer may permit Authorized Users to Use the SaaS Services, *provided* that (i) the Use, including the number of Authorized Users, does not exceed the Entitlement; (ii) Customer ensures each Authorized User complies with all applicable terms and conditions of this Agreement and Customer is responsible for acts or omissions by Authorized Users in connection with their Use of the SaaS Services; and (iii) the Use complies with all applicable laws and regulations. Customer will, and will require all Authorized Users to, use all reasonable means to secure

usernames and passwords, hardware and software used to access the SaaS Services in accordance with customary security protocols, and will promptly notify SessionGuardian if Customer knows or reasonably suspects that any username and/or password has been compromised. Each account for the SaaS Services may only be accessed and used by the specific Authorized User for whom such account is created. SessionGuardian will not be liable, and Customer will be solely responsible, for (A) any unauthorized access, damage or loss that may occur through the use or misuse of Customer's user names, passwords, hardware or software; or (B) any activities that occur under any account issued to or created by Customer in connection with Customer's use of the SaaS Services, including any unauthorized access or usage of any such account, in each case, except to the extent proven to have been directly caused by SessionGuardian's gross negligence, willful misconduct or fraud. SessionGuardian may terminate or suspend any Authorized User's individual access to the SaaS Services for any breach.

**2.4 SaaS Services Tools.** SessionGuardian may use tools, scripts, software, and utilities (collectively, the "Tools") to monitor and administer the SaaS Services and to help resolve Customer's SessionGuardian service requests. Data collected by the Tools (excluding production data) may also be used to assist in managing SessionGuardian's product and service portfolio and for license management. If SessionGuardian provides Customer with access to or use of any tools in connection with the SaaS Services, any such tools are provided by SessionGuardian on an "as is" basis and SessionGuardian does not provide technical support or offer any warranties for such tools.

**2.5 Third-Party Services.** Certain features and functionalities within the SaaS Services may allow Customer and its Authorized Users to interface or interact with, access and/or use compatible third-party services, products, technology and content (collectively, "**Third-Party Services**") through the SaaS Services. SessionGuardian does not provide any aspect of the Third-Party Services and is not responsible for any compatibility issues, errors, or bugs in the SaaS Services or Third-Party Services caused in whole or in part by the Third-Party Services or any update or upgrade thereto. Customer is solely responsible for maintaining the Third-Party Services and obtaining any associated licenses and consents necessary for Customer to use the Third-Party Services in connection with the SaaS Services.

**2.6 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, SessionGuardian reserves and, as between the Parties will solely own, the SessionGuardian IP and retain all rights, title and interest in and to the SessionGuardian IP. No rights are granted to Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein.

**2.7 Feedback.** From time to time, Customer or its employees, contractors, or representatives may provide SessionGuardian with suggestions, comments, feedback or the like with regard to the SaaS Services (collectively, "**Feedback**"). Customer hereby grants SessionGuardian a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with SessionGuardian's business purposes, including, without limitation, the testing, development, maintenance and improvement of the SaaS Services.

**2.8 Rights in Customer Materials.** As between SessionGuardian and Customer, Customer owns the Customer Materials. Customer hereby grants and agrees to grant to SessionGuardian and its contractors, a worldwide, non-exclusive, royalty-free license to host, copy, transmit, display, and process the Customer Materials as reasonably necessary to (a) provide the SaaS Services to Customer and (b) monitor, modify, and improve the SaaS Services.

### 3. ENTITLEMENTS.

**3.1 General.** Customer is entitled to use the SaaS Services in accordance with its Entitlements as defined in the Order Form. Any SessionGuardian IP licensed to Customer for use with the SaaS Services is subject to the same Entitlements that applies to the SaaS Services with which such SessionGuardian IP is used. SessionGuardian will monitor Customer's Use of the SaaS Services on a monthly basis in order to ensure that such usage complies with the Entitlements. In the event that Customer's use exceeds the Entitlements ("**Overages**") for the preceding month ("**Overage Period**"), SessionGuardian will notify Customer ("**Notice of Overage**").

