



## iPolicy Networks, Inc. End User License Agreement

IMPORTANT: THIS END USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU AND iPOLICY NETWORKS, INC. ("iPOLICY"). IF YOU DOWNLOAD, INSTALL OR USE THE SOFTWARE PROVIDED WITH THIS AGREEMENT ("SOFTWARE") OR USE EQUIPMENT THAT CONTAINS THE SOFTWARE, YOU ARE CONSENTING TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, PROMPTLY RETURN THE SOFTWARE, HARDWARE AND ACCOMPANYING DOCUMENTATION TO THE PLACE YOU OBTAINED THEM.

### 1. Ownership

Title to the Software, all modifications thereof, any documentation provided with the Software, and all copies of the foregoing, as well as any and all worldwide intellectual property rights in the Software and documentation, are owned by iPolicy or its licensors. The Software and documentation are protected by the United States copyright law, international intellectual property laws and treaties. If the Software contains documentation that is provided only in electronic form, you may print one copy of such electronic documentation. You may not copy any printed materials accompanying the Software. iPolicy and its licensors reserve all rights not specifically granted in this Agreement, including all intellectual property rights.

### 2. License

**2.1 License Grant.** In consideration of full payment of the required license fees, iPolicy hereby grants you a non-exclusive, non-transferable license to use the Software for your own internal business purposes, subject to the terms and conditions of this Agreement. You may use the Software only on the computer and hardware systems for which iPolicy has provided and you have procured this license, including iPolicy hardware equipment purchased or leased by you from iPolicy or its resellers or distributors, provided that you may use only the specified number of copies of Software at the location(s) and subject to maximum number of (a) seats (i.e. users with access to the installed Software); (b) concurrent users (or end-customer locations in the event you have been granted a license to use Software as a service provider), bits per second, sessions, ports; and (c) issued and outstanding IP addresses; and/or (d) time period for operating the specified number of Software copies which have been purchased by you and for which you have paid iPolicy the required license fee.

**2.2 Use Restrictions.** This Software license is subject to the following limitations: (a) unless otherwise expressly provided in the documentation, you may use the Software solely as embedded in, for execution on, or, where the applicable documentation permits installation on non-iPolicy equipment, for communication with iPolicy equipment owned or leased by you and you may not transfer the Software from such equipment; (b) your use of the Software is limited to use on a single hardware chassis, on a single central processing unit, as applicable, or on such greater number of chassis or central processing units for which you have paid the required license fee; (c) your use of the Software is also limited, as applicable and set forth in this Agreement or in iPolicy's product catalog, user documentation, or web

site, to a usage capacity, number of users and period for operating each copy and right to use; and (d) your use of the Software is limited by any other restrictions contained in iPolicy's product catalog, documentation, or web site for the Software.

**2.3 General Restrictions.** Except as otherwise expressly provided under this Agreement, you may not:

(a) Use the Software on unauthorized or secondhand iPolicy equipment;

(b) Copy the Software;

(c) Sell, license or distribute copies of the Software on a stand-alone basis or as part of any collection, product or service where the primary value of the product or service is the Software, or permit third parties to do so;

(d) Rent, lease, loan or resell the Software, provide commercial hosting services to third parties, or permit third parties to benefit from the use or functionality of the Software via a time sharing, service bureau, subscription service, or other arrangement;

(e) Make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do so;

(f) Reverse engineer (unless required by law for interoperability), disassemble, decompile or unencrypt the Software or otherwise attempt to gain access to any source code, trade secret or confidential information related to the Software; or

(g) Remove, obscure or alter any notice of patent, copyright, trade secret, trademark, trade name, mask work or other proprietary right related to Software or documentation.

**2.4 Third Party Software.** The Software contains software owned and licensed to iPolicy by third parties ("Third Party Software"). Your use of such Third Party Software is subject to any additional terms and conditions, as indicated in the Software or documentation. You must comply with all additional terms and conditions applicable to the Third Party Software.

**2.5 Taxes.** You are solely responsible for payment of any and all taxes that may be assessed on the Software

or its use, including personal property taxes, sales and use taxes, and excise taxes.

