ZIMPERIUM, INC.

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c. You promise to indemnify and hold harmless Zimperium and its representatives fully against any claims, liabilities, costs, expenses, and other harm arising from your unauthorized use of the Software or Cloud Application or any other violation of these Terms (including any of the prohibitions stated above). We reserve the right, but have no obligation, to monitor compliance with the prohibitions set forth above, and we may investigate and prosecute violations of any of the above and/or involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms.

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5. Modifications
The Cloud Application and Software may change from time to time (for example, we may push updates to your Authorized Device, increase or decrease server capacity, or modify our user interface), and/or we may stop providing the Cloud Application or any of its features (permanently or temporarily), possibly without prior notice to you. In the case of paid licenses, however, we will not discontinue the essential features of the Software or Cloud Application during your paid license period without offering a reasonable substitute or alternative. We may decide to charge users a fee for the use of certain features, although if we do, we will provide you with prior notice before such fees take effect.

6. Your Account
In order to access and use certain features of the Cloud Application, you will need to register and create an account ("Account"). By creating an Account, you represent that you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or any other applicable jurisdiction. When creating an Account, you may be required to provide certain personal information about yourself and will establish a username and a password. You agree to provide accurate, current and complete information about your Account. We reserve the right to suspend or terminate your Account if any information provided during the registration process or thereafter is or becomes inaccurate, false or misleading. You are responsible for maintaining the confidentiality of your password and Account, and agree to notify us if your password is lost, stolen, or disclosed to an unauthorized third party, or otherwise may have been compromised. You are responsible for all activities that occur under your Account.

7. Data Collection and Transmission
a. In order for the Software and Cloud Application to identify patterns associated with security attacks and to perform other functions for which they were designed, they will gather and transmit to our servers certain technical information, user data, and metadata associated with your Authorized Device(s) and use of the Software, including device IDs, MAC addresses, user names and email addresses, IP configurations, stored sessions, open ports, captured credentials, network metadata, and device operating system, status, version, and configuration (collectively, “Data”).

b. You consent to our collection, transmission, storage, monitoring, copying, processing, analysis and use of the Data to administer the Cloud Application, to develop and improve the Software and Cloud Application and our other products and services, and to monitor compliance with these Terms. You acknowledge that this may include transmission of your Data to or from locations in the United States, Europe, and other countries or jurisdictions, potentially including those outside of where you reside or use the Software. We may also disclose Data as needed to cooperate with law enforcement activities and otherwise to fulfill our legal obligations.
and protect our legal rights. You are solely responsible for securing any privacy-related rights and permissions from your individual users of the Software, consistent with this Section 7, as may be required by local law or by your organization’s internal policies.

8. Contacting You
As part of making the Cloud Application available to you, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Cloud Application and your Account, which you may not be able to opt-out from receiving.

9. Third-Party Software
The Software and/or Cloud Application may be accompanied by or utilize certain third-party software components, libraries or applications that are distributed (with or without modifications) under open-source licensing terms (the “Open-Source Components”). Your rights with respect to the Open-Source Components are, to the extent of any conflict with these Terms, governed by and subject to the terms of the open-source licenses under which they are distributed. You are responsible for complying with those licenses. Please refer to our website for more specific information regarding the Open-Source Components that we redistribute and the licenses that apply to them. You may not assume or infer that we endorse, or that we have reviewed, verified, or authenticated, any Open-Source Components or other third-party software that may be furnished with, available through, or used in connection with the Software or Cloud Application. Open-Source Components and any other third-party software, and the information or results provided by them, may be unreliable, inaccurate, incomplete, delayed, or otherwise defective. We make no representations, warranties, or guarantees in connection with any third-party software or the information or results provided by it. You acknowledge sole responsibility for and assume all risk arising from your use of or reliance on any third-party software.

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We may (but are not required to) monitor the use of the Software and Cloud Application, including by tracking the device IDs and license keys associated with the Authorized Devices on which the Software is used, for purposes of verifying compliance with these Terms. In addition, you agree to track and keep records of the individual users and Authorized Device(s) using the Software and promptly notify us if you learn of any unlicensed use. At our written request, you will provide us with a certification signed by you (or, if you are an organization, by an officer of the organization) verifying that the Software and Cloud Application are being used in compliance with these Terms. We may, at any time during the term of your license or for one year thereafter, upon reasonable written notice, audit your use of the Software. We may use a third-party organization to assist us in conducting such an audit. You agree to cooperate with us in such audit and will promptly make available to us all information, equipment and materials reasonably required by us to conduct such an audit. If an audit reveals that you have underpaid any license or service fees for the period audited, you agree to promptly pay us for such underpaid fees based on our price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the fees you paid for the relevant period, then you also agree to pay our reasonable costs of conducting the audit.

11. Termination
Your rights under these Terms will expire at the end of the period(s) for which you have acquired a valid license key from us for the Software. The Software may cease to function once the license key has expired. Any license renewals or extensions will be subject to availability and your payment of all applicable fees as then in effect. We have no obligation to offer license renewals or extensions, and we may condition renewals upon your acceptance of revised or new terms and conditions. Your rights under these Terms will automatically terminate, and we may suspend or terminate your Account and your use of the Software and Cloud Application, immediately and without notice if you breach any of these Terms. In addition, we may suspend your Account and your use of the Software and Cloud Application as we deem appropriate to prevent, investigate, or otherwise address any suspected misuse of the Software or Cloud Application. Upon expiration or termination of these Terms or your Account, you agree to promptly and permanently delete all copies of the Software that are on the Authorized Device(s) or otherwise in your possession or control. The provisions of Sections 3, 4, 10, and 12 through 17 will survive any expiration or termination of these Terms.
12. **Disclaimers**
   a. You understand and agree that the Software and the Cloud Application are provided to you “AS IS” and on an “AS AVAILABLE” basis. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Software or the Cloud Application will meet your requirements, will detect or prevent all security threats or vulnerabilities, or be available on an uninterrupted, secure, or error-free basis.

   b. Some states or jurisdictions do not allow the exclusion of express or implied warranties in certain circumstances, so the above disclaimer may not apply to you. IN THAT EVENT, SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW.

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   a. OUR TOTAL LIABILITY TO YOU FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL NOT EXCEED THE AMOUNT OF FEES YOU PAID US FOR THE SOFTWARE LICENSE. IF YOU HAVE AN EVALUATION OR OTHER NON-PAY LICENSE, WE WILL HAVE NO LIABILITY TO YOU WHATSOEVER; PROVIDED, HOWEVER, THAT WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, OUR TOTAL LIABILITY SHALL INSTEAD BE LIMITED TO THE SUM OF FIFTY U.S. DOLLARS ($50).

   b. WE WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, ARISING IN ANY WAY OUT OF THESE TERMS OR RESULTING FROM YOUR ACCESS TO, USE OF, OR INABILITY TO ACCESS OR USE THE SOFTWARE AND/OR CLOUD APPLICATION, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

   c. You acknowledge that it is your responsibility to implement back-up plans and other safeguards appropriate for the value of the networks, devices, data, and systems with which you use the Software and Cloud Application and, accordingly, that the foregoing exclusions and limitations of damages and liability are reasonable. The allocation of risk described in this Section 13 is an essential basis of the bargain between you and us, and without it, the fees charged for the Software and Cloud Application would be significantly higher. To the extent, if any, that applicable local laws prohibit the exclusion or limitation of certain liabilities or damages, the provisions of this Section 13 will apply only to the maximum extent permitted by such laws.

14. **Maintenance and Support**
We have no software maintenance or technical support obligations under these Terms. We may from time to time offer maintenance and support services or other add-on services for the Software or Cloud Application for you to purchase. Any add-on services will be subject to such separate fees and contract terms and conditions as we may specify when offering those services.

15. **Export Control**
You agree to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the Software nor Cloud Application, nor any direct product thereof, are: (i) downloaded or otherwise exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by the such export laws and regulations, including but not limited to nuclear, chemical, or biological weapons proliferation.

16. **U.S. Government End Users**
The Software and Cloud Application consist of “commercial items,” “commercial computer software” and “commercial computer software documentation,” as those terms are used in FAR Subpart 12.2, DFARS 227.7202 and other government acquisition regulations, as applicable. Any use, duplication, or disclosure of the Software or Cloud Application by the U.S. government is permitted solely as expressly provided in Section 2 above, and is subject to restrictions as set forth in these Terms.

17. **General**

These Terms will be governed by and construed in accordance with the laws of the State of California, without regard to or application of conflict of laws rules or principles. The parties to these Terms irrevocably consent to the jurisdiction of, and venue in, the state or federal courts located in the State of California for any disputes arising under these Terms. Our failure to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force and effect. You may not assign, delegate or transfer these Terms or any of your rights or obligations hereunder without our prior written consent, and any attempt to do so will be void. We may assign these Terms without your consent. These Terms constitute the entire agreement between you and us regarding the Software and Cloud Application, and they supersede and replace any prior agreements and understandings between you and us regarding the Software or Cloud Application.

18. **Contacting Us**

If you have any questions regarding these Terms please contact us via email at licensing@zimperium.com.

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