

## SOFTWARE LICENSE AND SUBSCRIPTION AGREEMENT

IMPORTANT – PLEASE REVIEW CAREFULLY THE TERMS OF THIS SOFTWARE LICENSE AND SUBSCRIPTION AGREEMENT. BY CLICKING “ACCEPTED AND AGREED TO,” CUSTOMER ACCEPTS AND AGREES TO THESE TERMS AND CONDITIONS.

This Software License and Subscription Agreement (this “Agreement”) is a contract between BeyondTrust Corporation, a Delaware corporation (“BeyondTrust”) and the other business entity, City of Aurora, an Illinois home rule municipal corporation, executing this Agreement (“Customer”). BeyondTrust and Customer are also hereafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

This Agreement is effective as of the Effective Date, as that term is defined in Exhibit A (“Defined Terms”), which is attached to and made a part of this Agreement by this reference. Customer’s use, and BeyondTrust’s provision, of the “Software or Other Offerings” (as that term is defined in Exhibit A) is governed by the terms and conditions of this Agreement.

This Agreement includes the Standard Terms & Conditions below (“Standard Terms & Conditions”), Exhibit A, and any applicable Order, all of which are hereby incorporated into this Agreement by reference. Capitalized terms used but not defined in the Standard Terms & Conditions are defined in Exhibit A. In the event of a conflict between the terms of the Standard Terms & Conditions, Exhibit A and/or any applicable Order, the order of precedence shall be: (i) the Standard Terms & Conditions, (ii) Exhibit A, then (iii) the applicable Order.

### STANDARD TERMS & CONDITIONS

#### 1. ACCESS AND USE

**1.1 *ACCESS AND USE OPTIONS AND RESTRICTIONS.*** Software offered by BeyondTrust to Customer under this Agreement is either via (i) an On-Premise Software perpetual license or Subscription, or (ii) a Cloud Services Subscription, as specified in the applicable Order.

(a) ***License (applicable for On-Premise Software).*** For On-Premise Software that is licensed to Customer either on a perpetual basis or via a Subscription, as specified in the applicable Order, subject to the terms and conditions of this Agreement and Customer’s payment of all applicable Fees, BeyondTrust hereby grants to Customer a limited, non-exclusive, non-transferable, non-assignable, revocable, personal right and license in the Territory (defined below) to install and use the Software for internal use, in accordance with the terms and conditions of this Agreement and as applicable and as specified on each Order, for the Subscription Term specified in the applicable Order (unless the applicable Order specifies a perpetual license), and limited to the number of deployed Instances, Assets, physical and virtual machine(s), and/or the physical location(s) specified in the applicable Order, and, in all cases, to use the Documentation provided in connection with such Software solely for the purpose specified in Section 1.2(a) below. “Territory” means worldwide unless otherwise agreed in the applicable Order (and subject always to Customer’s compliance with applicable export laws, regulations and restrictions).

(b) ***Cloud Services Subscription (applicable for cloud subscription offerings).*** For Software that is provided to Customer via a Subscription for Cloud Services, subject to the terms and conditions of this Agreement and Customer’s payment of all applicable Fees, BeyondTrust hereby grants to Customer a Subscription to access and use the Cloud Services in accordance with the terms and conditions of this Agreement, both for internal use and in support of Clients (the “Permitted Use”), for the Subscription Term specified in the applicable Order and consistent with the requirements and limited to the number of deployed Instances, Assets, physical and virtual machine(s), and/or the physical location(s) specified in the applicable Order, and, in all cases, to use the Documentation provided in connection with such Software solely for the purpose specified in Section 1.2(a) below. Customer may access the applicable Software through Cloud Services (instead of under an On-Premise Software license) solely to facilitate the use and administration of the applicable Software for the Permitted Use.

(c) ***Restrictions on Software or Other Offerings.*** All rights to Software or Other Offerings not expressly granted under this Agreement are hereby reserved to BeyondTrust, and no rights are granted by implication or otherwise. Without limiting the generality of the foregoing, Customer shall not (and Customer shall also ensure that Customer’s Personnel and Affiliates shall not): (i) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense any Software or Other Offering, including without limitation through any loan, encumbrance, or lease; (ii) access or use any Software or Other Offering or BeyondTrust’s Confidential Information to create a product or service similar to or competitive with any Software or Other Offering; (iii) time-share any Software or Other Offering or use such Software or Other Offering in a service bureau arrangement or for the benefit of any third party; (iv) permit or allow any person to remove any proprietary or other legend or restrictive notice on any Software or Other Offering or on any media containing such Software or Other Offering; (v) permit any person to reproduce any such media or Software or Other Offering except as specifically provided in this Agreement; (vi) use any Software or Other Offering to distribute or otherwise support any software or computer file that contains a virus, worm, Trojan horse, or other harmful component; (vii) use any Software or Other Offering for any illegal activity; (viii) use any Software or Other Offering to disrupt or interfere with any other networks, websites, or security; (ix) use any Software or Other Offering to infringe any third party’s intellectual property rights; (x) use any Software or Other Offering to distribute any objectionable material of any kind; (xi) use any Software or Other Offering to gain unauthorized access to computer systems or devices; (xii) use any Software or Other Offering under false pretense to gain access to a third party’s computer, network, or information; (xiii) in any manner or under any circumstances use, copy, modify, enhance, merge, reverse engineer, reverse assemble, decompile, disassemble or in any way alter any Software or Other Offering or any copy, adaptation, transcription, or merged portion thereof or otherwise attempt to derive source code therefrom; or (xiv) disclose to any third party the results of any benchmark or other tests of any Software or Other Offering. Customer shall maintain all of BeyondTrust’s copyright, trademark, and other notices on the Software, Hardware, and Documentation and shall reproduce all such notices on any and all partial or full copies thereof.