- 2.6 Upgrades and Additional Copies.** For any upgrades, updates, bug fixes or modified versions (collectively, "Upgrades") or backup copies of the Software licensed or provided to you by iPolicy or an authorized reseller or distributor for which you have paid the applicable license fees: (a) you have no license or right to use any such additional copies or Upgrades unless, at the time of acquiring such copy or Upgrade, you already hold a valid license to the original Software and have paid the applicable fee for the Upgrade; (b) your use of Upgrades is limited to the equipment for which you are the original purchaser or lessee or for which you otherwise hold a valid license to use the Software which is being upgraded; and (c) use of additional copies is limited to use for backup purposes only.
- 2.7 Confidentiality.** You acknowledge and agree that the Software incorporates or is based in part upon proprietary information of iPolicy and its licensors. You may not disclose or make available the Software, documentation, or any information or data embodied in the Software or Third Party Software to any person or entity other than your employees. You must require such employees to use the Software and documentation solely for the purposes set forth in this Agreement and you and your employees will not disclose or make available the Software, documentation, or any information or data embodied therein, to any person or entity other than those permitted by this Agreement. You will use the same degree of care to maintain the confidentiality of the iPolicy proprietary information that you use to maintain the confidentiality of your own information of equal importance, but no less than a reasonable degree of care.
- 2.8 Maintenance and Support Services.** iPolicy may provide maintenance and support services under a separate agreement ("Support Services") subject to payment of iPolicy's Support Services fees and its Support Services policies, terms and conditions. Any supplemental software code or documentation provided as part of the Support Services are considered part of the Software and subject to the terms and conditions of this Agreement. iPolicy reserves the right to amend its Support Services policy, terms and conditions and applicable fees and to desupport the Software.
- 2.9 Records.** You grant to iPolicy and its independent accountants the right to audit your use of the Software and examine your books, records and accounts during normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, you will promptly pay to iPolicy the appropriate license fees with interest at the highest rate allowed under the law and the audit expenses incurred by iPolicy.

**3. Limited Warranty by iPolicy; Disclaimer**

- 3.1 Limited Warranty.** iPolicy warrants to you that for a period of ninety (90) days commencing from the date of original purchase by you ("Warranty Period"): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use and (b) the Software will substantially conform to its published specifications. This limited warranty extends only to the customer who is the original licensee under this Agreement. This limited warranty does not apply if the Software or any related product or equipment supplied by iPolicy (i) has been altered, except by iPolicy; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by iPolicy; (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence, virus or accident; or (iv) is licensed, for beta, trial evaluation or demonstration basis for which iPolicy does not receive a payment or license fee.

**3.2 DISCLAIMER**

(a) EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, THE SOFTWARE (INCLUDING ANY THIRD PARTY SOFTWARE), DOCUMENTATION AND SUPPORT SERVICES (IF ANY) ARE PROVIDED "AS IS", WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED, AND IPOLICY AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FURTHER, IPOLICY AND ITS LICENSORS EXPRESSLY DO NOT WARRANT THAT THE SOFTWARE OR ANY OF ITS PARTS WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY SOFTWARE OR HARDWARE POSSESSED OR TO BE POSSESSED BY YOU. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE ORIGINAL WARRANTY PERIOD. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. TO THE EXTENT PERMITTED BY LAW, IPOLICY'S LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND ARISING FROM YOUR USE OF THE SOFTWARE.

(b) Due to the continual development of new techniques for intruding upon and attacking networks, iPolicy does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion, virus attack or hacker attacks. The Software is not fault-

tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). iPolicy expressly disclaims any express or implied warranty of fitness for High Risk Activities.

(c) iPolicy specifically does not warrant that the Software will prevent access to offensive or obscene material and you acknowledge and agree that it is your sole responsibility to maintain such workplace policies and procedures to ensure an environment free of hostility and sexual harassment.

(d) Any supplements or updates to the Software, including without limitation, any service packs or hot fixes provided by iPolicy after the expiration of the limited Warranty Period are not covered by any warranty or condition, express, implied or statutory.

4. **Limitation of Liability.** Your sole and exclusive remedy and the entire liability of iPolicy under this Agreement shall be limited to, at iPolicy's option and subject to applicable law, repair, replacement, or refund of the Software if reported (or, upon request, returned with receipt) to iPolicy within the Warranty Period. iPolicy will provide this remedy without charge, except that you are responsible for any expenses you may incur, such as the cost of shipping the Software to iPolicy. You acknowledge and agree that iPolicy has set its prices and entered into this Agreement in reliance upon limitation of liability specified herein, which allocates the risk between iPolicy and you and forms the basis of the bargain between the parties.

5. **Consequential Damages.** IN NO EVENT SHALL IPOLICY OR ITS LICENSORS, RESELLERS OR DISTRIBUTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, DATA LOSS, DATA USE, BUSINESS INTERRUPTION, PERSONAL INJURY, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY INCLUDING DUTY OF GOOD FAITH OR OF REASONABLE CARE, NEGLIGENCE, OR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE OR HARDWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF IPOLICY OR ANY LICENSOR, RESELLER OR DISTRIBUTOR, AND EVEN IF IPOLICY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES

DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR PERTAINING TO THIS AGREEMENT MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR FROM THE DATE OF SUCH CAUSE OF ACTION ACCRUED.

