

## **IMPORTANT!**

**Be sure to carefully read and understand all the terms and conditions set forth in this Agreement (“Agreement”) prior to opening, installing, or using this Product (as defined below). This Product contains software and other proprietary material which is subject to this Agreement. By executing this Agreement was provided, a binding legal agreement is created between Fidelis Cybersecurity, Inc. (“Fidelis”) and the entity that is the end user of the Product (“Customer”). If you are not so authorized or do not agree to these terms, then Fidelis refuses to permit access to, license of, or the installation and use of the Product, and any installation or use of the Product shall constitute a violation of applicable intellectual property laws and conventions.**

### **I. DEFINITIONS**

- a. “Product” means the Fidelis-provided hardware (“Hardware”) to which this document applies, together with the object code copy of Fidelis’s proprietary software, and any included third-party software, provided by Fidelis as part of the Hardware, and all Software Updates (collectively the “Software”), along with the accompanying Documentation. The Product to which this agreement applies may also be Fidelis’ proprietary software (and any included third party software) made available for use on a virtual hardware machine, in which case both “Product” and “Software, as used herein, shall be deemed to be such software, and “Hardware” shall be deemed to refer to a virtual machine meeting the specifications set forth in the Documentation. Additionally the Product to which this Agreement applies may also be Fidelis’s proprietary Endpoint software along with any included third-party software) which is made available for use on Customer owned endpoint devices.
- b. "Documentation" means the user guides and manuals for installation and use of the Product regardless of format.
- c. “Endpoint” means any computer, phone or device that is owned by the Customer and running any Fidelis Endpoint software.
- d. “Software Update” means any error corrections, fixes, patches, new versions, new releases, modifications, functional improvements or replacement of the Software made available to Customer at Fidelis’ sole discretion under an active maintenance and support contract between Customer and Fidelis in connection with the Product.

### **II. LICENSE**

- a. Upon payment of the applicable fees for the Product, subject to the terms and conditions of this Agreement, Fidelis grants to Customer a personal, non-exclusive and non-transferable license to use the Software and related Documentation in object code form for use on the Hardware, solely for Customer's internal business purposes and, and as set forth in the Customer’s purchase order as accepted by Fidelis and for which Customer has paid to Fidelis the required license fees (the “Applicable Purchase Order”). If, per the Applicable Purchase Order, the Software was licensed for a limited term (a “Subscription License”), the term of the license granted herein will be as set forth in the Applicable Purchase Order.
- b. The Product may contain third party software. Unless expressly provided for, any third party software may only be used in conjunction with the Product under the terms of this Agreement. The application package documentation that accompanies such third party software may also indicate certain third party technology that may be appropriate or necessary for use with such third party software, or Fidelis or its licensors may notify Customer as to such third party technology. Any such third party technology is licensed to Customer only for use with the relevant application package under the terms of the third party license agreement specified in the application package documentation or as otherwise notified by Fidelis or its licensor, and not under the terms of this Agreement.
- c. WARM SPARES: In the event that Products provided to Customer were identified in the Applicable Purchase Order as “warm spares” or by a similar designation, the license granted in Section IIa above is further qualified in that Customer will have no right to use such “warm spare” except in replacement of an identical malfunctioning product properly licensed by Customer. In no event may Customer use simultaneously both a “warm spare” and the product it is to replace.
- d. LAB PRODUCTS: In the event that Products provided to Customer were identified in the Applicable Purchase Order as “lab product” or by a similar designation, the license granted in Section IIa above is further qualified in that Customer will have no right to use such “lab product” except in a non-production environment for demonstration purposes only. In no event may Customer use a “lab product” in a production environment of any kind.