## **1.2 DOCUMENTATION & TEMPORARY USE SOFTWARE.**

(a) **Documentation.** Customer may access and use the Documentation solely in connection with the Permitted Use and to support use of the Software or Other Offerings as expressly authorized in this Agreement.

(b) **Beta & Evaluation Software (only if applicable).** BeyondTrust hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, revocable, personal right and license to install and use Beta Software and/or Evaluation Software (each as defined below) during the time period set forth on the applicable Order, or if no time period is stated, for 30 days from the effective date of the applicable Order. “Beta Software” refers to Software so designated as “Beta Software” on the applicable Order or provided to Customer for feedback by Customer to BeyondTrust. “Evaluation Software” refers to Software so designated as “Evaluation Software” on the applicable Order or provided to Customer for Customer’s own internal evaluation purposes only. CUSTOMER IS NOT REQUIRED TO USE BETA SOFTWARE OR EVALUATION SOFTWARE. IF CUSTOMER DOES SO CHOOSE TO USE SUCH BETA SOFTWARE OR EVALUATION SOFTWARE, THEN NOTWITHSTANDING ANYTHING TO CONTRARY SET FORTH IN THIS AGREEMENT, THE FOLLOWING TERMS APPLY: (i) THE BETA SOFTWARE AND EVALUATION SOFTWARE ARE PROVIDED “AS IS,” AND WITH ALL FAULTS, AND WITH NO PROMISE, REPRESENTATION, WARRANTY, OR INDEMNITY WHATSOEVER; (ii) BEYONDTRUST HAS NO RESPONSIBILITY OR LIABILITY WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO BETA SOFTWARE OR EVALUATION SOFTWARE; (iii) Customer shall reasonably answer BeyondTrust’s questions and requests regarding Customer’s use of the Beta Software; and (iv) Customer shall use Evaluation Software only for internal evaluation purposes, to decide whether to purchase a subscription to the underlying Software. BeyondTrust may suspend or terminate the license granted in this Subsection 1.2(b) at any time and for any reason. Customer recognizes and agrees that Beta Software or Evaluation Software may disable itself after a predefined time period. If Customer provides any suggestions, recommendations, ideas, or other feedback (collectively, “Feedback”) to BeyondTrust regarding the Beta Software, Customer hereby agrees that BeyondTrust may use and incorporate into the Software any Feedback that Customer provides to BeyondTrust, and Customer shall not be entitled to any compensation for such Feedback. Customer hereby grants to BeyondTrust, free of charge, all rights in and to the Feedback.

**1.3 SOFTWARE OR OTHER OFFERINGS IN GENERAL.** For clarification, Customer’s Affiliates may access and use the On-Premise Software and Cloud Services subject to such Affiliates’ adherence to and compliance with the terms and conditions of this Agreement. Customer shall be primarily responsible for any breach of this Agreement by any of Customer’s Personnel or Affiliates. Customer’s rights to use On-Premise Software in accordance with this Agreement are limited to object code. In its use of Cloud Services, Customer is solely responsible and liable for (1) preserving the secrecy of its usernames and passwords, and (2) any and all activity that occurs under Customer’s account. Customer agrees that, to the extent that any applicable mandatory laws give it the right to perform any activity forbidden in this Agreement without BeyondTrust’s consent in order to gain certain information about a Software or Other Offering, before exercising any such right, Customer shall first request such information from BeyondTrust in a writing detailing the purpose for which Customer needs the information. Only if BeyondTrust denies Customer’s request (which BeyondTrust may do at its sole discretion) shall Customer exercise such statutory right.

## **2. ADDITIONAL SERVICES.**

**2.1 SUPPORT SERVICES.** BeyondTrust shall provide Support Services as a part of the Subscriptions for On-Premise Software and Cloud Services. Support Services shall begin on the date that, as applicable, BeyondTrust (i) delivers On-Premise Software to Customer, (ii) makes On-Premise Software available for download by Customer, or (iii) sends Customer a password for Cloud Services, and the Support Services shall continue for the remainder of the Subscription Term. For any On-Premise Software which is provided to Customer under a perpetual license and not under a Subscription, as specified in the applicable Order, upon expiration of the Support Term for the Support Services specified in the applicable Order, such Support Term shall automatically renew at BeyondTrust’s then-current rates and terms for subsequent one (1) year periods, unless either Party provides the other Party with written notice of its intent not to renew such Support Term at least thirty (30) days before expiration of the then-current Support Term period. If Customer elects not to extend the Support Term for the Support Services and later seeks to reinstate such Support Services, Customer shall pay to Beyond Trust all Fees for all Support Services that Customer would have paid to BeyondTrust as though such Support Term and Support Services had continued uninterrupted, in addition to the Fees applicable for the next subsequent Support Term. Customer shall pay to BeyondTrust the applicable Fees for Support Services in advance of any applicable renewal of the Support Term. Any and all Upgrades provided through the Support Services will become and be construed as a part of the Software immediately upon installation of such Upgrades.

**2.2 PROFESSIONAL SERVICES.** BeyondTrust shall provide, and Customer shall pay the Fees for, such professional services that BeyondTrust has agreed to provide (“Professional Services”) as are specified in an Order specifically calling for “professional services”. Unless otherwise provided on the Order or agreed by the Parties in writing, all Professional Services must be able to be completed within one hundred eighty (180) days of the Order effective date. Unless otherwise agreed between the Parties in writing, the Fees for Professional Services do not include expenses incurred by BeyondTrust in providing such Professional Services. Customer shall reimburse BeyondTrust’s reasonable and pre-approved travel and other expenses in connection with such Professional Services.

**2.3 E-LEARNING SERVICES.** If specified in an Order, BeyondTrust shall provide e-learning services related to the Software or Other Offerings that Customer receives pursuant to this Agreement (“E-Learning Services”), for up to one (1) year after execution of the applicable Order, to the extent that BeyondTrust makes such E-Learning Services generally available to its customers.

### **3. TITLE & IP.**

**3.1 OWNERSHIP IN GENERAL.** The Software offered pursuant to this Agreement, and all copies thereof, are licensed (or otherwise made available and accessible as the case may be), not sold, and Customer receives no title to or ownership of the Software itself or any copies thereof. BeyondTrust retains exclusive ownership of the Software or Other Offerings, including any media on which they are provided to Customer, except to the extent that this Agreement expressly transfers title to Hardware in accordance with Section 3.4 below of this Agreement. Customer receives no intellectual property license: (a) to any Software or Documentation provided through Cloud Services; or (b) to any other Software or Other Offering. Customer shall not (i) make any assertion contrary to the preceding sentence, (ii) jeopardize BeyondTrust's proprietary rights in the Software or Other Offerings, or (iii) attempt to acquire any rights to the Software or Other Offerings, other than the limited rights which are expressly provided by BeyondTrust in this Agreement. Customer hereby acknowledges that the Software and Documentation are works copyrighted under United States federal copyright law and protected by other intellectual property rights and embody valuable confidential and secret information of BeyondTrust and its third-party licensors. BeyondTrust shall own all rights in any copy, translation, modification, adaptation, or derivation of the Software or Other Offerings or other items of BeyondTrust Confidential Information, including any improvement or development thereof, and Customer shall, and hereby agrees to, execute such assignment documents as BeyondTrust reasonably requests to perfect, confirm, or transfer all such ownership rights.

**3.2 CUSTOMER DATA.** BeyondTrust acknowledges that, as between BeyondTrust and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to Customer Data. Customer hereby grants to BeyondTrust a non-exclusive, royalty-free, worldwide license to transmit and store Customer Data and perform all acts with respect to Customer Data as may be necessary for BeyondTrust to provide the Software or Other Offerings to Customer.

**3.3 USE OF CUSTOMER DATA.** BeyondTrust shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the provision of Software and Other Offerings, and maintaining, supporting, evaluating, improving and/or developing new Software and Other Offerings. Notwithstanding the foregoing, BeyondTrust may disclose Customer Data as required by applicable law or by proper legal or governmental authority. BeyondTrust shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense, unless such action or notice is prohibited by applicable law or by proper legal or governmental authority. In any event, BeyondTrust will not use Customer Data or derive information from it for any advertising or other marketing purposes without Customer's express written consent.

**3.4 RIGHTS TO HARDWARE (if applicable).** Title to purchased Hardware (excluding all software thereon, and also excluding any leased or evaluation Hardware), and the risk of loss for such Hardware, passes to Customer upon shipment of the Hardware from BeyondTrust's (or, as applicable, Reseller's) facility. For Hardware provided to Customer under a lease transaction for a limited time period or for evaluation purposes ("Temporary Hardware"), BeyondTrust retains title to such Temporary Hardware. Customer: (a) shall not offer or purport to sell, assign, sub-let, lend, pledge, mortgage, or otherwise part with personal possession of Temporary Hardware, or allow any lien or other encumbrance to attach to such Temporary Hardware; (b) shall maintain Temporary Hardware in a suitable environment and in good condition, subject to reasonable wear and tear; (c) shall return all Temporary Hardware to BeyondTrust at Customer's expense or pay the then-current retail value for any such Temporary Hardware that is not returned upon expiration of the lease term or evaluation period or which is damaged; and (d) shall not conceal, alter, or make any addition or alteration to Temporary Hardware without BeyondTrust's prior express written consent.

**4. FEES AND PAYMENTS.** In the event Customer purchases directly with BeyondTrust, Customer shall: (a) pay the undisputed Fees and other charges and expenses set forth in each Order; (b) make all payments in full and without deduction or set-off within thirty (30) days of the date of each invoice; and payments may be made in accordance with the Local Government Prompt Payment Act ("ACT"). Approved, but unpaid portions of any invoice shall accrue interest in the manner and to the extent authorized under the Act. Customer agrees to pay such reasonable extra fees as BeyondTrust may charge for credit card payments. BeyondTrust may adjust the Fees for Software or Other Offerings at the end of the Initial Subscription Term (or, if applicable, any then-current Renewal Subscription Term) or the Support Term (or, if applicable, any then-current renewal period of the Support Term), as applicable, by providing written notice at least sixty (60) days before the beginning of any subsequent Renewal Subscription Term or, as applicable, any subsequent renewal period of the Support Term. All Fees and other amounts paid or payable to BeyondTrust are exclusive of federal, state, or local excise, sales, use, intangible, value added, or other taxes assessed or imposed with respect to the Software or Other Offerings. Customer is solely responsible for the payment of all taxes resulting from this Agreement, purchases under all Orders, or the use of any Software or Other Offering, including without limitation VAT, sales use, gross receipts tax, withholding taxes, and any similar tax, except for taxes based on BeyondTrust's income. BeyondTrust has no obligation to provide any Software or Other Offerings, or other products or services, while any payment amount due and owing from Customer is delinquent. Unless otherwise specified in the Order, all payments shall be made in U.S. Dollars, and Customer shall be responsible for all of Customer's bank fees in transmitting payment. If Customer is tax exempt from paying sales, use, or other taxes, Customer must provide BeyondTrust with appropriate evidence of tax exemption for all relevant jurisdictions prior to invoicing.