6. **Indemnity**

6.1 **By You.** You will defend, indemnify and hold iPolicy harmless from and against any and all claims, demands, actions, proceedings, losses, liabilities, costs and expenses (including court costs and reasonable fees of attorneys, accountants and other professionals) by any third party relating to any violation by you of the terms of this Agreement or any Third Party Software license terms or the use, performance, quality, condition, service, maintenance or support of the Software in whole or in part.

6.2 **By iPolicy.** iPolicy will indemnify you for any loss, damage, expense, or liability, including costs and reasonable attorneys' fees, finally awarded in any action brought against you to the extent that it is based on a claim that use of the Software provided by iPolicy pursuant to this Agreement infringes any U.S. patent or copyright, provided that (a) you notify iPolicy within fifteen (15) days in writing of any such claim; (b) that you grant iPolicy sole control of the defense of any such claim and all negotiations for its settlement or compromise; and (c) that you provide all reasonable cooperation to iPolicy to facilitate the settlement or defense of the claim. In the event the Software becomes, or in iPolicy's sole opinion is likely to become, the subject of such a claim of infringement, iPolicy may, at its sole discretion and expense, (i) procure the right for you to continue using the same under the terms of this Agreement; or (ii) replace or modify the same so that it becomes non infringing and substantially equivalent in function; or (iii) refund to you the fees paid to iPolicy by you hereunder, less a proportionate charge for the time the Software was used by you. THIS SECTION STATES IPOLICY'S SOLE RESPONSIBILITY AND LIABILITY, AND YOUR EXCLUSIVE REMEDY, FOR ANY AND ALL THIRD PARTY INFRINGEMENT CLAIMS.

6.3 **Exclusions.** iPolicy shall have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (a) modifications to the Software made by a party other than iPolicy, if a claim would not have occurred but for such modifications; (b) the combination, operation or use of the Software with equipment, devices, software or data not supplied by iPolicy, if a claim would not have occurred but for such combination, operation or use; (c) your failure to use the most current version of the Software; (d) your failure to use any updated or modified Software provided by iPolicy to avoid a

claim; (e) iPolicy's compliance with any designs, specifications or plans provided by you; (f) your use of the Software other than in accordance with this Agreement or documentation; or (g) any Third Party Software.

## **7. Term; Termination**

**7.1 Term.** The license granted under this Agreement shall continue until terminated or on expiry of 10 year period from the Effective Date, whichever occurs earlier, provided that your right to use and operate some specific copies, modules, feature set(s) or feature(s) of the Software and hardware may be limited to the license period(s) as specified by iPolicy and such right will expire at the end of such specified license period(s). Without limiting the foregoing, if the license fees you paid include the license of an Anti-Virus security application or URL Screen database that is supplied with the Software, then the term of this license for such Anti-Virus security application or URL Screen database shall be one (1) year from the date of shipment of the Software to you.

**7.2 Termination By iPolicy.** Your rights under this License will terminate immediately without notice from iPolicy if you fail to comply with any provision of this Agreement. Without limiting the foregoing, iPolicy may terminate this Agreement if (a) you fail to honor the restrictions on disclosure and use of proprietary information provided under this Agreement; (b) you infringe or participate in infringement of iPolicy's or its licensors' intellectual property rights; (c) you fail to honor the limitations and restrictions on use of the Software or any part thereof as provided in this Agreement; (d) you breach or fail to perform any other material term or condition of this Agreement; (e) you have not paid any fees owed to iPolicy; (f) you cease to be in business, (g) you become the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (h) you become unable to pay your debts as they become due.

**7.3 Termination By You.** You may terminate this Agreement at any time by providing written notice to iPolicy and discontinuing use of and returning or (at iPolicy's request) destroying all copies of Software, including any documentation.

**7.4 Effect of Termination.** Upon expiration or termination of this Agreement for any reason, all fees or charges due for the remaining term of this Agreement shall immediately become due and payable, iPolicy's obligations under this Agreement and any Support Services agreement shall cease, the license granted to you hereunder shall cease, and you shall immediately cease all use of the Software, return to iPolicy or (at iPolicy's request) destroy all copies of the Software and certify to iPolicy in writing, over the signature of your President or a Vice President, that you have done so. All obligations relating to nonuse and nondisclosure of confidential

information, indemnification, and your obligations to respect iPolicy's intellectual property rights shall survive expiration or termination of this Agreement for any reason. Without limiting the foregoing, Sections 1 (Ownership), 2.3 (General Restrictions), 2.4 (Third Party Software, 2.5 (Taxes), 2.7 (Confidentiality), 4 (Records), 5 (Limited Warranty; Disclaimer), 6 (Limitation of Liability); 7 (Consequential Damages), 8 (Indemnity), 9 (Term; Termination) and 10 (Miscellaneous) shall survive expiration or termination of this Agreement.

