Software License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE BEYONDTRUST PRODUCTS (DEFINED BELOW). BY DOWNLOADING, INSTALLING OR USING THE BEYONDTRUST PRODUCTS, YOU INDICATE YOUR ACCEPTANCE OF AND AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT DOWNLOAD, INSTALL OR USE THE BEYONDTRUST PRODUCTS.

This Software License Agreement (the "Agreement") is made between BeyondTrust Software, Inc., with its principal place of business located at 5090 North 40th Street, Suite 400, Phoenix, AZ 85018 ("BeyondTrust") and you, the customer ("Licensee").

1. DEFINITION OF BEYONDTRUST PRODUCTS. For purposes of this Agreement, the "BeyondTrust Products" shall mean (i) the BeyondTrust software product(s) (the "Software") identified in the ordering document entered into between Licensee and BeyondTrust (the "Order") ; (ii) any hardware which BeyondTrust may provide associated with the Software ("Equipment"), if applicable; and (iii) the related user manuals and other related documentation provided by BeyondTrust ("Documentation"). The Software will be delivered via Internet download(s) as and when determined by BeyondTrust.

2. LICENSE. Subject to the terms and conditions of this Agreement and Licensee's payment of all applicable fees, BeyondTrust hereby grants Licensee a nonexclusive, nontransferable, non-assignable (except as provided in Section 15A) revocable right and license in the Territory to install and use the Software (a) on the number of physical and virtual machine(s) designated on the Order and located at the physical location(s), if any, designated in the Order, or (b) on the Managed User Objects and/or Managed Computer Objects set forth in the Order; or (c) to manage the number of IP addresses indicated on the Order, and to use the Documentation provided in connection therewith. Licensee's use of the Software is limited to the number of licenses set forth in the Order (the "Permitted Licenses"). If Licensee desires to use the BeyondTrust Products in excess of the Permitted Licenses or at another location, Licensee must first obtain the written consent of BeyondTrust, and pay the then-current Software license fee and transfer and/or upgrade charges. "Territory" means the United States of America unless otherwise agreed in the Order.

3. RESTRICTIONS. The BeyondTrust Products licensed to Licensee under this Agreement may only be used to process data which is Licensee's property and to administer Licensee's internal business operations. Licensee may not redistribute, assign, sell, rent, lease, sublicense, lend, transfer, resell or distribute the BeyondTrust Products to any third party or use the BeyondTrust Products on behalf of any third-party. Licensee agrees not to copy the BeyondTrust Products, in whole or in part, except for backup purposes, unless BeyondTrust consents in writing. In total no more than one (1) copy of the Software may be generated by Licensee for the authorized purposes, unless given written consent by BeyondTrust. Licensee agrees not to modify, obscure, or delete any proprietary rights notices included in or on the Software, Documentation, or media, and Licensee agrees to include all such notices on all copies. Licensee may not modify the BeyondTrust Products, make derivative works of the Software, including customization, translation or localization, nor merge the Software into any other computer programs. Licensee may not reverse engineer or disassemble or decompile the Software, in whole or in part or otherwise attempt to derive its source code. Licensee may

not (i) directly or indirectly permit any third party to use or copy the Software; (ii) use the Software to gain access to any third party data or system; or (iii) disclose to any third party the results of any benchmark or other tests of the Software. Licensee agrees to use the Software in compliance with all applicable laws, rules and regulations.

4. TITLE. In the event Licensee acquires Equipment under this Agreement, title to such Equipment shall pass to Licensee upon shipment (unless such Equipment is rented, leased or loaned to Licensee). In all other instances, Licensee acknowledge that, as between Licensee and BeyondTrust, title and full ownership, trade secrets, copyright, patent rights and all other intellectual property and proprietary rights to the BeyondTrust Products (including, without limitation any third-party software incorporated therein) remain with BeyondTrust, whether or not any portion thereof is or may be validly copyrighted or patented. Licensee is only granted the limited license rights to use the BeyondTrust Products as described in this Agreement. Licensee agrees to treat the BeyondTrust Products as BeyondTrust's proprietary information. Licensee will take all reasonable steps to protect the BeyondTrust Products from disclosure to or use by any unauthorized third party. Licensee agrees that BeyondTrust shall own and have the right to exploit and include in the Software any suggestions, enhancement requests, feedback, recommendations or other information provided by Licensee related to the Software.