**3.2 Reconciliation.** Customer will have ten (10) business days ("**Grace Period**") from the date of the Notice of Overages to respond to SessionGuardian with Customer's intent to either reduce the usage to comply with the Entitlements or amend the applicable Order Form to increase the Entitlements. In the event that Customer elects to reduce usage to comply with the Entitlement, SessionGuardian will work with Customer, in good faith, to reduce such usage. In the event that Customer wishes to increase the Entitlement, the parties will have thirty (30) days ("**Reconciliation Period**") to amend the then-current, applicable Order Form to increase the Entitlement.

**3.3 Fees.** To the extent that Customer's usage exceeds the Entitlements, Customer will be billed either (1) the amount listed in the Order, if applicable; or (2) the pro rata rate of the overage plus twenty-five percent (25%) for the Overage, Grace, and Reconciliation Periods.

**3.4 Payment.** Customer is responsible to remit payment for all fees associated with Overages as stated in this Section 3, in accordance with Section 4.

**3.5 Support Services.** Subject to Customer's payment of all applicable Fees, SessionGuardian shall provide Support Services to Customer during the Term of any Order Form that includes an Entitlement to SaaS Support Services. SessionGuardian's Gold Level Support Services are included with Customer's subscription to the SaaS Services during the applicable Term at no additional charge. SessionGuardian provides SaaS Support Services and associated Documentation in the English language.

**3.6 Training Services.** SessionGuardian will provide Training Services on a per-quote basis as purchased or otherwise requested by Customer. Customer will execute an Order Form for any agreed Training Services. For Training Services acquired from SessionGuardian by Customer, (i) Customer will approve SessionGuardian's quote prior to SessionGuardian's commencement of the Training Services and (ii) SessionGuardian will invoice Customer monthly in arrears as SessionGuardian provides the Training Services. Unless otherwise stated in the applicable Order Form, Training Services Fees shall exclude travel and living expenses.

**3.7 Service Level Agreement.** The SaaS Service Level Agreement ("**SLA**") for the production instance of the SaaS Services is set forth in SessionGuardian's current standard SLA.

**3.8 Professional Services.** Customer may purchase Professional Services from SessionGuardian on a time-and-materials basis. The following terms and conditions shall apply to Professional Services performed for Customer by or on behalf of SessionGuardian:

- a. **Scope of Professional Services.** Professional Services will be documented in a mutually executed SOW. The scope of any Professional Services shall be limited to (i) program and deployment planning, (ii) configuration and integration assistance, and/or (iii) interface adapter efforts.



- b. **Term of Professional Services.** Professional Services will begin and terminate on the dates or times described in a SOW, unless earlier terminated in accordance with this Agreement.
- c. **Fees and Expenses.** Fees for Professional Services are described in a SOW or an Order. SessionGuardian may issue invoices on a monthly basis for Professional Services actually performed or in accordance with a payment schedule documented in a SOW or Order. SessionGuardian shall invoice Customer, and Customer shall pay, all actual and reasonable expenses for travel, food and lodging which are directly related to the performance of Professional Services.
- d. **Termination or delay of Professional Services.** Customer may terminate Professional Services by giving ten (10) days prior written notice to SessionGuardian; termination shall be effective ten (10) days after SessionGuardian's receipt of the notice. If Customer delays the scheduled start of contracted Professional Services, Customer shall reimburse SessionGuardian for any actual non-refundable costs incurred (including for expenses and contractors) due to the delay. If Customer terminates Professional Services before the agreed end of a Professional Services engagement as set forth in a SOW, Customer shall pay SessionGuardian for any Professional Services completed but not yet paid for prior to the termination date, as well as reasonable and actual costs (including for expenses and contractors) incurred by SessionGuardian through the effective date of the termination.
- e. **SessionGuardian Proprietary Information.** All SessionGuardian Proprietary Information and all right, title and interest, including, without limitation, all patents, copyrights, and trade secret rights anywhere in the world, and all other Intellectual Property Rights in connection therewith shall be the sole property of and remain with SessionGuardian or its licensors, as applicable. SessionGuardian Proprietary Information includes, but is not limited to, the SaaS Services, Software and related documentation and any modifications thereto developed in whole or in part by Professional Services. Except for the license use rights otherwise expressly provided in this Agreement, no right, title or interest in the SaaS Services or Software is granted hereunder.
- f. **Independent Contractors.** SessionGuardian is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations, including but not limited to, Worker's Compensation Insurance. Nothing herein shall form or be construed to form a joint venture or partnership.
- g. **Performance Standards.** SessionGuardian's performance of Professional Services under this Agreement will be conducted with standards of practice common in the industry for similar services. While performing Professional Services at Customer's site, SessionGuardian will comply with all applicable Customer network and safety rules, guidelines and policies that do not conflict with the terms of this Agreement and any attachments hereto.
- h. **Consent to Subcontract.** Customer hereby consents for SessionGuardian to subcontract Professional Services to persons or companies qualified and certified by SessionGuardian to provide Professional Services on SessionGuardian's behalf.