### **5. TERM; TERMINATION.**

**5.1 TERM.** This Agreement is effective on the Effective Date and continues until terminated as provided herein (the "Term"). No Subscription Term or term for Hardware, Support Services, Professional Services or E-Learning Services, or other right to any BeyondTrust product or service will continue after any termination of this Agreement. In addition, any perpetual license for On-Premise Software shall also terminate upon any termination of this Agreement. The term for an On-Premise Software perpetual license shall begin on the date that, as applicable, BeyondTrust either (i) delivers such On-Premise Software to Customer, or (ii) makes such On-Premise Software available for download by Customer and shall continue until any termination of such license or this Agreement as provided herein. The initial term for any

Subscriptions granted herein commences on the effective date of the applicable Order and continues for the term specified in each such Order, or for one (1) year from the effective date of the applicable Order if the Order is silent with regard to the term (“Initial Subscription Term”). For purposes of clarity, the Initial Subscription Term may be for multiple years if specified in the applicable Order. Upon expiration of the Initial Subscription Term, the term of each Order will automatically renew thereafter for successive periods of one (1) year each, or for such other period as is stated on the applicable Order, (each, a “Renewal Subscription Term”), unless either Party notifies the other Party in writing of its intention to terminate an applicable Order at least thirty (30) days prior to the end of the Initial Subscription Term or, as applicable, the then-current Renewal Subscription Term. The Initial Subscription Term and all Renewal Subscription Term(s), if any, are collectively referred to as the (“Subscription Term”).

**5.2 TERMINATION FOR BREACH.** Either Party may terminate this Agreement thirty (30) days after notice to the other Party if the other Party has breached any material provision of this Agreement and fails to cure such breach within such thirty (30) day period. Notwithstanding the foregoing, BeyondTrust may terminate this Agreement immediately upon written notice if Customer materially breaches the provisions of the access and use restrictions set forth in this Agreement. Except for termination rights in this section and in Section 8 below, the Parties have no other right of early termination.

**5.3 EFFECTS OF TERMINATION.** Upon termination of this Agreement or of a Subscription Term or license for any reason, Customer shall immediately cease all use of all Software which is subject to such termination and any related Documentation and, within five (5) days of the effective date of such termination, return to BeyondTrust all such Software and Documentation, as well as any Temporary Hardware provided for use with such Software and any related BeyondTrust Confidential Information, or if BeyondTrust so requests, destroy the same and certify the manner, date, and time of destruction in writing. In the event of any such termination, Customer remains responsible for the payment of any Fees and other amounts incurred as of the effective date of such termination, including (except in the event of a termination for breach of this Agreement by BeyondTrust) payment of any applicable discounts provided for then-current Initial Subscription Term or Renewal Subscription Term, as applicable. The following provisions of this Agreement will survive any termination of this Agreement: (a) Sections 1, 3, 4, 5.3, 6, 7, 9, 10, 11, 12 and Exhibit A; and (b) and all other provisions which by their nature would extend beyond the Term of this Agreement.

## **6. DISCLAIMER AND LIMITATION OF LIABILITY.**

**6.1 DISCLAIMER.** BEYONDTRUST HEREBY EXPRESSLY AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AS WELL AS ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, BEYONDTRUST DOES NOT WARRANT OR REPRESENT THAT: (a) THE OPERATION OF THE SOFTWARE OR OTHER OFFERINGS WILL BE UNINTERRUPTED OR ERROR-FREE; (b) THAT THE SOFTWARE OR OTHER OFFERINGS WILL OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR SERVICE; OR (c) THAT THE SOFTWARE OR OTHER OFFERINGS ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION. SOFTWARE AND OTHER OFFERINGS ARE PROVIDED “AS IS,” AND BEYONDTRUST MAKES NO PROMISES, REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESSED OR IMPLIED, REGARDING THE SOFTWARE OR OTHER OFFERINGS. CUSTOMER HEREBY ACKNOWLEDGES THAT THE RECORDING FEATURES OF CERTAIN SOFTWARE MAY SUBJECT CUSTOMER TO LAWS AND/OR REGULATIONS REGARDING THE RECORDING OF COMMUNICATIONS, AND CUSTOMER IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH SUCH LAWS AND/OR REGULATIONS.

### **6.2 LIMITATION OF DAMAGES.**

(a) **Excluded Damages.** NEITHER PARTY WILL HAVE LIABILITY FOR ANY LOSS OF DATA, LOSS OF PROFITS, OR INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR OTHER OFFERINGS.

(b) **Dollar Cap.** NEITHER PARTY’S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR OTHER OFFERINGS WILL EXCEED THE FEES PAID BY CUSTOMER FOR THE APPLICABLE SOFTWARE OR OTHER OFFERING GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM.

(c) **Clarifications.** THE LIABILITIES LIMITED BY THIS SECTION 6.2 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF A PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF A PARTY’S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. NEITHER PARTY WILL BE LIABLE FOR CLAIMS MADE MORE THAN TWO (2) YEARS AFTER THE EVENT GIVING RISE TO THE CLAIM. Notwithstanding the foregoing, the limitations of this Section 6.2 do not apply to infringement of intellectual property rights or to a Party’s obligations or liabilities set forth in Section 1 (Access and Use), Section 4 (Fees and Payments), Section 7 (Indemnification), and Section 9 (Confidential Information), or to claims for attorney’s fees and other litigation costs either Party becomes entitled to recover as a prevailing party in any action. If applicable law limits the application of the provisions of this Section 6.2, a Party’s liability will be limited to the maximum extent permissible under such applicable law. For the avoidance of doubt, a Party’s liability limits, and other rights set forth in this Section 6.2 apply likewise to a Party’s Personnel and Affiliates, and to BeyondTrust’s licensors, suppliers, advertisers, sponsors, and other representatives, as well as to Resellers.

