

## AMI/ON-PREM SAAS END USER LICENSE AGREEMENT

This AMI/ON-PREM SAAS END USER LICENSE AGREEMENT (this "Agreement") dated the \_\_\_ day of \_\_\_\_, 2016 ("Effective Date"), is made by and between **Evident.io, Inc.**, a Delaware corporation with its principal offices at 11501 Dublin Blvd., Suite 200, Dublin, CA 94568 ("Evident.io"), and **Ordering Activity**, an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 4800.2h and as may be revised from time to time ("Licensee").

This Agreement is a legal agreement between Licensee and Evident.io, for the use of the Evident.io Amazon Machine Image virtual appliance and virtual software and any ancillary components and materials that audits Licensee's security processes and helps Licensee determine processes, methodologies, and configurations to enhance Licensee's network security ("Licensed Materials") all as more particularly described on an order form entered into by Evident.io and Licensee or Licensee and its customer (and approved by Evident.io) ("Order Form"). In consideration of the foregoing and the mutual covenants hereinafter set forth, the parties hereby agree as follows:

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6. Fees. In consideration of the License, Licensee will pay the fees set forth on the GSA Schedule contract and the attached Schedule Price List.

7. Registration and Security. Licensee will be responsible for providing to Licensee's users or Customer or Customer's users ("Users") the user-ids, passwords and, where applicable, any other necessary access credentials. Licensee is solely responsible for Users' access to the Licensed Materials, and Licensee and Users are solely responsible for the confidentiality of the user-ids and passwords. Licensee shall not, and shall not permit any User or third party to, breach or attempt to breach any security measures used in connection with the Licensed Materials. Any attempt to circumvent or penetrate any security measures used in connection with the Licensed Materials is prohibited.

8. Lawful Conduct. Both parties shall comply with all applicable local, state, and federal laws and regulations.

9. General Warranties. Each party represents and warrants to the other party that (i) such party has the full corporate right, power and authority to enter into this Agreement and to perform that acts required of it hereunder; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which such party is otherwise bound; and (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

10. No Responsibility. Evident.io will not be liable for losses or damages arising from or in any way related to the Licensed Materials. If the Licensed Materials are found to be defective in workmanship or materials and Evident.io is given notice within 10 days of discovering such defect, Licensee's remedy, and Evident.io's obligation to Licensee, is a replacement of the defective portion of the Licensed Materials.

11. Licensee's Warranty to Evident.io. Licensee warrants that all individuals having access to the Licensed Materials will observe and comply with all the terms and conditions of this Agreement. Licensee will immediately notify Evident.io in writing of any misuse, misappropriation or unauthorized disclosure, display or copying of the Licensed Materials that may come to Licensee's attention.

12. Disclaimer of Warranties and Indemnification. EVIDENT.IO IS LICENSING THE LICENSED MATERIALS ON AN "AS IS" BASIS TO LICENSEE. EVIDENT.IO MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, TIMELINESS, AND ACCURACY, FOR ANY PURPOSE, OF THESE LICENSED MATERIALS, THEIR OPERATION OR THE CONTENT CONTAINED THEREIN. EVIDENT.IO DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE LICENSED MATERIALS, THEIR OPERATIONS, AND THE CONTENT CONTAINED THEREIN AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. This clause does not limit or disclaim any of the warranties specified in the GSA Schedule contract under FAR 52.212-4(o). In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109.

13. Limitation of Liability. IN NO EVENT SHALL EVIDENT.IO BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER RELATED OR SIMILAR DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE CONNECTED WITH THE USE OF OR INABILITY TO USE THE LICENSED MATERIALS. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (ii) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT. ANY DAMAGES ARISING UNDER THE USE OF THE LICENSED MATERIALS THAT EVIDENT.IO IS REQUIRED TO PAY FOR ANY PURPOSE WHATSOEVER, INCLUDING WITHOUT LIMITATION, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO THE FEES PAID OR PAYABLE BY LICENSEE TO EVIDENT.IO UNDER THIS AGREEMENT. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU UNDER THE LAWS OF THOSE STATES. The Contract Disputes Act (and SOL) will apply to this agreement. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under federal fraud statute, including the False Claims Act, 31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies

provided in the GSA Schedule contract (e.g., clause 552.238-75 – Price Reductions, clause 52.212-4(h) – Patent Indemnification, and GSAR 552.215-72 – Price Adjustment – Failure to Provide Accurate Information).

14. Audit. Evident.io may, consistent with Licensee’s security measures, upon thirty (30) days prior notice and at any time during reasonable business hours, not more than once every twelve months, either on its own or in conjunction with its professional representatives, conduct an audit of the use by Licensee of the Licensed Materials to ensure that Licensee is complying with the terms of this Agreement. The parties agree that (i) the scope of Evident.io’s audit shall be limited to ensuring Licensee’s compliance with its obligations under this Agreement, and (ii) at all times during the audit process, Evident.io will cooperate with Licensee’s reasonable requests to ensure that such audit does not interfere with or interrupt Licensee’s ability to conduct Licensee’s business.

15. Governing Law. This Agreement shall be governed by the laws of the United States, without giving effect to its choice of law principles.

16. Severability. The terms and conditions stated in this Agreement are severable. If any paragraph, provision, or clause in this Agreement shall be found or be held to be invalid or unenforceable in any jurisdiction, the remainder of this Agreement shall be valid and enforceable and the parties shall use good faith to negotiate a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Agreement.

17. Restricted Rights. Any Licensed Materials provided to the United States of America, including its agencies or instrumentalities (collectively, the “U.S. Government”) is subject to RESTRICTED RIGHTS. Use, duplication, or disclosure of the Licensed Materials by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Licensed Materials clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Licensed Materials – Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Evident.io, Inc. 11501 Dublin Blvd., Suite 200, Dublin, CA 94568, USA.

18. Export Controls. The Licensed Materials may not be re-exported, downloaded or otherwise exported into (or to a national or resident of) any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By installing the Licensed Materials, Licensee is agreeing to the foregoing, and Licensee is representing and warranting that it is not located in, under the control of, or a national or resident of any such country or on any such list.

19. Counterparts. This Agreement may be executed in two counterparts, each of which shall be considered an original hereof and both of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their authorized representatives as of the Effective Date.

**EVIDENT.IO, INC.,**

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By \_\_\_\_\_  
Name: Tim Prendergast  
Title: CEO

DocuSigned by:  
*Tim Prendergast*

By \_\_\_\_\_  
Name:  
Title: