



## Fudo Enterprise License Agreement

This Fudo Enterprise License Agreement ("**Agreement**") is a legal and binding contract between Fudo Security, Inc. ("**FUDO**") and the individual or entity accessing and using Fudo Enterprise ("**CUSTOMER**"). FUDO and CUSTOMER may be referred to individually as a "**Party**" and collectively as the "**Parties**."

BY INSTALLING, ACCESSING, OR USING FUDO ENTERPRISE, CUSTOMER, ON ITS BEHALF OR ON BEHALF OF THE ENTITY CUSTOMER REPRESENTS, AGREES TO BE BOUND BY THIS AGREEMENT. THE USE OF FUDO ENTERPRISE IS CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS SPECIFIED BELOW AND ANY ADDITIONAL TERMS SPECIFIED IN ANY ADDENDUM, SCHEDULE, OR OTHER DOCUMENT THAT EXPRESSLY REFERENCES THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CUSTOMER SHALL NOT DOWNLOAD, INSTALL, OR OTHERWISE USE FUDO ENTERPRISE.

**This Agreement applies to the purchase, access, or use of Fudo Enterprise in North, South, and Central America. If you purchase and/or use Fudo Enterprise in any other jurisdiction, the use of Fudo Products is governed by a separate end-user license agreement.**

Any use of Fudo Enterprise by anyone who is not an Authorized User is prohibited.

- 1. Definitions.** Capitalized terms not otherwise defined herein have the meanings set forth in Exhibit A (Definitions).
- 2. Fudo Enterprise.** Fudo Enterprise is a security software solution available directly from FUDO or through a Fudo Partner that CUSTOMER may: (i) download and install on its own physical, virtual, or cloud environment; (ii) access and use as software-as-a-service; or (iii) access and use as an element of the services provided by a Fudo Partner.

**2.1 License Terms.** CUSTOMER may obtain a License to Fudo Enterprise through: (i) a Subscription License, subject to the payment of all applicable Subscription Fees during the Subscription Period; (ii) a Perpetual License, subject to the payment of a one-time fee and ongoing Support Fees; or (iii) custom licensing terms provided by FUDO. CUSTOMER may later add additional Authorized Servers and/or Authorized Users, subject to payment of additional Subscription Licenses and/or Support Fees, as applicable. Additional Authorized Servers and/or Authorized Users will incur pro-rated Subscription Fees and/or Support Fees for the remainder of the Subscription Period in which they are purchased.

**2.2 License Grant.** Subject to the terms and conditions of this Agreement and the payment of all applicable Fees, FUDO grants CUSTOMER a non-exclusive, non-transferable, and non-sublicensable license solely for its own business operations: (i) to use Fudo Enterprise to manage the number of Authorized Servers, Authorized Users, or any other metrics for which CUSTOMER has subscribed or purchased licenses (as the case may be); (ii) to use Fudo Enterprise in accordance with the terms of the Documentation and this Agreement; and (iii) to install and deploy, or have a Fudo Partner install and deploy, Fudo Enterprise in accordance with the terms of the Documentation and this Agreement.

**2.3 Installation.** Fudo Enterprise can be installed: (i) on a Fudo Hardware Appliance; (ii) as a Virtual Appliance Image; and/or (iii) as a Specific Cloud Image (collectively, "**Environment**"). FUDO will make available or deliver to CUSTOMER or an applicable Fudo Partner, as the case may be, Fudo Enterprise, in accordance with the Environment purchased by CUSTOMER. CUSTOMER is solely responsible for procuring and maintaining the virtual and/or cloud environment necessary for Fudo Enterprise to function as intended.

### 3. Fudo Responsibilities

**3.1 Availability.** FUDO shall make Fudo Enterprise or components thereof purchased by CUSTOMER available to CUSTOMER for the duration purchased by CUSTOMER under the terms and conditions of this Agreement and any other agreements between FUDO and CUSTOMER (which are hereby incorporated into this Agreement by reference).