### III. LICENSE RESTRICTIONS

- a. Customer shall not: (i) copy all or part of the Product or use the Product (including the Documentation) except as specified in this Agreement; (ii) modify, alter, adapt, enhance, improve, revise, correct errors in, or create derivative works of the Software or any part thereof, (iii) cause or permit the reverse engineering, de-encryption, disassembly or de-compilation of the Product or otherwise attempt to create the source code from the Software or gain access to trade secrets or confidential information of Fidelis or its licensors; (iv) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Software or Documentation;; (v) rent, lease, sell, assign, transfer, distribute or sublicense the Software or any part thereof or permit access to the Software by third parties or use the Software for service bureau or time-sharing purposes; (vi) use the Product for competitive analysis or permit publication or distribution of functionality or performance testing of the Product without express written consent of Fidelis; (vii) remove, disable, circumvent or otherwise create or implement any workaround to any technological copy protection or other security features designed to prevent unauthorized use of the Software; or (viii) Other than as installed on Endpoints, any use of the Software on any third party equipment, except on virtual hardware approved by Fidelis; (ix) permit any third party to do any of the foregoing.
- b. Notwithstanding the foregoing limitations, Fidelis authorizes Customer to make as many archival copies of the Software and Documentation as Customer reasonably requires solely for its internal use, provided such archival copies are not used for production purposes.
- c. Upon reasonable advance notice and subject to Government security requirements, Fidelis or its licensors may take such steps as are reasonably necessary to audit Customer's compliance with this Agreement. Customer shall provide reasonable assistance and access to information in the course of such audit, at Customer's expense. Fidelis shall be permitted to report the audit results to its licensors as applicable in relation to use of software licensed by such licensors.

### IV. OWNERSHIP AND PROPRIETARY NOTICES

- a. As between Customer and Fidelis, all rights, title and interest in the Software, including any and all copyrights, patent rights, trade secrets, trademarks, service marks, trade names, trade secrets, know-how and any other statutory or common law intellectual property or other proprietary rights related to the Product, including the design, manufacture, operation or service of the Product, are owned by Fidelis or its licensors. Customer shall obtain no rights in the Software except those limited, non-exclusive rights expressly granted under this Agreement.
- b. All third party licensors and suppliers retain all right, title and interest in third party software and all copies thereof, including all copyright and other intellectual property rights.
- c. Customer shall not remove or alter any trademark, logo, copyright, confidentiality or other proprietary notices, legends, symbols or labels on the Software or any copies thereof.
- d. Except as set forth herein, or as may be permitted in writing by Fidelis, Customer shall not provide access to, transmit or otherwise make available, the Software and the Documentation or any part or any copy thereof to any third party; provided, however, that Customer may permit its employees, agents and contractors that are not Fidelis competitors having a need-to-know for purposes of operating or maintaining the Software or Hardware to access or use of the Software on behalf of Customer upon such employees', agents' and contractors' agreement to access or use the Software in accordance with the limitations set forth in this Agreement, and subject to a non-disclosure agreement which is at least as protective as the obligations set forth herein. Customer will take appropriate action, by instruction, agreement, or otherwise, with the persons permitted access to the Software and related Documentation to enable Customer to satisfy its obligations under this Agreement.

### V. MAINTENANCE AND SUPPORT

- a. Subject to payment by Customer of the fees as set forth in the Customer's Purchase Order as accepted by Fidelis (or that of an authorized third party purchasing such services from Fidelis for delivery to Customer), Fidelis will provide maintenance and support for the Product to the extent available and as set forth in the "Maintenance and Support Agreement" at the time the Purchase Order is accepted by Fidelis. In the absence of a separate purchase of support in accordance with the foregoing, Fidelis has no

## obligation to provide Software Updates or technical support under this Agreement.

- b. As a part of maintenance and support services, for certain Products, Fidelis may make available to Customer certain dynamic information related to security threats (“Feeds”) for use in connection with the Products. Customer will have the option to configure the Product to accept these feeds or not. In connection with accepting Feeds and except as provided in Section Vc below, Customer also acknowledges that certain statistical and/or aggregate information (“Information”) related to use of the Feeds will be provided to Fidelis by the Product in an automated manner. The Product is configured to permit Customer to view the information that is provided. In the case of the Fidelis XPS Vector Products, the acceptance of the Feeds and the provision of the Information to Fidelis is not optional. By using the Product, including the Fidelis XPS Vector Products, configured in the manner that allows delivery of Feeds, except in accordance with Section Vc below, Customer acknowledges that such Information will be provided to Fidelis and consents to the same.
- c. Notwithstanding the foregoing, if Customer purchases a “No Feedback” license or an “Air Gap” license pursuant to a valid Purchase Order, Customer may opt out of providing Information while accepting Feeds.
- d. Customer acknowledges that submissions to the Fidelis cloud-based malware detection and analysis capability (“Submissions”) will be sent to Fidelis' malware analysis partner for analysis and will become the property of Fidelis and Fidelis' malware analysis partner. Customer agrees to allow Fidelis and Fidelis' malware analysis partner to use and share Submissions and information about Submissions without limitation, except that Submissions marked as Private will not be voluntarily shared with third parties. All Submissions sent from Fidelis XPS systems will be marked as Private by default.