7. **INDEMNIFICATION.** As used below in this Section 7: (1) “Indemnified Claim” refers to any claim listed in the first sentence of Section 7.1, or to claims listed in Section 7.2; and (2) “Associates” refers to a Party’s officers, directors, shareholders, parents, subsidiaries, agents Affiliates, successors, and assigns.

7.1 **INDEMNITY FROM BEYONDTRUST.** BeyondTrust shall defend at its own expense any third party action against Customer or its Associates to the extent based on a claim that the Software or Other Offerings, as made available to Customer by BeyondTrust and used in accordance with the terms and conditions of this Agreement, directly infringes a United States registered patent, copyright or trademark, and BeyondTrust shall pay the costs and damages finally awarded against Customer that are specifically attributable to such claim or those costs and damages agreed to by BeyondTrust in a monetary settlement of such action. Notwithstanding the foregoing, BeyondTrust has no responsibility pursuant to the preceding sentence for any Indemnified Claim arising out of or related to: (a) any modification to a Software or Other Offering not made by BeyondTrust; (b) compliance with Customer’s designs, specifications, or instructions; (c) any combination or use of the applicable Software or Other Offering with or in any third party software, hardware, process, firmware, or data, to the extent that such claim is based on such combination or use; (d) Customer failure to use the Software or Other Offerings in accordance with the applicable Documentation and/or outside the scope of the rights granted under this Agreement; (e) Customer’s continued use of the allegedly infringing Software or Other Offering after being notified of the alleged infringement claim or after being provided a modified version of the Software or Other Offering by BeyondTrust at no additional cost that is intended to address such alleged infringement; (f) or Customer’s breach of this Agreement.

7.2 **INDEMNITY FROM CUSTOMER** Intentionally Omitted.

7.3 **PROCEDURE.** The Party requesting indemnification hereunder (“Indemnified Party”) shall: (a) provide the other Party (“Indemnitor”) with prompt notice of the Indemnified Claim, provided that failure to do so relieves Indemnitor of its obligations to the Indemnified Party above only to the extent of any material prejudice; (b) permit Indemnitor to control the defense and/or settlement of the Indemnified Claim; and (c) provide to Indemnitor all available information and assistance reasonably necessary for the defense. Indemnified Party shall have the right, at its sole cost and expense, to participate in the defense and settlement of an Indemnified Claim with counsel of its choice.

8. **IP REMEDIES.** If any Software becomes or, in BeyondTrust’s opinion, is likely to become the subject of an injunction preventing its use as contemplated herein, BeyondTrust may, at its option: (a) procure for Customer the right to continue using such Software; (b) replace or modify such Software so that it becomes non-infringing without substantially compromising its functionality; or if (a) and (b) are not commercially practical in BeyondTrust’s reasonable opinion, (c) terminate Customer’s rights to the allegedly infringing Software. In case of termination pursuant to this Section 8, BeyondTrust shall refund: (i) in the case of an On-Premise Software perpetual license, the license Fees paid by Customer for the allegedly infringing On-Premise Software, less depreciation at the rate of 1/3 of such license Fees per year, or, if licensed at the time by Customer for less than one (1) year, a pro rata portion of the license Fees for that part of the year from the date of payment by Customer to the date of termination of the perpetual license for such allegedly infringing On-Premise Software; or (ii) the prepaid and unused pro-rata portion of the Fees for the Subscription for the allegedly infringing On-Premise Software or Cloud Services. If BeyondTrust selects the option in Subsection 8(b) or 8(c) herein, Customer shall immediately cease use of the allegedly infringing Software. SECTION 7 AND THIS SECTION 8 SET FORTH BEYONDTRUST’S ENTIRE OBLIGATION AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR ALLEGED OR ACTUAL INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION BY SOFTWARE OR OTHER OFFERINGS.

## 9. **CONFIDENTIAL INFORMATION.**

9.1 **CONFIDENTIAL INFORMATION.** “Confidential Information” refers to the following items one Party to this Agreement (“Discloser”) discloses to the other Party (“Recipient”): (a) any document Discloser marks “Confidential” or designates as “Confidential” in writing; or (b) any information Discloser orally designates as “Confidential” at the time of disclosure. In addition, BeyondTrust’s Confidential Information, as Discloser, includes the Software, any specifications regarding any Software or Other Offering, any pricing information regarding any Software or Other Offering, proprietary algorithms, SOC 2 reports and any information related to BeyondTrust research and development. However, Confidential Information does not include any information received from the Discloser that Recipient can demonstrate: (i) is in Recipient’s possession at the time of disclosure without an obligation of confidentiality; (ii) is independently developed by Recipient without use of or reference to the Discloser’s Confidential Information; (iii) becomes known publicly, before or after disclosure to the Recipient by Discloser, other than as a result of Recipient’s improper action or inaction; or (iv) is approved for release in writing by Discloser.