## **8. Miscellaneous**

### **8.1 Restricted Rights.**

(a) You acknowledge and agree that the Software is subject to the export control laws and regulations of the U.S.A. and any amendments thereof. You will comply with all relevant export laws and regulations of the U.S.A. and other countries. You will not export or re-export the Software, directly or indirectly, to any countries that are subject to U.S.A. export restrictions. You further acknowledge and agree that the Software may include technical data subject to export and re-export restrictions imposed by U.S.A. law. Both before and after termination of this Agreement for any reason, you must refrain from permitting all or part of the Software, including any embedded data, to be exported outside the United States of America, in any manner or by any means, without in each instance, if required, a validated license from the Office of Export Administration within the United States Department of Commerce and other appropriate governmental authorities of the United States. This requirement shall survive expiration or termination of this Agreement.

(b) For government end users, the Software or any Third Party Software delivered subject to the DOD FAR Supplement are "commercial computer software" and use, duplication, and disclosure of the programs, including documentation, shall be subject to the licensing restrictions set forth in this agreement or the applicable Third Party Software license agreement. Otherwise, programs delivered subject to the Federal Acquisition Regulations are "restricted computer software" and use, duplication, and disclosure of the programs, including documentation, shall be subject to the restrictions in FAR 52.227-19, Commercial Computer Software-Restricted Rights (June 1987).

(c) The Software and any data provided under this Agreement is "technical data" as that term is defined in 48 C.F.R. 27.401 and is a "commercial item" as that term is described in 48 C.F.R. 2.101. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial item technical data subject to the terms of this Agreement as specified in 48 C.F.R. 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial item technical data subject to the

terms of this Agreement as specified in 48 C.F.R. 227.7102-1 of the DOD FAR Supplement ("DFAR") and its successors.

(d) Any use, duplication, or disclosure of the Software by the U.S. government is subject to restrictions as set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable. For Department of Defense agencies, the restrictions set forth in the "Technical Data-Commercial Items" clause at DFARS 252.227-7015 (Nov 1995) shall also apply.

- 8.2 Notices.** Any notice or communication under this Agreement shall be in writing and sent to a party at its mailing address, or such other address as either party may provide under this Section. Notices may be delivered and shall be deemed received: (a) by hand delivery, upon receipt thereof; (b) by mail, three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested; (c) by facsimile transmission, upon electronic confirmation thereof; or (d) by next day delivery service, upon such delivery.
- 8.3 Communication.** End User grants iPolicy Networks permission to communicate via either fax or email for updates on issues, fixes and upgrades to the product, to send support or license renewal notices and generally to appraise End User on news, activities, products, services or programs related to the field of network security.
- 8.4 Force Majeure.** Neither party hereto will be liable to the other for any failure or delay in performance hereunder due to circumstances beyond its reasonable control including, without limitation, Acts of God, power outages, strikes, accident, death, injury or illness of key personnel, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.
- 8.5 Assignment.** You may not assign, sublicense, or otherwise transfer your rights under this Agreement or the Software or any services, whether by operation of law, merger, sale of substantially all of your assets or otherwise. Any attempt to make such an assignment without iPolicy's consent shall be void. This Agreement shall be binding on and inure to the benefit of the parties and your permitted successors assigns. If you grant a security interest in the Software or any services, the secured party has no

right to use or transfer the Software or any services.

- 8.6 No Waiver.** No failure of iPolicy to prosecute its rights with respect to any single or continuing breach of this Agreement will act as a waiver of the right of iPolicy to later exercise any right or enforce any remedy granted hereunder with respect to that same or any other breach of this Agreement.
- 8.7 Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without giving effect to principles of conflict of laws. Any dispute arising out of or relating to this Agreement shall be resolved only in the United States Federal Courts located in the Northern District of California or California State Courts located in Alameda County, California. Each party hereby irrevocably consents to the jurisdiction and venue of such courts and waives any objection which it may have with respect to jurisdiction or proper venue or forum. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods. The Uniform Computer Information Transactions Act does not apply to this Agreement.
- 8.8 Severability.** If any part of this Agreement is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not effect or nullify the remainder of this Agreement, and the legality and enforceability of the other provisions of this Agreement shall remain in full force and effect.
- 8.9 Entire Agreement.** This Agreement (and any documentation, information or agreements referred to in this Agreement, which are hereby incorporated herein by reference as if set forth at length herein) set forth the entire agreement between the parties with respect to the subject matter hereof, and supercede all prior and contemporaneous agreements and other communications between the parties, oral and written, and any other discussions, representations, proposals, offers, purchase orders and any other prior or contemporaneous oral or written communications of any nature. This Agreement may only be modified in writing, when signed by both parties.
- 8.10 Third Party Beneficiaries.** iPolicy's licensors are third party beneficiaries of this Agreement with the right to enforce its terms directly.
- 8.11 English Language.** The original of this Agreement has been written in English. English is the authoritative text of this Agreement, and all communications and adjudications hereunder shall be made and conducted in English.