#### **4. FEES AND PAYMENT.**

**4.1 Fees.** Except to the extent that Customer places an order through an authorized Reseller of SessionGuardian, Customer will pay SessionGuardian the non-refundable fees set forth in the relevant Order Form

in accordance with the terms therein (“**Fees**”) and without offset or deduction. All Fees are exclusive of sales and use taxes, value added taxes (VAT), or similar charges. SessionGuardian reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then-current Renewal Term, upon sixty (60) days’ prior notice to Customer (which may be sent by email); any increase to Fees will not exceed 10% of the Fees paid by Customer in the previous twelve (12) month period. Except as otherwise provided in the relevant Order Form, SessionGuardian will issue annual invoices to Customer during the Term with the initial invoice issued promptly following the Order Form Effective Date, and Customer will pay all amounts set forth on any such invoice no later than thirty (30) days after the date of such invoice or as set forth in an Order Form. If Customer has signed up for automatic billing, SessionGuardian will charge Customer’s selected payment method for any Fees on the applicable payment date, including any applicable taxes. If SessionGuardian cannot charge Customer’s selected payment method for any reason (such as expiration or insufficient funds), Customer remains responsible for any uncollected amounts, and SessionGuardian will attempt to charge the payment method again as Customer may update its payment method information. In accordance with local law, SessionGuardian may update information regarding Customer’s selected payment method if provided such information by Customer’s financial institution.

**4.2 Purchases Through a Reseller.** For any SaaS, Support, Implementation and Training Services purchased by Customer through a Reseller, the pricing and payment terms are established through the order or agreement entered into by and between Customer and the Reseller (“**Reseller Order**”) and all payments will be made directly to the Reseller. If a Reseller is entitled to terminate or suspend any services purchased by Customer pursuant to the Reseller Order and notifies SessionGuardian, SessionGuardian may suspend or terminate the services identified by the Reseller. Subsequently, if Reseller notifies SessionGuardian that Customer is entitled to reinstatement of any services purchased by Customer pursuant to the Reseller Order, and Customer is otherwise in compliance with the terms of this Agreement, SessionGuardian shall reinstate the services as soon as reasonably practicable. SessionGuardian shall not be liable to Customer or to any third party for any liabilities, claims, or expenses arising from or relating to any suspension or termination of services in accordance with this Section 4.2.

**4.3 Payments.** Payments due to SessionGuardian under this Agreement must be made in U.S. dollars by check, wire transfer of immediately available funds to an account designated by SessionGuardian or such other payment method mutually agreed by the Parties. All payments are non-refundable and neither Party will have the right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other Party under this Agreement. If Customer fails to make any payment when due, late charges will accrue at the rate of 1.5% per month or, if lower, the highest rate permitted by applicable law and SessionGuardian may suspend SaaS Services until all payments are made in full. Customer will reimburse SessionGuardian for all reasonable costs and expenses incurred (including reasonable attorneys’ fees) in collecting any late payments or interest.