## VI. CONFIDENTIALITY

Customer acknowledges that the Product and the Documentation contain proprietary and confidential information of Fidelis (“Confidential Information”). Confidential Information does not include (i) information already known to or independently developed by Customer; (ii) information in the public domain through no wrongful act of Customer; or (iii) information Customer received from a third party who is free to disclose it. With respect to the Confidential Information, Customer hereby agrees that Customer shall at no time use such Confidential Information except in connection with the exercise of its license rights or disclose it to any person or entity, and shall use at least the same degree of care in safeguarding the Confidential Information as Customer uses in safeguarding Customer’s own confidential information, but in no event less than a reasonable standard of care. Customer shall immediately notify Fidelis of any inappropriate use or disclosure of Confidential Information. Customer acknowledges that violations of the provisions of this Section shall cause irreparable harm to Fidelis not adequately compensable by monetary damages. In addition to other relief, Customer agrees that Fidelis shall be entitled to injunctive relief to prevent any actual or threatened violation of such provisions.

## VII. TERM AND TERMINATION

This Agreement shall remain effective until terminated in accordance herewith. For a Subscription License, the term of this Agreement shall end at the end of the applicable term of such license as indicated in the Applicable Purchase Order. Customer may terminate this Agreement by destroying and/or returning to Fidelis all copies of the Product. This Agreement and any rights granted to Customer will terminate immediately if Customer fails to comply with the terms of this Agreement. Upon termination or expiration of this Agreement, the licenses granted hereunder shall terminate effective immediately and Customer shall promptly cease all use of the Product, destroy and/or return to Fidelis all copies of the Product, return, at Customer’s expense, any Confidential Information (including all print copies thereof) in Customer’s possession or control, destroy all electronic copies of the Confidential Information, and certify that Customer has complied with the foregoing requirements.

## VIII. LIMITED WARRANTY AND WARRANTY DISCLAIMERS

- a. Fidelis warrants that for a period of ninety (90) days from shipment of the Product to Customer, the Product will perform substantially in accordance with its applicable Documentation. This warranty does not apply if the Software has been altered, except by Fidelis, or has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Fidelis. This limited warranty extends only to Customer as the original licensee of the Software and may be enforced solely by Customer.
- b. Customer's sole and exclusive remedy and the entire liability of Fidelis and its suppliers under this limited warranty will be, at Fidelis’s option, repair or replacement of the Product or the component thereof that is not in compliance with the warranty, or a refund of that portion of the purchase price allocable thereto by Fidelis, provided that Fidelis shall have received from Customer during the applicable warranty period written notice of the alleged warranty breach.

## **c. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, THE PRODUCT IS**

**PROVIDED AS IS, AND FIDELIS DISCLAIMS ALL WARRANTIES REGARDING THE PRODUCT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TIMELINESS, ACCURACY, COMPLETENESS, RESULTS, AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. FIDELIS DOES NOT WARRANT THAT THE PRODUCT WILL MEET CUSTOMER REQUIREMENTS, THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR FREE FROM ALL DEFECTS OR ERRORS, OR THAT THE PRODUCT WILL WORK IN COMBINATION WITH ANY HARDWARE OR SOFTWARE PROVIDED BY THIRD PARTIES. THERE IS NO WARRANTY AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE PRODUCT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FIDELIS, ITS EMPLOYEES, DISTRIBUTORS OR RESELLERS SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF FIDELIS' LIABILITY HEREUNDER. FIDELIS DOES NOT WARRANT OR GUARANTEE THE SECURITY OF CUSTOMER'S COMPUTER SYSTEMS OR DATA, OR THAT CUSTOMER'S COMPUTER SYSTEMS ARE IMMUNE FROM HARMFUL OR UNAUTHORIZED EXTRUSIONS, INTRUSIONS, OR ANY OTHER SECURITY EXPOSURES.**

**IX. LIMITATION OF LIABILITY**

- a. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL FIDELIS OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, MULTIPLE OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, LOST OR DAMAGED DATA, LOSS OF SOFTWARE, DOWNTIME OR COSTS OF SUBSTITUTE PRODUCTS) ARISING FROM THE LICENSE, DELIVERY AND/OR USE OF THE SOFTWARE OR ANY OTHER ACT OR OMISSION OF FIDELIS IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF FIDELIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
  