**3.2 Updates and Upgrades.** FUDO will make Updates and Upgrades to Fudo Enterprise via releases. Updates will be made as generally and commercially available to CUSTOMER without levying an incremental fee. Upgrades will be released by FUDO at its discretion and may be subject to additional fees ("**Upgrade Fees**"). CUSTOMER may Update or Upgrade Fudo Enterprise by accessing and installing the latest release from the FUDO website or as provided by a Fudo Partner and paying the additional Upgrade Fees, if applicable. If any Update to Fudo Products is deemed necessary or required by FUDO ("**Required Update**"), CUSTOMER is responsible for installing such Required Update in accordance with the instructions provided by FUDO. The terms and conditions of this Agreement will govern any



Updates and Upgrades provided by FUDO to Fudo Enterprise unless such release is accompanied by an updated End User Agreement, in which case the updated End User Agreement shall control to the extent it conflicts with this Agreement.

#### 4. Customer Responsibilities

**4.1 Limitations.** CUSTOMER acknowledges and agrees that CUSTOMER shall only provide access to Fudo Enterprise to the number of Authorized Users and/or use Fudo Enterprise to monitor the number of Authorized Servers purchased by CUSTOMER. If CUSTOMER purchases Fudo Enterprise under any custom license terms, then CUSTOMER further agrees to abide by the limitations set forth in such custom terms. CUSTOMER shall promptly notify FUDO if CUSTOMER exceeds the number of Authorized Users, Authorized Servers, or any other custom metrics purchased by CUSTOMER and shall request a Purchase Order and remit the applicable Fees for any overages in accordance with such Purchase Order.

**4.2 Restrictions.** CUSTOMER shall not use Fudo Enterprise for any purposes beyond the scope of the License granted under this Agreement. Except as expressly permitted by law and this Agreement, CUSTOMER agrees not to:

- 4.2.1 Copy, reproduce, or republish Fudo Enterprise, in whole or in part;
- 4.2.2 Translate, adapt, disassemble, change the layout, or make other changes to Fudo Enterprise;
- 4.2.3 Use Fudo Enterprise or parts thereof in other software;
- 4.2.4 Make Fudo Enterprise available to any person other than Authorized Users, if applicable;
- 4.2.5 Use or access Fudo Enterprise to provide service bureau, time-sharing, or other computer hosting services to third parties;
- 4.2.6 Modify or create derivative works based upon Fudo Enterprise;
- 4.2.7 Remove, modify, or obscure any copyright or proprietary notices contained in Fudo Enterprise;
- 4.2.8 Reverse engineer, decompile, disassemble, or attempt to derive the source code of Fudo Enterprise;
- 4.2.9 Access Fudo Enterprise in order to build a similar or competitive product;
- 4.2.10 Share nonpublic features or content of Fudo Enterprise with any third party;
- 4.2.11 Use Fudo Enterprise in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other rights of any person or that violates any applicable law;
- 4.2.12 Use a jump server or other intermediary method to monitor the number of servers beyond the number of Authorized Servers available in the license, if applicable;
- 4.2.13 Introduce any Malicious Code or instructions that may disrupt, damage, delay, or interfere with other customers' use of Fudo Enterprise; or
- 4.2.14 Assign, transfer, sell, resell, sublicense, rent, lease, time-share, distribute, or otherwise transfer the rights granted to CUSTOMER under this Agreement to any third party except as expressly set forth herein or in an addendum.

**4.3 Compliance with the Law.** By using or accessing Fudo Enterprise, CUSTOMER represents, warrants, and agrees not to do anything illegal, infringing, fraudulent, malicious, or which could expose FUDO or other users of Fudo Enterprise to harm or liability. CUSTOMER will not attempt, encourage or facilitate any of the above. CUSTOMER further represents and warrants that it shall, at all times while accessing and using Fudo Enterprise, be in compliance with applicable privacy laws and technology export laws.

#### 5. Fees and Payments

**5.1 Fees.** CUSTOMER shall pay all Fees in accordance with the terms specified in an applicable invoice or Purchase Order. Unless otherwise specified, all Fees are non-cancellable and non-refundable when paid, and no refunds will be permitted if CUSTOMER terminates CUSTOMER's License prior to the end of the applicable License Term.

**5.2 Failure to Pay Fees.** If any Fees are not received from CUSTOMER within the limited pay period provided in an applicable invoice, and provided CUSTOMER does not have a reasonable basis for disputing all or a part of such invoice, then, in addition to the other rights and remedies available and at FUDO's discretion: (i) suspend access to Fudo Enterprise until all undisputed amounts are paid; and/or (ii) levy a late fee at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is higher, from the date such payment was due until the date paid. CUSTOMER shall reimburse FUDO for all reasonable costs incurred by FUDO in collecting any late payment or interest, including attorneys' fees, court costs, and collection agency fees. FUDO WILL NOT BE LIABLE FOR ANY LOSSES WHATSOEVER INCURRED BY CUSTOMER RELATED TO CUSTOMER'S FAILURE TO PAY UNDISPUTED FEES IN ACCORDANCE WITH THIS SECTION.