**4.4 Expenses.** Unless otherwise specified in an Order Form, Customer will reimburse SessionGuardian for all pre-approved, out-of-pocket travel and related expenses incurred in performing the Implementation and Training Services or other professional services. SessionGuardian will include reasonably detailed documentation of the expenses with each related invoice as applicable.

**4.5 Taxes.** Customer is responsible for all sales, use, ad valorem and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by Customer to SessionGuardian hereunder, other than any taxes imposed on SessionGuardian’s income, which amounts are in addition to the Fees for the services. Without limiting the foregoing, in the event that Customer is required to deduct or withhold any taxes from the amounts payable to SessionGuardian hereunder, Customer will pay an additional amount, so that SessionGuardian receives the amounts

due to it hereunder in full, as if there were no withholding or deduction. The foregoing is unless Customer provides SessionGuardian with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 5. CONFIDENTIAL INFORMATION; DATA SECURITY.

**5.1 Confidential Information.** As used herein, “**Confidential Information**” means any information that one Party (the “**Disclosing Party**”) provides to the other Party (the “**Receiving Party**”) in connection with this Agreement, whether orally or in writing, that is designated as confidential or that reasonably should be considered to be confidential given the nature of the information and/or the circumstances of disclosure. For clarity, SessionGuardian IP will be deemed Confidential Information of SessionGuardian. However, Confidential Information will not include any information or materials that: (i) were, at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party; (ii) were rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party; (iii) are rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the Disclosing Party; or (iv) are independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party

The Receiving Party will maintain the Disclosing Party’s Confidential Information in strict confidence and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (i) to those employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such Confidential Information to perform under this Agreement and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement, or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.

Each Party’s obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three (3) years from the date first disclosed to the Receiving Party; *provided*, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

The terms and conditions of this Agreement will constitute Confidential Information of each Party but may be disclosed on a confidential basis to a Party’s advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

**5.2 Data Protection.** Without limitation of its general confidentiality obligations in this Agreement, SessionGuardian further represents, warrants and covenants to Customer that it will employ industry standard technical, administrative, and physical security measures to protect Customer Materials and Confidential Information and use reasonable care and skill in the access, collection, transmission, processing, and use thereof, including without limitation by implementing and maintaining an information security policy in accordance with or exceeding industry standards that includes, at a minimum, (a) managing and changing passwords and security parameters for SessionGuardian’s computers and networks on an ongoing basis, (b) logging all successful and



unsuccessful log-in attempts to SessionGuardian's computers and networks, including, without limitation, the originating address (e.g., the IP address or media access control address).

**6. GENERAL REPRESENTATIONS AND WARRANTIES.** Each Party hereby represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; and (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party.

## **7. INDEMNIFICATION.**

**7.1 SessionGuardian Indemnification.** Subject to Section 7.3, SessionGuardian will defend Customer from all claims, demands, suits, or proceedings brought against Customer by a third party alleging that the SaaS Services, as provided by SessionGuardian to Customer under this Agreement, infringe any patent, copyright, or trademark or misappropriate any trade secret of that third party (each, an "**Infringement Claim**"). SessionGuardian will indemnify Customer for all damages and costs (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction, authorized arbitral panel, or paid to a third party in accordance with a written settlement agreement signed by SessionGuardian, in connection with an Infringement Claim. In the event an Infringement Claim is brought, or in SessionGuardian's reasonable opinion is likely to be brought, SessionGuardian may, at its option:

- (i) procure the right to permit Customer to continue use of the SaaS Services;
- (ii) replace or modify the SaaS Services with a non-infringing alternative having substantially equivalent performance, within a reasonable period of time, or
- (iii) if SessionGuardian determines that neither of the foregoing options are reasonably practicable, terminate the applicable Order Form and repay to Customer any prepaid fees paid by Customer under the Order Form to SessionGuardian with respect to any period of time following the termination date.