5. TERM AND TERMINATION. This Agreement is effective from the day BeyondTrust grants the applicable license hereunder, and continues until terminated as provided herein. Either party may immediately terminate this Agreement if the other breaches any material terms or condition of this Agreement; provided, however, that if any such breach is curable, the non-breaching party may terminate this Agreement if the breaching party fails to cure such breach within thirty (30) days of written notice describing such breach. Upon termination of this Agreement for any reason, Licensee will immediately return the BeyondTrust Products, together will all copies in any form and any other Confidential Information in Licensee's possession or control or certify to BeyondTrust in writing that the same has been destroyed. Any payment obligations as of the termination or expiration of the Agreement shall remain in effect. Those provisions of this Agreement that by their terms should survive any termination of this Agreement shall be deemed to survive and remain in full force and effect, including, but not limited to Sections 1, 3, 4, 5D, 7- 11, 14, and 15.

6. SUPPORT AND UPDATES. BeyondTrust will provide extended software support ("ESS") for the Software for an initial period beginning on the date BeyondTrust delivers the Software to Licensee or otherwise makes the Software available for download by Licensee and ending twelve (12) months thereafter (the "Initial ESS Period"), unless agreed to otherwise by Licensee and BeyondTrust. Unless otherwise stated in the applicable Order, ESS will consist of (a) that level of support indicated on the applicable Order, and (b) Software error corrections, and any updates that

BeyondTrust offers, when and if available, as part of ESS (which, for the avoidance of doubt exclude enhancements which are separately offered by BeyondTrust). Following the Initial ESS Period, ESS shall automatically renew at BeyondTrust's then-current rates and terms for subsequent one-year periods (each, a "Renewal ESS Period") unless either party provides the other party with notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current period. ESS fees shall be invoiced and paid in advance of the applicable Renewal ESS Period and shall be subject to the payment requirements set forth in this Agreement. BeyondTrust's sole obligation (and Licensee's sole and exclusive remedy) in the event of a breach by BeyondTrust of this Section shall be to either correct or replace the affected BeyondTrust Products, re-perform the applicable Service, or, at BeyondTrust's option, to refund a portion of the paid ESS fees based on the remaining length of the Initial ESS Period or Renewal ESS Period, as applicable.

7. PAYMENT. Licensee agrees to pay to BeyondTrust the license fees and ESS fees for the BeyondTrust Products. Licensee shall make all payments due to BeyondTrust in full within thirty (30) days from the date of each invoice or such other period (if any) as may be indicated in such invoice. Any amounts payable to BeyondTrust by Licensee that remain unpaid after the due date shall be subject to a late charge equal to the lesser of (a) 1.5% of the invoice amount per month from the due date until such amount is paid or (b) the maximum rate permitted by law. For the avoidance of doubt, Licensee is solely responsible for all taxes (including taxes which may be applicable to online transactions in Licensee's state), fees, duties and governmental assessments (except for taxes based on BeyondTrust's net income) that are imposed or become due in connection with the subject matter of this Agreement.