- b. IN NO EVENT WILL FIDELIS BE LIABLE FOR DAMAGES HEREUNDER IN EXCESS OF AGGREGATE AMOUNTS ACTUALLY RECEIVED BY FIDELIS IN CONNECTION WITH THIS AGREEMENT. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.**
  
- c. THE LIMITATIONS IN THIS SECTION SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

**d. THE FOREGOING LIMITATION OF LIABILITIES, SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM FIDELIS' NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.**

**X. INFRINGEMENT CLAIMS**

Subject to the exclusions set forth below in this section, Fidelis will defend, at its expense with counsel of its choice, any third party claim, suit or proceeding ("Claim") brought against Customer alleging that the Products, in the form delivered by Fidelis to Customer, infringe a United States copyright or trade secret of such third party and will pay directly or indemnify Customer for all damages and costs finally awarded against Customer regarding such Claim or amounts agreed to in a monetary settlement of such Claim provided in each case that Customer (a) notifies Fidelis promptly of the Claim; (b) cooperates fully with Fidelis in the defense of such Claim; and (c) gives Fidelis sole and exclusive control over the defense and settlement of such Claim. If Customer's further distribution of the Products as authorized hereunder is enjoined or if Fidelis believes it is commercially practicable to do so, Fidelis may, at its sole election and expense: (i) obtain for Customer the right to continue using the Products; (ii) replace the Products with non-infringing, functionally equivalent Products; (iii) modify the Products so they become non-infringing, or (iv) terminate this Agreement and all licenses granted hereunder and refund Customer a pro-rated portion of any prepaid license fees, amortized on a straight line basis over three years from the license purchase date. Fidelis has no liability hereunder with respect to any claim: (i) relating to software contained with the Product or provided by Fidelis that is proprietary to a third party, (ii) that is based upon or results from the combination of Products with equipment, devices, firmware or software not furnished by Fidelis, where the alleged infringement relates to such combination (iii) that results from any modification of Products after delivery (other than by Fidelis); (iv) attributable to changes or customizations to the Products made at Customer's direction, or (v) occurring after failure by Customer to install or have installed changes or revisions or updates in accordance with Fidelis' instructions, where such changes or revisions would have cured the infringement. This Section states the exclusive remedy of Customer and liability of Fidelis in respect of claims of infringement of any intellectual property rights.

**XI. COMPLIANCE WITH LAWS**

Customer shall comply, at its sole expense, with all applicable Federal, State and local laws, regulations and rules relating to its use of the Product, including without limitation privacy, security and employment laws. Customer agrees to indemnify, defend and hold harmless Fidelis and its shareholders, directors, officers, employees, legal representatives, agents and affiliated companies from and against any losses, costs, or damages (including reasonable attorneys' fees and litigation costs) resulting from or in connection with (i) Customer's failure to comply with law, (ii) Customer's breach of any individual's right to privacy or publicity, (iii) any misuse by Customer of information collected through use of the Product, and (iv) Customer's use or misuse of the Product.

**XII. GENERAL**

- a. *Independent Contractors.* The relationship between Fidelis and Customer established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or agency relationship, or as granting a franchise.
- b. *Survival.* Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement (in whole or in part) shall survive any termination or expiration of this Agreement (in whole or in part, as applicable) and continue in full force and effect.
- c. *Assignment.* Customer may not assign any of Customer's rights or obligations under this Agreement without the prior written consent of Fidelis. Assignment of this Agreement or its rights and obligations by Fidelis is subject to FAR 52.232-23 "Assignment of Claims" (MAY 2014) and FAR subpart 42.12 "Novation and Change-of-Name Agreements." This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- d. *Governing Law and Jurisdiction.* This Agreement is governed by the laws of the Commonwealth of Virginia, without reference to its conflict of law principles and without regard to the U.N. Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act does not apply to this Agreement.
- e. *Waiver.* A waiver of any breach or default under this Agreement shall not constitute a waiver of any other right for subsequent breach or default.
- f. *Language.* The original of this Agreement has been written in English. The parties hereto waive any statute, law, or regulation that might provide an alternative law or forum or to have this Agreement written in any language other than English.
- g. *Severability.* The provisions of this Agreement are declared to be severable. If any provision of this Agreement is held to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law, such provision shall be constructed by limiting or reducing it so as to be enforceable to the maximum extent compatible with the applicable law as it

shall then appear.