9.2 **NONDISCLOSURE.** Recipient shall not, without Discloser’s prior written consent (in each instance): (a) publish, disclose, or otherwise divulge Discloser’s Confidential Information; or (b) use Discloser’s Confidential Information for any purpose other than to support provision and use of Software or Other Offerings as authorized by, and in accordance with, the terms and conditions of this Agreement. Recipient shall use at least the same level of care to protect Discloser’s Confidential Information as it uses to protect its own sensitive non-public information, but in no event less than a commercially reasonable degree of care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Discloser’s Confidential Information that comes to Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Discloser’s Confidential Information as required by applicable law or by proper legal or governmental authority; provided, however, that Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser’s expense, unless such notice or action is prohibited by applicable law or proper legal or governmental authority. Recipient agrees that breach of this Section 9 would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy at law or in equity, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security. This Agreement does not transfer ownership of Discloser’s Confidential Information or grant a license thereto to Recipient or any other party.



For clarity, this Section 9 relates only to the disclosure by one Party to the other Party of Confidential Information as defined herein and not to data that Customer or its Clients transmit or access through Software or Other Offerings provided by BeyondTrust.

**9.3 FOIA.** The provisions of this section are subordinate to the Illinois Freedom of Information Act (FOIA). Compliance by the Customer with its obligations under FOIA shall not constitute a violation of this paragraph.

## **10. USAGE COMPLIANCE.**

**10.1 VERIFICATION REPORT.** On no more than an annual basis, Customer shall provide BeyondTrust with a report detailing Customer's installation and usage of the Software with sufficient specificity to establish Customer's compliance (or non-compliance) with the access and use limitations set forth in the applicable Order or this Agreement.

**10.2 COMPENSATION.** For On-Premise Software subscriptions and Cloud Services subscriptions, if Customer has exceeded the rights granted under this Agreement, Customer shall pay additional fees to BeyondTrust for the excess usage at BeyondTrust's then-current rates. Customer acknowledges and agrees that BeyondTrust may sell Subscription rights to Software or Other Offerings in unit multiples, and Customer shall pay the applicable Fees for the number of units that cover at least Customer's usage.

## **11. SECURITY AND DATA PROCESSING.**

**11.1 SECURITY.** BeyondTrust shall: (i) have in place administrative, physical and technical measures designed to ensure the protection of the security and confidentiality of Customer Data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties; and (ii) have commercially reasonable measures in place designed to protect the security and confidentiality of Customer Data, as more specifically set forth at [www.beyondtrust.com/security-requirements](http://www.beyondtrust.com/security-requirements).

**11.2 DATA PROCESSING ADDENDUM.** The DPA, which is hereby made a part of and incorporated into this Agreement by this reference, sets forth the terms and conditions which BeyondTrust may receive and process "Personal Data" (as defined in the DPA) received by BeyondTrust from Customer. To the extent applicable, the DPA shall apply with respect to BeyondTrust's processing of such Personal Data received by BeyondTrust as more specifically set forth at [www.beyondtrust.com/dpa](http://www.beyondtrust.com/dpa).

## **12. GENERAL PROVISIONS.**

**12.1 INDEPENDENT PARTIES.** The Parties acknowledge that each Party is an independent contractor of the other Party, and each Party may engage in other business activities at its sole discretion. This Agreement does not in any way create or constitute a relationship of employment, partnership, or a joint venture between the Parties. Customer hereby acknowledges and agrees that: (a) Resellers and BeyondTrust are independent contractors; (b) BeyondTrust has no liability for any act or omission of any Reseller; and (c) Resellers have no power to modify this Agreement or to bind BeyondTrust in any manner whatsoever, including without limitation any power to make any representation, warranty, or indemnity on BeyondTrust's behalf.

**12.2 ASSIGNMENT.** Neither Party may assign or transfer any of its rights under this Agreement or delegate any of its duties or obligations under this Agreement to any third party, other than to its Affiliates, without the other Party's prior written consent, except that an assigning Party may so assign, transfer or delegate without the other Party's consent pursuant to a transfer of all or substantially all of the assigning Party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment or transfer in violation of the foregoing will be void. In the case of any permitted assignment or transfer of under this Agreement, this Agreement or the relevant provisions hereof shall be binding upon, and inure to the benefit of, the Parties and their respective successors, executors, heirs, representatives, administrators and permitted assigns. In the event BeyondTrust permits Customer to assign this Agreement or a license granted hereunder, then the transferee must accept in writing the terms and conditions of this Agreement, and Customer's license to use the Software shall automatically terminate immediately upon such transfer.

**12.3 FORCE MAJEURE.** Each Party will be excused from performance of any of its obligations under this Agreement for any period during which, and to the extent that, it is prevented from performing such obligation as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, due to acts or omissions of government or military authority, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, internet or other telecommunication delays, communication line failure and power failures. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to forgive Customer's failure, or Customer's obligation, to pay any and all Fees and other amounts when due which are owed to BeyondTrust under this Agreement.

**12.4 NOTICES.** All notices given pursuant to this Agreement shall be in writing and delivered by hand, by registered or certified mail with proper postage, by third party delivery service (e.g., FedEx, UPS) or by email (with confirmation copy sent by certified mail). Notices shall be delivered to the recipient Party and addressed to the signatory for such Party at the address for such Party that is set forth on the applicable Order, or to such other person and address as may be designated in writing by the recipient Party in accordance with this Section 12.4. All such notices will be deemed received upon the earlier of actual receipt or actual delivery to the notice address.