8. WARRANTY AND DISCLAIMER.

A. Warranty. BeyondTrust warrants to Licensee that (i) the BeyondTrust Products as delivered not contain or transmit any computer code or other technology specifically designed to disrupt, disable, harm, or otherwise impede in any manner, any other software, hardware, computer system or network (sometimes referred to as "malware," "viruses" or "worms"); (ii) any media which BeyondTrust may provide (the "Media") is and will be free from defects in materials and workmanship under normal use; and (iii) any services performed by BeyondTrust pursuant to this Agreement (the "Services") will be performed in a good and workmanlike manner by appropriately qualified and trained personnel. If the Software, the Media or the Services (as applicable) fails to fulfill or is not in compliance with one or more of the warranties set forth in this Section 8(A), then Licensee shall inform BeyondTrust in writing and provide to BeyondTrust such information and materials as BeyondTrust may reasonably request to document and reproduce such noncompliance. Such information may include, if and to the extent applicable, a written explanation of the problem with the Software, the Media, the Services, or other noncompliance, as applicable, a written description of the operating environment. As Licensee's sole and exclusive remedy, BeyondTrust shall, as applicable, modify the Software, replace the Software with other software offering comparable functionality, replace the defective Media or re-perform the Services, in each case as may be necessary to cause the Software, the Media or the Services (as applicable) to comply with the warranties set forth in this Section 8(A). BeyondTrust shall have no responsibility if the Software has been altered in any way, if the Media has been damaged by misuse, accident, abuse, modification or misapplication, or if the failure or non-compliance arises out of use of the Software other than in a BeyondTrust recommended hardware configuration. Any such misuse, accident, abuse, modification or misapplication of the Software and/or Media will void the warranty above.

B. DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8A ABOVE, THE BEYONDTRUST PRODUCTS ARE OFFERED "AS IS," AND BEYONDTRUST GRANTS LICENSEE AND LICENSEE RECEIVES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED OR OTHERWISE. BEYONDTRUST SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BEYONDTRUST DOES NOT WARRANT THAT THE OPERATION OF ANY OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE OR HARDWARE, OR THAT IT WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA.

9. LIMITATION OF LIABILITY.

A. NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BEYONDTRUST AND ITS LICENSORS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE INDIRECT LOSS OF PROFIT, REVENUE OR CONTENT) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF BEYONDTRUST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. LIMITATION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BEYONDTRUST'S AND ITS LICENSORS' CUMULATIVE, AGGREGATE LIABILITY TO LICENSEE OR ANY OTHER PARTY FOR ANY DAMAGES SHALL NOT EXCEED THE FEES PAID BY LICENSEE TO BEYONDTRUST FOR THE BEYONDTRUST PRODUCTS GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY.

10. INDEMNIFICATION.

A. Indemnities. BeyondTrust agrees to defend and hold Licensee harmless from and against any third-party claim, action or proceeding (a "Claim") that the BeyondTrust Products as made available to Licensee by BeyondTrust infringe any United States patent, copyright or trademark or misappropriates any trade secret. Licensee agrees to defend and hold BeyondTrust harmless from and against any Claim arising from or in connection with any breach of this Agreement by Licensee.

B. Procedure. The party requesting indemnification hereunder (the "Indemnified Party") will (i) provide the other party (the "Indemnifying Party") with prompt notice of any such Claim (provided, however, that failure to do so shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent of any material prejudice to the Indemnifying Party as a direct result of such failure); (ii) permit the Indemnifying Party to assume and control the defense of such action upon the

Indemnifying Party's written notice to the Indemnified Party of its intention to indemnify; and (iii) upon the Indemnifying Party's written request, provide to the Indemnifying Party all available information and assistance reasonably necessary for the Indemnifying Party to defend such Claim. The Indemnified Party shall have the right, at its sole cost and expense, to participate in the defense and settlement of any such Claim with counsel of its choice. Notwithstanding the foregoing, BeyondTrust shall have no obligation to indemnify Licensee to the extent that any Claim arises from (a) Licensee's use of the BeyondTrust Products in contravention of this Agreement or the Documentation; (b) the combination or use of the BeyondTrust Products with any other services, technology, content or material that were neither (x) provided by BeyondTrust, nor (y) specified by BeyondTrust for use with the BeyondTrust Products as contemplated by this Agreement; (c) modification of the BeyondTrust Products; or (d) Licensee's use of the BeyondTrust Products after Licensee reasonably could have implemented a non-infringing alternative pursuant to Section 10(C)(ii) or (iii).