Notwithstanding the foregoing, SessionGuardian shall have no liability for any Infringement Claim of any kind to the extent that it relates to (a) modification of the SaaS Services by a party other than SessionGuardian, (b) use of the SaaS Services in combination with any other product, service, or device, if the infringement would have been avoided by the use of the SaaS Services without the other product, service, or device, or (c) use of the SaaS Services other than in accordance with the Documentation and this Agreement. The indemnification obligations set forth in this Section 7.1 are Customer's exclusive remedy and SessionGuardian's sole liability with respect to SessionGuardian's infringement or misappropriation of third-party Intellectual Property Rights of any kind.

**7.2 Customer Indemnification.** Subject to Section 7.3, Customer will defend SessionGuardian from all claims, demands, suits, or proceedings brought against SessionGuardian by a third party alleging a violation of or arising from (i) any Customer Materials, including, without limitation, (A) any claim that the Customer Materials infringe, misappropriate or otherwise violate any third party's Intellectual Property Rights or privacy or other rights; or (B) any claim that the use, provision, transmission, display or storage of Customer Materials violates any applicable law, rule or regulation; (ii) any of Customer's products or services; and (iii) Use of the SaaS Services by Customer or its Authorized Users in a manner that is not in accordance with this Agreement or the Documentation, including, without limitation, any breach of the Use Restrictions in Section 2.2, and in each case, will indemnify and hold harmless SessionGuardian against any damages and costs finally awarded by a court of competent

jurisdiction against SessionGuardian or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim.

**7.3 Indemnification Procedures.** The Party seeking defense and indemnity under this Section 7 (the “**Indemnified Party**”) will promptly (and in any event no later than thirty (30) days after becoming aware of facts or circumstances that could reasonably give rise to any claim) notify the other Party (the “**Indemnifying Party**”) of the claim for which indemnity is being sought (provided that any failure to provide prompt written notice will only relieve the Indemnifying Party of its obligations to the extent its ability to defend the claim is materially prejudiced by the failure) and will reasonably cooperate with the Indemnifying Party in the defense and/or settlement thereof. The Indemnifying Party will have the sole right to conduct the defense of any claim for which the Indemnifying Party is responsible hereunder (*provided* that the Indemnifying Party may not settle any claim without the Indemnified Party’s prior written approval unless the settlement is for a monetary amount, unconditionally releases the Indemnified Party from all liability without prejudice, does not require any admission by the Indemnified Party, and does not place restrictions upon the Indemnified Party’s business, products or services). The Indemnified Party shall provide reasonable assistance, cooperation, and required information with respect to the defense and settlement of the claim, at the Indemnified Party’s expense and may participate in the defense or settlement of any such claim at its own expense and with its own choice of counsel or, if the Indemnifying Party refuses to fulfill its obligation of defense, the Indemnified Party may defend itself and seek reimbursement from the Indemnifying Party.

## **8. WARRANTIES AND REMEDIES; DISCLAIMER.**

**8.1 SaaS Services Warranty.** SessionGuardian warrants that during the Term the SaaS Services will perform materially in accordance with the Documentation. As Customer’s exclusive remedy and SessionGuardian’s sole liability for breach of the warranty set forth in this Section 8.1, (i) SessionGuardian shall correct the non-conforming SaaS Services at no additional charge to Customer, or (ii) in the event SessionGuardian is unable to correct the deficiencies after good-faith efforts and within a commercially reasonable timeframe, Customer shall be entitled to terminate the applicable SaaS Services and SessionGuardian will refund Customer of any fees prepaid by Customer attributable to the defective SaaS Services for the period commencing from the date SessionGuardian received the notice contemplated in the next sentence. To receive warranty remedies, Customer must promptly report deficiencies in writing to SessionGuardian, but no later than thirty (30) days of the first date the deficiency is identified by Customer. The warranty set forth in this Section 8.1 shall apply only if the applicable SaaS Services have been utilized in accordance with the Documentation, this Agreement, and applicable law.