**12.5 GOVERNING LAW; VENUE.** This Agreement, and all claims arising out of or related to this Agreement, will be governed solely by the internal laws of the State of Illinois, and applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the Parties' rights or duties; The Parties' consent to the personal and exclusive jurisdiction of the federal and state courts of Kane County, Illinois and the State of Illinois and agree that such courts are convenient forums. This Section 12.5 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

**12.6 LICENSE TO GOVERNMENT.** The Software and any Documentation and e-learning systems are *commercial items*, as that term is defined in 48 CFR 2.101, consisting of *commercial computer software* and *commercial computer software documentation*, as those terms are used in 48 CFR 12.212. If the Software or any Documentation is acquired by or on behalf of the U.S. government or by a U.S. government contractor (including without limitation prime contractors and subcontractors at any tier), then in accordance with 48 CFR 227.7202-4 (for Department of Defense licenses only) and 48 CFR 12.212 (for licenses with all federal government agencies), the government's rights to the Software and such Documentation are limited to the commercial rights specifically granted in this Agreement, as restricted by this Agreement. The rights limited by the preceding sentence include, without limitation, any rights to reproduce, modify, perform, display, disclose, release, or otherwise use the Software or Documentation. This Section 12.6 does not grant Customer any rights not specifically set forth in this Agreement.

**12.7 COMPLIANCE WITH LAWS.** Each party shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information. Without limiting the generality of the foregoing, Customer acknowledges the Software is subject to U.S. export jurisdiction, and each party shall comply fully with all export and import laws, regulations, orders, and policies of the U.S. and any other applicable jurisdiction, including, without limitation, export licensing requirements, end user, end-use and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities Customer acknowledges and agrees that, with respect to applicable import and export restrictions, BeyondTrust has no further responsibility after the initial distribution to Customer within the original country of sale. Each party represents and warrants that neither the U.S. Bureau of Industry and Security nor any other federal agency has suspended, revoked, or denied a party's export privileges. Customer agrees it shall not use or transfer Software or Other Offerings for end use relating to any nuclear, chemical, or biological weapons, or development of missile technology unless authorized by the U.S. Government by regulation or specific license. Customer further agrees it may not use, sell, lease, export, re-export, or transfer (in-country), either directly or indirectly, Software or Other Offerings to a prohibited destination and/or country under the U.S. Export Administration Regulations ("EAR") or U.S. sanctions regulations, which currently includes Cuba, Iran, North Korea, Syria, and the Donetsk People's Republic, Luhansk People's Republic, and Crimea regions of Ukraine. Please note that this list ("Embargoed Destinations") is subject to change by U.S. Government authorities, and Customer should independently verify which destinations are prohibited. In addition to the Embargoed Destinations, Customer may not use, sell, lease, export, re-export, or transfer (in-country), either directly or indirectly, Software or Other Offerings to a person or entity barred by the U.S. Government from participating in export activities. Denied persons/entities include, but are not limited to, persons and/or entities such as those listed on the U.S. Commerce Department's Denied Persons List, Entity List, and the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") Specially Designated Nationals List. Finally, Customer represents and warrants that Customer is not the subject or target of economic sanctions of the United States or other applicable jurisdictions, and that Customer is not located in a country or territory subject to a U.S. Government embargo (including the "Embargoed Destinations") or that are located in the Republic of China or Russian Federation (collectively, an "Ineligible Customer"). BeyondTrust shall have the right to reject any Order from an Ineligible Customer.

**12.8 INTEGRATION AND AMENDMENT.** This Agreement and written documents referenced herein (including the Order) constitute the entire agreement of the Parties and supersede and extinguish all prior agreements or understandings, representations or warranties, whether written or oral, relating to the subject matter hereof. The terms and conditions of this Agreement supersede those of any prior contract between the Parties related to the Software or Other Offerings, as of the Effective Date of this Agreement and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the Parties, except that prior and still active orders between the Parties related to the Software are incorporated into this Agreement and are considered Orders by this reference. This Agreement may not be modified, amended, nor may additional obligations be assumed, by either Party to this Agreement except (a) by written agreement specifically referring to this Agreement signed by the respective authorized representatives of the Parties or (b) by Customer's execution of a subsequent electronic agreement provided by BeyondTrust with respect to the same Software or Other Offerings. Customer represents and acknowledges that, in entering into this Agreement, it did not rely on any representations or warranties other than those explicitly set forth in this Agreement. CUSTOMER HEREBY AGREES THAT ANY CONFLICTING, INCONSISTENT, VARYING OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER WRITTEN NOTIFICATION OR DOCUMENT ISSUED BY CUSTOMER IN RELATION TO THE SOFTWARE OR OTHER OFFERINGS WILL BE INAPPLICABLE AND OF NO FORCE OR EFFECT.

**12.9 PUBLIC RELATIONS** Intentionally Omitted.

**12.10 CONSTRUCTION.** This Agreement will be construed simply according to its fair meaning and not strictly for or against any Party by reason of authorship or for any other reason. References to "including" mean "including, without limitation." If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement shall remain in full force and effect, provided that in such event the Parties agree to negotiate in good faith enforceable substitute provisions for such invalid or unenforceable provisions that most nearly effect the Parties' original intent, and which are valid and enforceable under applicable law. No waiver of any breach or default hereunder will be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver will waive any subsequent breach or default. Nothing expressed or implied in this Agreement will be construed to give any rights or remedies to any third party, including without limitation any third-party beneficiary rights, except as applicable the Parties' respective executors, heirs, representatives, administrators, successors, and assigns.

**12.11 REPRESENTATIONS.** Customer represents and acknowledges that: (a) it has read and understands this Agreement; and (b) it has had an opportunity to have its legal counsel review this Agreement. In addition, the individual accepting this Agreement on Customer's

behalf personally represents that he or she is duly authorized to accept this Agreement on behalf of Customer and that this Agreement is binding upon Customer.

**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized representatives to sign this Agreement upon the date first set forth above.