- h. *Headings.* Headings in this Agreement are included for reference only and shall not constitute a part of this Agreement for any other purpose.
- i. *Government End Users.* This provision applies whenever the Customer is the U.S. federal government. In such cases, the terms and conditions of this provision shall pertain to the Customer's use and disclosure of the Software and Documentation, and shall supersede any conflicting contractual terms or conditions. (i) The Software and Documentation is commercial computer software and documentation within the meaning of the applicable acquisition regulations (e.g., Federal Acquisition Regulation ("FAR") 2.101). (ii) Sections II(b), VI, VII, X, XI, XII(d), and XII(l) shall not apply to the U.S. federal government, but shall continue to apply to prime contractors and subcontractors of the U.S. federal government. (iii) Disputes with the U.S. federal government shall be subject to resolution pursuant to the Contract Disputes Act of 1978, as amended. All other provisions of this Agreement remain in effect as written.
- j. *Entire Agreement.* This Agreement, together with the GSA Schedule Contract, Schedule Price List, and GSA Customer Purchase Order(s), sets forth the entire agreement and understanding between Fidelis and Customer regarding the subject matter hereof and supersedes any prior or contemporaneous representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. Customer agrees that any purchase order submitted is for administrative purposes only and that in the event of a conflict between this Agreement and any standard purchase order term, this Agreement shall prevail. However, this Agreement shall not prevail over any specific, negotiated terms of the GSA Customer's Purchase Order. This Agreement may not be modified or amended except by a single writing signed by both Fidelis and Customer.
- k. *Third Party Beneficiary.* Each of Fidelis' licensors of third party software made available as part of the Product is a third party beneficiary of this Agreement, entitled to all rights of Fidelis hereunder.
- l. Customer hereby acknowledges that the Product is subject to export controls under the laws and regulations of the United States. Customer agrees to comply with all laws and regulations governing the use, export, re-export, and transfer of the Product and will obtain all U.S. and local authorizations, permits, or agreements required. Customer agrees not to distribute or supply the Product or any part thereof or any direct product thereof to any person or entity if Customer has reason to believe that such person or entity intends to export, re-export or otherwise take the same to, or use the same in, prohibited or embargoed countries. Customer shall obtain, at its own expense, any non-United States government consents, authorizations, approvals, filings, registrations, permits or licenses required for Customer to exercise its rights and to discharge its obligations under this Agreement. Customer shall indemnify, defend and hold harmless Fidelis from any and all damages, costs, and expenses, including reasonable attorneys' fees, resulting to Fidelis from Customer's failure to comply with the foregoing.

### XIII. EVALUATION PRODUCT

In the event that Products provided to Customer were provided free of charge as evaluation equipment, the following additional terms will apply:

- a. *License.* The license granted in this Agreement is a revocable license, for a term only of an evaluation period beginning on the date the Product is first accessed by Customer and ending 30 days thereafter ("Evaluation Period"), and the rights granted under the license are limited to the right to use the Products (including Software and Documentation) for evaluation purposes only (subject to all other terms and conditions as set forth in this Agreement).
- b. *Responsibility for Products.* Customer acknowledges that at the end of the Evaluation Period, Customer will return the Products in the same condition (subject to ordinary wear) as when delivered to Customer at the Customer's cost via overnight courier. Customer further acknowledges that it is responsible for taking such action, prior to returning Products to Fidelis, as is necessary to remove from the Products any data retained in their non-volatile storage sub-systems (hard disks). Fidelis shall have no responsibility for any data that has not been removed from the Products prior to their return to Fidelis.
- c. *Support.* During the Evaluation Period, upon request, Fidelis will provide Customer with the contact information for a Fidelis pre-sales engineer for technical support in the installation and use of the Software and the Products, and will use commercially reasonable efforts to respond to and resolve reported problems with the Software and the Products. Notwithstanding the foregoing, Fidelis will have no obligation to resolve any reported problems or bugs during the Evaluation Period.
- d. *Disclaimers.* THE PRODUCTS ARE PROVIDED AS-IS, WITH NO REPRESENTATIONS, WARRANTIES, INDEMNITIES OR ASSURANCES WHATSOEVER. ALL DISCLAIMED WARRANTIES PURSUANT TO SECTION III(c) SHALL EQUALLY APPLY TO EVALUATION PRODUCTS.
- e. *Term.* The term of this Agreement shall expire at the end of the Evaluation Period.