**8.2 Professional Services Warranty.** SessionGuardian warrants that Professional Services will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of five (5) days from the completion of any Professional Services, except as otherwise agreed to between the parties in the applicable Statement of Work for such Professional Services. As Customer’s sole and exclusive remedy and SessionGuardian’s entire liability for any breach of the foregoing warranty, SessionGuardian will promptly re-perform any Professional Services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming portion of the Other Services.

**8.3 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8, THE SAAS SERVICES, PROFESSIONAL SERVICES AND OTHER SESSIONGUARDIAN IP ARE PROVIDED ON AN “AS IS” BASIS, AND SESSIONGUARDIAN MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ITS AUTHORIZED USERS OR TO ANY OTHER PARTY REGARDING THE

SESSIONGUARDIAN IP, THE SAAS SERVICES, PROFESSIONAL SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SESSIONGUARDIAN HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, SESSIONGUARDIAN HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE SAAS SERVICES OR PROFESSIONAL SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

## **9. LIMITATIONS OF LIABILITY.**

**9.1 EXCLUSION OF DAMAGES.** EXCEPT FOR: (I) DAMAGES RESULTING FROM FRAUD OR WILLFUL MISCONDUCT BY EITHER PARTY, OR (II) DAMAGES RESULTING FROM EITHER PARTY'S BREACH OF SECTION 5.1 (CONFIDENTIAL INFORMATION), NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE SAAS SERVICES OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SESSIONGUARDIAN IP OR THE PROVISION OF THE SAAS SERVICES AND PROFESSIONAL SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

**9.2 TOTAL LIABILITY.** EXCEPT FOR: (I) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7 (INDEMNIFICATION), (II) DAMAGES RESULTING FROM FRAUD OR WILFUL MISCONDUCT BY EITHER PARTY, (III) DAMAGES RESULTING FROM EITHER PARTY'S BREACH OF SECTION 5.1 (CONFIDENTIAL INFORMATION), OR (IV) BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS, IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY TO THE OTHER OR ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO SESSIONGUARDIAN IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

**9.3 BASIS OF THE BARGAIN.** THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN SESSIONGUARDIAN AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

## **10. TERM AND TERMINATION.**

**10.1 Term.** The initial term of this Agreement begins on the Effective Date and expires at the end of the Initial Term specified in the relevant Order Form (the "**Initial Term**"). Following the Initial Term, this Agreement will automatically renew for additional periods of one (1) year (each, a "**Renewal Term**," and together with the

Initial Term, the “**Term**”), unless either Party provides the other with at least thirty (30) days’ written notice of its intent not to renew this Agreement prior to the end of the then-current Term.

**10.2 Termination.** Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach. For the avoidance of doubt, any nonpayment, whether by Customer or a Reseller, through which Customer has purchased the SaaS Services, shall be deemed a material breach of this Agreement. Upon termination of this Agreement by Customer for a material breach by SessionGuardian pursuant to this Section 10.2, SessionGuardian will refund Customer any fees prepaid by Customer to SessionGuardian that cover the remainder of the Term after the effective date of termination and any fees prepaid by Customer to SessionGuardian for Professional Services that have not been delivered as of the effective date of termination. In the event SessionGuardian terminates this Agreement as a result of Customer’s material breach, all unpaid fees under all Order Forms shall be accelerated and become immediately due and payable.

**10.3 Survival.** This Section 10.3 and Sections 2.2 (Use Restrictions), 2.6 Reservation of Rights, 2.7 (Feedback), 2.8 (Rights in Customer Materials), 4 (Fees and Payment), 5.1 (Confidential Information), 7 (Indemnification), 8.3 (Disclaimer), 9 Limitations of Liability), 10.4 (Effect of Termination), and 12 (General) survive any termination or expiration of this Agreement for any reason.