C. <u>Right to Ameliorate Damages</u>. In the event that a court of competent jurisdiction determines or in the event that BeyondTrust, in its sole discretion, reasonably determines, that the BeyondTrust Products, or any portion thereof, infringes or misappropriates, or may infringe or misappropriate, any third-party intellectual property right, BeyondTrust shall, as Licensee's sole and exclusive remedy (but without limitation of BeyondTrust's indemnification obligations under Section 10(A)), and at BeyondTrust's sole discretion, either: (i) obtain a license, at reasonable cost, for Licensee to continue using the BeyondTrust Products, or portion thereof; (ii) modify the BeyondTrust Products while retaining substantively equivalent functionality; (iii) replace the affected BeyondTrust Products with functionally equivalent software or services; or (iv) terminate this license in whole or in part (in which event, Licensee shall immediately terminate use of such BeyondTrust Products and the provisions of Section 5 will apply).

11. CONFIDENTIALITY. Each party (a "Receiving Party") understands that the other party (the "Disclosing Party") may disclose information of a confidential nature including, without limitation, the BeyondTrust Products, product information, data, pricing, financial information, end user information, software, specifications, research and development and proprietary algorithms or other materials that is (a) clearly and conspicuously marked as "confidential" or with a similar designation or (b) is disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used ("Confidential Information"). The terms and conditions of this Agreement also constitute Confidential Information of each party. The Receiving Party agrees, for itself and its agents and employees, that it will not publish, disclose or otherwise divulge or use for its own purposes (other than as expressly permitted under this Agreement) any Confidential Information of the Disclosing Party furnished to it by such Disclosing Party without the prior written approval of the Disclosing Party in each instance. Each party will use at least the same level of care to maintain the Confidential Information of the other party as it uses to maintain the confidentiality of its own non-public information, and in no event less than a reasonable degree of care. The foregoing obligations shall not extend to any information to the extent that the Receiving Party can demonstrate that such information (i) was at the time of disclosure or, to the extent that such information thereafter becomes through no fault of the

Receiving Party, a part of the public domain by publication or otherwise; (ii) was already properly and lawfully in the Receiving Party's possession at the time it was received by the Receiving Party free from any obligation of confidentiality, (iii) was lawfully received by the Receiving Party from a third party who was under no obligation of confidentiality to the Disclosing Party with respect thereto, or (iv) was independently developed by the Receiving Party or its independent contractors who did not have access to the Disclosing Party's Confidential Information. In the event that the Receiving Party is required to disclose Confidential Information in accordance with a judicial or governmental order or requirement, the Receiving Party shall promptly notify the Disclosing Party in order to allow such party to contest the order or requirement or seek confidential treatment for such information.

12. MARKETING. BeyondTrust may use Licensee's company name, logo, trademark, trade name, service mark, or other commercial designation for the purpose of indicating the existence of a customer relationship between Licensee and BeyondTrust. BeyondTrust may place Licensee's name and/or logo in audio and online presentations to other potential customers and business partners, and use Licensee's name in a release to the press.

13. USAGE VERIFICATION. BeyondTrust may request annually a certified report detailing Licensee's installation and usage of the BeyondTrust Products, including whether or not Licensee has exceeded the scope of license granted by BeyondTrust. Licensee agrees to provide such report promptly following BeyondTrust's request. Some Software may contain devices that allow the Software to connect with BeyondTrust's activation servers to ascertain compliance with the Permitted Licenses. If Licensee's use of any BeyondTrust Product is found to exceed the scope of license granted, Licensee will be charged additional license and ESS fees, at BeyondTrust's then-current rates, for each instance of additional use in excess of license scope granted and such fees shall be payable in accordance with this Agreement. Should Licensee not provide BeyondTrust with a usage report within thirty (30) days of request, then Licensee agrees to pay BeyondTrust a processing fee (defined as two percent (2%) of the additional license and ESS fees) for each month outstanding. This Section 13 shall not limit or restrict any other rights or remedies of BeyondTrust that are otherwise set forth in this Agreement or available law.