**BEYONDTRUST CORPORATION**

\_\_\_\_\_

By: \_\_\_\_\_ (Signature)

By: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_ (Print)

Name: \_\_\_\_\_ (Print)

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

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

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

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



## EXHIBIT A

### DEFINED TERMS

In addition to any other terms defined elsewhere in this Agreement, the following terms have the following meanings:

“Active Login” means use of the BeyondTrust Remote Support Software as described in the applicable Order, by a single service representative, logged in directly or indirectly to the Remote Support server software, at any given time. The number of Active Logins is the number of service representatives accessing the Remote Support server software concurrently.

“Active Endpoints” means the number of Endpoints accessed by the BeyondTrust Privileged Remote Access Software, as described in the applicable Order. “Endpoint” means any network device or computer system, virtual or physical, such as, but in no event limited to, a router, server, storage array, database, or desktop, and/or any unique application made accessible via the Secure App feature included with the Software; and/or any unique URL made accessible through BeyondTrust Web jump feature published as an endpoint within the Software

“Affiliate(s)” means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity or one or more of the other affiliates of that entity (or a combination thereof), as of the Effective Date or thereafter; provided, however, such entity shall be considered an Affiliate only for the time during which such control exists. Solely for the purposes of this definition, an entity shall “control” another entity if the first entity: (a) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity, or (b) has the ability to elect a majority of the directors of the other entity. Each Party shall at all times be primarily responsible for the acts or omissions of its Affiliates.

“Asset” means a device, physical or virtual, that meets one of the descriptions for Active Login, Active Endpoints, Managed User and/or Computer Object, Managed Devices and Managed Servers.

“Client” means a direct customer of Customer.

“Cloud Services” means provision of access to and use of the Software, and in some cases the Documentation, remotely over the Internet. Cloud Services do not include or provide On-Premise Software.

“Cloud Service Level” located at <https://www.beyondtrust.com/cloud-service-level> as applicable, which will apply only to BeyondTrust’s provision of the Cloud Services and not to the provision of On-Premise Software.

“Customer Data” means all graphic user interface, text, content, images, video, designs, products, computer programs, drawings, documentation, and other materials of any kind posted, submitted, provided or otherwise made available to BeyondTrust by Customer in connection with the Software and Other Offerings.

“DPA” means the provisions detailed in the BeyondTrust Data Processing Addendum located at: [www.beyondtrust.com/dpa](http://www.beyondtrust.com/dpa)

“Documentation” means the documents, help files, and other textual matter, in any form or media, that are included with the Software and describe its specifications, functionality, and limitations.

“Effective Date” means the earlier of the following: (i) execution of this Agreement by both Parties, (ii) the effective date of the first Order, or (iii) the date the Software is first made available to Customer.

“Fee(s)” means the fee(s) charged by BeyondTrust (as set forth on the applicable Order) for each Software or Other Offering.

“Hardware” means the computer equipment distributed by BeyondTrust, or by a Reseller on BeyondTrust’s behalf, pursuant to an Order. Hardware may contain firmware or software.

“Instance” means a single deployed application (e.g., production, test, or disaster recovery)

“Managed User and/or Managed Computer Object” is any physical, virtual, Container or computing device, wired or wireless and regardless of the number of IP addresses assigned, that will be either interacting with software rules, have an agent installed, or be targeted for an assessment. A “Virtual Machine” is a virtual emulation of a physical computer. Virtual Machines exist in virtual environments including but not limited to VMWare Server, Hyper-V, Azure VM’s, Amazon AWS VM’s, or zOS LPAR’s. “Container(s)” is an emulation that occurs at the OS level. This is a contrast to Virtual Machines, which emulate at the hardware level up.

“Managed Devices” means any network device being managed by a Software or Other Offering that is virtual or physical, such as a desktop PC, router, or switch that is not a server OS or functioning as a server of Customer and/or Clients.

“Managed Servers” means any network device being managed by a Software or Other Offering that is (a) acting as a server or running a server-based operating system, virtual or physical, (b) used for serving applications, websites, DNS, Directory Service, DHCP, files, storage arrays, databases or (c) filling any other server-related roles on behalf of Customer and/or Clients.

“On-Premise Software” means electronically delivered Software provided for installation on computers owned or managed by Customer. On-Premise Software does not include Cloud Services, or any Software provided through Cloud Services.

“Order” means an ordering document executed by Customer and BeyondTrust, or a Reseller, on BeyondTrust’s standard order form, referencing this Agreement and calling for provision of one or more Software or Other Offerings; provided a Customer purchase order for the second or later purchase under this Agreement will become an Order upon execution by BeyondTrust or a Reseller.

“Personnel” means individual employees, contractors, and agents of an entity.

“Reseller” means a reseller of the Software authorized by BeyondTrust. As between the Parties, BeyondTrust has sole and complete discretion to grant or terminate Reseller status.

“Software” means the applicable object code form of the BeyondTrust software as listed on the applicable Order.

“Software or Other Offering(s)” means: (a) Software and Documentation, in each case whether provided as or with On-Premise Software or via Cloud Services; (b) Hardware; (c) deliverables provided through Professional Services; and (d) the Professional Services, Support Services, and E-Learning Services.

“Subscription” means the purchase by Customer under an Order of either an On-Premise Software limited term license or Cloud Services.

“Support Services” means the then-current services provided by BeyondTrust as set forth in the “Support Guide” located at <https://www.beyondtrust.com/resources/datasheets/customer-support-guide>

“Support Term” means the time period specified in the applicable Order during which Support Services shall be provided by BeyondTrust to Customer in connection with an On-Premise Software perpetual license, which time period for Support Services is subject to renewal or termination in accordance with the Standard Terms & Conditions.

“Upgrade” means any modification, correction, enhancement, deletion, or substitution to the Software, including but not limited to, any data file or module thereto that may be provided by BeyondTrust.