**10.4 Effect of Termination.** Upon expiration or termination of this Agreement: (i) the rights granted pursuant to Section 2.1 will terminate; and (ii) Customer will return or destroy, at SessionGuardian’s sole option, all SessionGuardian Confidential Information in its possession or control, including permanent removal of such SessionGuardian Confidential Information (consistent with customary industry practice for data destruction) from any storage devices or other hosting environments that are in Customer’s possession or under Customer’s control, and at SessionGuardian’s request, certify in writing to SessionGuardian that the SessionGuardian Confidential Information has been returned, destroyed or, in the case of electronic communications, deleted. Expiration or termination of this Agreement for any reason other than termination by Customer for a material breach by SessionGuardian pursuant to Section 10.2 (Termination) shall not relieve Customer of the obligation to pay all future amounts due under all Order Forms.

**11. TRADEMARKS.** Customer hereby grants SessionGuardian a limited, non-exclusive, royalty-free license to use and display Customer’s name, designated trademarks and associated logos (the “**Customer Marks**”) during the Term in connection with (i) the hosting, operation and maintenance of the SaaS Services; and (ii) SessionGuardian’s marketing and promotional efforts for its products and services, including by publicly naming Customer as a customer of SessionGuardian and in case studies. All goodwill and improved reputation generated by SessionGuardian’s use of the Customer Marks inures to the exclusive benefit of Customer. SessionGuardian will use the Customer Marks in the form stipulated by Customer and will conform to and observe such standards as Customer prescribes from time to time in connection with the license granted hereunder.

## **12. GENERAL.**

**12.1 Entire Agreement.** This Agreement, including its exhibits and the documents incorporated herein by reference, is the complete and exclusive agreement between the Parties with respect to its subject matter and supersedes any and all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to its subject matter. Customer agrees that its purchase of the SaaS Services is neither

contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SessionGuardian with respect to future functionality or features. If there is any conflict between the terms of this Agreement and any Order Form or similar ordering document with a Reseller, the terms of this Agreement shall control unless SessionGuardian and Customer expressly agree otherwise in the applicable Order Form or other document signed by both parties by specific reference to this section and the section(s) of this Agreement that are modified. This Agreement may be amended or modified only by a written document executed by duly authorized representatives of the Parties. It is expressly agreed that the terms of this Agreement, including the Order Form, shall supersede the terms in any purchase order or other non-SessionGuardian document and no terms included in any such purchase order or other non-SessionGuardian document shall apply to the SaaS Services or other services ordered.

**12.2 Notices.** All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be sent to the relevant address set forth below or to such other address as may be specified by the relevant Party to the other Party in accordance with this Section 12.2. Such notices will be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally recognized express courier, with written confirmation of receipt; (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) when sent by email, on the date the email was sent without a bounce back message if sent during normal business hours of the receiving party, and on the next business day if sent after normal business hours of the receiving party.

If to SessionGuardian: SecureReview, Inc.:  
1178 Broadway  
3rd Floor #1325  
New York, NY 10001  
Email: [contracts@sessionguardian.com](mailto:contracts@sessionguardian.com)

If to Customer:

**12.3 Waiver.** Either Party's failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party granting the waiver.

**12.4 Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the Parties, and the remaining provisions of this Agreement will remain in full force and effect.

**12.5 Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of New York and the U.S. without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the State of New York and the Parties irrevocably consent to the personal jurisdiction and venue therein.



**12.6 Assignment.** Neither Party may assign or transfer this Agreement, by operation of law or otherwise, without the other Party's prior written consent. Any attempt to assign or transfer this Agreement without such consent will be void. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a third party that succeeds to all or substantially all of the assigning Party's business and assets relating to the subject matter of this Agreement, whether by sale, merger, operation of law or otherwise, provided that in the event of an assignment by Customer, all fees then due and payable to SessionGuardian have been paid. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the Parties and their respective successors and permitted assigns.

**12.7 Equitable Relief.** Each Party agrees that a breach or threatened breach by such Party of any of its obligations under Section 5.1 (Confidential Information) or, in the case of Customer, Section 2.2 (Use Restrictions), would cause the other Party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other Party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise. If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, court cost and other collection expenses, in addition to any other relief it may be awarded.