**5.3 Taxes.** Unless otherwise stated, Fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, without limitation, value-added, sales, use, or withholding taxes assessable by any local, state, provincial, federal, or foreign jurisdiction in connection with any Fees.



**6. Term.** The term of this Agreement commences upon CUSTOMER's first access or use of Fudo Enterprise and continues until terminated as provided herein.

**7. Termination**

**7.1 Termination: Expiration.** If CUSTOMER purchases a Subscription License, then this Agreement shall automatically terminate upon expiration of the Subscription Period if not otherwise renewed.

**7.2 Termination: Convenience.** CUSTOMER may terminate this Agreement at any time and for any reason by providing FUDO with full payment of any Fees due under this Agreement or applicable addenda for the remainder of the License Term. CUSTOMER's right to terminate this Agreement or its License under this Section at CUSTOMER's convenience does not alleviate CUSTOMER's responsibility to pay any outstanding Fees nor entitle CUSTOMER to receive any refund from FUDO.

**7.3 Termination: Breach.** Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after the non-breaching Party provides written notice to the other Party.

**7.4 Effect of Termination.** Upon termination of this Agreement, all Licenses granted to CUSTOMER pertaining to Fudo Enterprise will cease, and CUSTOMER shall discontinue all use of Fudo Enterprise. Within fifteen (15) days of termination, CUSTOMER shall, delete, destroy, or, if requested by FUDO, return all copies of Fudo Enterprise, if any, and all Confidential Information of FUDO in CUSTOMER's possession.

**8. Proprietary Rights**

**8.1 Reservation of Rights.** Fudo Enterprise is licensed and not sold to CUSTOMER, and CUSTOMER receives no rights to Fudo Enterprise other than those specifically granted in this Agreement. Subject to the rights granted hereunder and any rights granted through other agreements between FUDO and CUSTOMER, FUDO reserves all rights, title, and interest in and to Fudo Enterprise, including all related Intellectual Property Rights. CUSTOMER acknowledges and agrees that this Agreement does not grant CUSTOMER any title or right of ownership in or to Fudo Enterprise, the Fudo Hardware Appliance, or any component thereof, or to any associated materials or Intellectual Property Rights, or to any enhancements, customizations, integrations, modifications, suggestions, Feedback, features, feature requests, or improvements related to the foregoing, whether or not associated and integrated into Fudo Enterprise. CUSTOMER shall not, at any time, take or cause any action which would be inconsistent with or tend to impair the rights of FUDO or its licensors in Fudo Enterprise.

**8.2 Proprietary Notices.** The Marks are trademarks or registered trademarks of FUDO or its Affiliates, partners, or licensors. CUSTOMER may not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify the Marks in any way, including in advertising or publicity, without FUDO's prior written consent. The use of the Marks on any other website or networked computer environment is not allowed, including as a "hot" link on or to any other website.

**9. Confidentiality; Data Protection**

**9.1 Confidentiality.** CUSTOMER and FUDO agree that during the performance of this Agreement, each may receive Confidential Information of the other Party or other third parties who have entrusted either Party with the safeguarding of such Confidential Information. The Parties agree not to use or disclose any Confidential Information except for the purpose of meeting its obligations under this Agreement and will not use Confidential Information for any other purpose whatsoever. As such, the Parties agree that during the term of this Agreement and thereafter, for as long as Confidential Information remains confidential, and as long as Fudo Enterprise or any related Documentation constitutes a trade secret, the Parties shall maintain such Confidential Information and/or trade secrets in strict confidence. The Parties shall advise all their employees, agents, or contractors that they are bound by the confidentiality terms of this Agreement or any other applicable nondisclosure agreement signed by the Parties. If either Party is required to disclose Confidential Information relating to the other Party to a court or government agency, it shall, prior to disclosure and as soon as practicable, notify the other Party and allow it an adequate opportunity to object to the disclosure order or take other action to preserve the confidentiality of the information. The obligations and responsibilities of this Subsection shall survive termination of this Agreement for any reason and shall bind and benefit the Parties and their respective successors and assigns.