14. GOVERNING LAW; ARBITRATION. This Agreement is to be governed by and interpreted in accordance with the laws of the State of California, U.S.A., without giving effect to its principles of conflict of laws. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Transactions Act shall not apply to this Agreement. Any action or proceeding arising out of or relating to this Agreement shall be resolved by arbitration in the County of Orange, California in accordance with the Commercial Dispute Resolution Procedures of the American Arbitration Association and, in the event either party seeks injunctive or provisional relief, the Optional Rules for Emergency Measures of Protection. The arbitration will be heard and determined by a single arbitrator experienced in the software industry. The arbitrator's decision in any such arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The prevailing party will be entitled to recover its attorneys' fees and arbitration costs from the other party. The parties agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be

disclosed beyond the arbitration panel, except as may lawfully be required in judicial proceedings relating to the arbitration or by disclosure rules and regulations of securities regulatory authorities or other governmental agencies. Notwithstanding the foregoing, Licensee acknowledges and agrees that in the event of a breach by Licensee of Sections 2-4 or 11 of this Agreement, BeyondTrust, without limitation of its other rights and remedies, shall be entitled to seek immediate injunctive relief in any court of competent jurisdiction.

15.   MISCELLANEOUS.

A.   Assignment.   This Agreement may not be assigned, transferred, delegated, sold or otherwise disposed of, including, without limitation, by operation of law, without the prior written consent of the non-assigning party; provided that either party may assign this Agreement without consent in connection with the sale of all or substantially all its assets.

B.   Severability. Each provision of this Agreement shall be viewed as separate and distinct, and in the event that any provision shall be deemed by a court of competent jurisdiction to be illegal, invalid or unenforceable, the court finding such illegality, invalidity or unenforceability shall modify or reform this Agreement to give as much effect as possible to such provision. Any provision which cannot be so modified or reformed shall be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

C.   Notices. All notices provided hereunder shall be in writing, delivered personally or sent by overnight courier, registered or certified mail to the address of the other party as specified in writing by such party. All such notices shall be deemed properly given (i) when received if delivered personally or by a recognized courier service; (ii) if delivered by facsimile transmission when the appropriate telecopy confirmation is received; (iii) upon the receipt of the electronic transmission by the server of the recipient when transmitted by electronic mail; or (iv) five (5) days after deposit with the U.S. Postal Service utilizing certified or registered mail, return receipt requested.

D.   Waiver. Performance of any obligations required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described herein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

E.   Force Majeure.   Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or services as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failure and power failures. Nothing in the foregoing shall be deemed to relieve Licensee of Licensee's obligation to pay any and all fees owed to BeyondTrust under this Agreement.

F.   Independent Contractors.   It is the intention of BeyondTrust and Licensee that BeyondTrust and Licensee are, and will be deemed to be, independent contractors with respect to the subject matter of this Agreement, and nothing contained in this Agreement will be deemed or construed in any manner whatsoever as creating any partnership, joint venture, employment, agency,

fiduciary or other similar relationship between BeyondTrust and Licensee.

G.   Entire Agreement.   This Agreement is intended by the parties as the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. This Agreement may only be modified or amended pursuant to a written agreement or instrument signed by a duly authorized representative of each party. No term or condition contained in Licensee's purchase order or similar document will apply unless specifically agreed to by BeyondTrust in writing, even if BeyondTrust has accepted the order set forth in such purchase order, and all such terms and conditions are hereby expressly rejected by BeyondTrust.

H.   Headings; Counterparts.   Headings are for convenience only and are not deemed to be part of this Agreement. This Agreement may be entered into in separate counterparts, each of which when so executed will be deemed an original and taken together will constitute one fully executed Agreement.

I.   Terms Applicable to Third Party Products. If so indicated in the Documentation and/or the installer provided with the Software, the BeyondTrust Products may contain or be distributed with third party software which is covered by a different license

J.   Government Rights.   Where the United States Government is the Licensee, such Licensee's rights to use, modify, reproduce, release, perform, display, or disclose the Software are established by this standard commercial license in accordance with DFARS 227.7202-1, for the Department of Defense, and FAR 27.405-3 and FAR 52.227-19 as applicable to other agencies. In addition, Section 14 above (Governing Law; Arbitration) is amended to specify that this Agreement shall be governed and interpreted in accordance with Federal law and disputes shall be resolved in accordance with FAR 52.233-1, Disputes, which provision is hereby incorporated by reference.