**12.8 Force Majeure.** Neither Party will be responsible for any failure or delay in the performance of its obligations under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, which may include labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics, epidemics, public health emergencies, governmental orders and acts (including government-imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God.

**12.9 Subcontracting.** SessionGuardian may use subcontractors, and other third-party providers ("**Subcontractors**") in connection with the performance of its own obligations hereunder as it deems appropriate, *provided* that SessionGuardian remains responsible for the performance of each such Subcontractor.

**12.10 Export Regulation.** Customer affirms that it is not named on, owned by, or acting on behalf of any U.S. government denied-party list, and it agrees to comply fully with all relevant export control and sanctions laws and regulations of the United States ("**Export Laws**") to ensure that neither the SaaS Services, Software, any Customer Materials, nor any technical data related thereto is: (i) used, exported or re-exported directly or indirectly in violation of Export Laws; or (ii) used for any purposes prohibited by the Export Laws, including, but not limited to, nuclear, chemical, or biological weapons proliferation, missile systems or technology, or restricted unmanned aerial vehicle applications. Customer will complete all undertakings required by Export Laws, including obtaining any necessary export license or other governmental approval.

**12.11 U.S. Government End Users.** The SaaS Services, software and Documentation are "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and other relevant government procurement regulations. Any use, duplication, or disclosure of the software or its documentation by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement.

**12.12 Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to establish any partnership, joint venture or agency relationship

between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other Party's prior written consent.

**12.13 No Third-Party Beneficiaries.** No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

**12.14 Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission (including via pdf) will be effective as delivery of a manually executed counterpart.

**12.15 Anti-Bribery/Corruption.** Neither party (a) has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement or (b) has made, paid, given, or agreed to make, pay, or give any bribe, kickback, payment, gift, or thing of value to any foreign government official or other person in violation of applicable laws related to the prevention of corruption, including the U.S. Foreign Corrupt Practices Act of 1977, as amended (“**Anti-Corruption Laws**”) in connection with this Agreement. Both parties agree to comply with Anti-Corruption Laws in relation to this Agreement. If either party learns of any violation of the foregoing restriction, the party will use reasonable efforts to promptly notify the other party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

“SessionGuardian”

“Customer”

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT A – EXAMPLE ORDER FORM

This Order Form documents the products and services being purchased by Customer and is subject to the terms and conditions of the Software as a Service Agreement entered by and between SecureReview, Inc. DBA SessionGuardian (“SessionGuardian”), a Delaware corporation, and \_\_\_\_\_ (“Customer”) (“Agreement”). In the event of a conflict between the Agreement and this Order Form, the terms of this Order Form shall control. Capitalized terms used and not defined herein have the same meaning as in the Agreement.

The effective date of this Order Form is the date of last signature below (the “Effective Date”).

### Software/SaaS:

Software/SaaS Services Purchase Date	Product Number	Software/SaaS Services Description	Subscription Term	# of Entitlements	Term Price
		Total Software/SaaS Services Fees			

### Support Services

Support Services	Description	Term	Term Price
Gold Level Maintenance and Support	Included in SaaS Services Fee		\$0
Support Services Total:			\$0

### Implementation and Training Services:

Service Name	Description	Fee Term	Quantify	Fees
	<b>Implementation and Training Services Total</b>			

**Total Fees:** \$ \_\_\_\_\_

**Invoicing and Payment**

SessionGuardian will invoice Customer for the Total Fees in accordance with the following firm, non-cancellable invoice schedule. All pricing is in USD and excludes any applicable sales or use tax which will be added to the invoice(s) as a separate line item. Payment is due according to the terms of the Agreement.

**Payment Schedule**

Payment No.	Amount Due	Invoice Date	Description
1			
2			
3			
<b>Total</b>			

**SESSIONGUARDIAN** \_\_\_\_\_ (**"Customer"**)

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Term Start Date.** Unless otherwise stated above, the Term start date is the Effective Date of this Order Form.