**9.2 Responsibilities for Customer Data.** FUDO is not responsible for any intentional or unintentional misuse of Customer Data by CUSTOMER (including CUSTOMER's employees, subsidiaries, Affiliates, and/or parent companies) and/or Authorized Users or Third Party Service providers to whom CUSTOMER has granted access to Customer Data via Fudo Enterprise. CUSTOMER understands that CUSTOMER is solely responsible for granting access to Fudo Enterprise to Authorized Users, and CUSTOMER is responsible for safeguarding Customer Data and for backup and restoration of Customer Data. FUDO is not responsible for the unauthorized disclosure of Customer Data resulting from CUSTOMER's negligence, Third-Party Services, or any other means outside FUDO's reasonable control.



**10. Fudo Partners.** Fudo Partners may provide Fudo Enterprise and related services to CUSTOMER under separate terms or agreements with CUSTOMER, and FUDO is not a party to such other agreements. FUDO is not responsible in any way for services performed by Fudo Partners with whom CUSTOMER contracts or through whom CUSTOMER accesses or installs Fudo Enterprise, including any virtual and/or cloud environment provided by a Fudo Partner, and FUDO is not responsible in any way for the provision or maintenance of such environments. Any dispute with a Fudo Partner should be taken up directly with the applicable Fudo Partner. FUDO EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF CUSTOMER'S USE OF A FUDO PARTNER RELATING TO FUDO ENTERPRISE, REGARDLESS OF WHETHER SUCH PARTNER IS LISTED AS AN "AUTHORIZED PARTNER," "CERTIFIED PARTNER," OR OTHERWISE.

## **11. Third-Party Services**

**11.1 Third-Party Services in General.** Fudo Enterprise may interoperate with Third-Party Services. All Third-Party Services are provided "As-Is," and FUDO does not endorse or warrant any Third-Party Services, regardless of whether they are provided by FUDO or are required to use Fudo Enterprise. CUSTOMER expressly relieves FUDO from all liability arising from CUSTOMER's use of any Third-Party Services. Any use of Third-Party Services is solely between CUSTOMER and the applicable Third-Party Services provider. If CUSTOMER accesses Third-Party Services from Fudo Enterprise, it does so at its own risk and understands that this Agreement does not apply to the use of Third-Party Services. FUDO shall not be responsible for any disclosure, modification, or deletion of Customer Data, including Personal Data, resulting from access by Third-Party Services. FUDO is not responsible for downtime or unavailability of any Third-Party Services. Under no circumstances will FUDO be liable for any indirect, special, incidental, punitive, or consequential damages, including but not limited to loss of data, business interruption, or loss of profits arising from the use or the inability to use a Third-Party Service.

**11.2 Required Third-Party Services.** Third-Party Services may require CUSTOMER or a Fudo Partner, as applicable, to purchase or otherwise obtain a license to use such Third-Party Services. Payment of all Third-Party Services fees is the responsibility of CUSTOMER or the applicable Fudo Partner, and all necessary permissions and licenses for Required Third-Party Services must be maintained in full force and effect for the duration of the License Term. FUDO will not be responsible for any loss of features or availability of Fudo Enterprise related to CUSTOMER's failure to maintain Required Third-Party Services as specified in this Subsection. If CUSTOMER fails to maintain Required Third-Party Services licenses as required under this provision, then FUDO reserves the right to obtain such Third-Party Services license on behalf of CUSTOMER and invoice CUSTOMER accordingly.

**11.3 Open-Source Software.** Portions of Fudo Enterprise may include OSS that are subject to third-party terms and conditions. A list of all third-party OSS and their related terms used in Fudo Enterprise is available by sending an email to [legal@fudosecurity.com](mailto:legal@fudosecurity.com). If there is a conflict between any third-party OSS terms and the terms of this Agreement, then the third-party OSS terms shall prevail but solely in connection with the related third-party OSS. Notwithstanding anything in this Agreement to the contrary, FUDO makes no warranty or indemnity of any kind with respect to any third-party OSS.

## **12. Fudo Warranty**

**12.1 Fudo Limited Warranties.** FUDO warrants that Fudo Enterprise will materially conform to the Documentation for a period extending thirty (30) days from the initial delivery of Fudo Enterprise by FUDO to CUSTOMER or a Fudo Partner, if applicable ("**Fudo Warranty**"). The Fudo Warranty will not apply to Fudo Enterprise provided to CUSTOMER for no Fee or to subsequent Subscription Licenses or Perpetual Licenses purchased by CUSTOMER.

**12.2 Limitations.** FUDO shall not be liable, and the Fudo Warranty shall not apply, if:

**12.2.1** CUSTOMER fails to material perform any of its obligations under this Agreement, including, without limitation, failure to pay all applicable Fees when and to the extent due;

**12.2.2** CUSTOMER accesses or uses Fudo Enterprise beyond the express rights provided herein;

**12.2.3** The non-compliance of Fudo Enterprise results from changes to security or system settings, protocols, permissions, or any other act or omission of CUSTOMER that is outside of FUDO's reasonable control;

**12.2.4** Fudo Enterprise has not been properly installed and used as instructed by FUDO;

**12.2.5** Fudo Enterprise has been modified other than by FUDO or its authorized representatives;

**12.2.6** CUSTOMER combines Fudo Enterprise with any other software, application, or other systems not provided or otherwise approved in writing by FUDO, as such combination or use is the cause of Fudo Enterprises's failure to function properly; or

**12.2.7** CUSTOMER violates any applicable law.

**12.3 Exclusive Remedy.** FUDO will, at its expense, correct or replace the applicable Fudo Enterprise functionality giving rise to a breach of the Fudo Warranty. If FUDO determines that it cannot correct or replace Fudo Enterprise, FUDO may terminate this Agreement and refund all prepaid Fees to CUSTOMER for the remainder of the



License Term, if applicable. The foregoing are FUDO's sole obligations and CUSTOMER's exclusive remedies for any breach of the Fudo Warranty.

**13. Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTY CONTAINED IN THIS AGREEMENT, FUDO ENTERPRISE IS PROVIDED "AS-IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, ASSURANCE, CONDITION, OR DUTY REGARDING THE FUNCTIONALITY, PRIVACY, SECURITY, ACCURACY, AVAILABILITY, REPAIR, INTERRUPTIONS, FREE OF VIRUSES OR MALICIOUS CODE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, FUDO DISCLAIMS ANY AND ALL WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, ORAL, OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, REASONABLE CARE, AND/OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT FUDO KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE). TO THE EXTENT PERMITTED BY APPLICABLE LAW, FUDO FURTHER DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, AND/OR REPRESENTATIONS OF TITLE AND NON-INFRINGEMENT AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FUDO DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE FUNCTIONS PERFORMED BY FUDO ENTERPRISE WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE OPERATION OF FUDO ENTERPRISE WILL BE ERROR-FREE, OR THAT ALL DEFECTS IN FUDO ENTERPRISE WILL BE CORRECTED. CUSTOMER AGREES THAT CUSTOMER'S USE OR PURCHASE OF FUDO ENTERPRISE HEREUNDER IS NEITHER CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES UNLESS A DESCRIPTION OF SUCH FUNCTIONALITY OR FEATURES IS ATTACHED HERETO. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FUDO OR ITS EMPLOYEES OR A FUDO PARTNER SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF FUDO'S OBLIGATIONS HEREUNDER.

**14. Indemnification**

**14.1 Fudo Indemnification.** FUDO shall indemnify CUSTOMER for any suit or proceeding alleging that Fudo Enterprise infringes any Intellectual Property Rights of a third party, provided that CUSTOMER: (i) gives FUDO immediate notice in writing of any such suit, proceeding, or threat thereof; (ii) permits FUDO sole control, through counsel of FUDO's choice, to defend and/or settle such suit; and (iii) gives FUDO all the needed information, reasonable assistance, and authority, at FUDO's expense, to enable FUDO to defend and/or settle such suit. In the event the use of Fudo Enterprise provided by FUDO is challenged by a third party, or in the event FUDO wishes to minimize its potential liability hereunder, FUDO may, at its sole option and expense and without any cost or harm to CUSTOMER: (i) procure for CUSTOMER the right to use Fudo Enterprise; (ii) substitute a functionally equivalent, non-infringing unit of Fudo Enterprise; (iii) modify Fudo Enterprise so that it no longer infringes but remains functionally equivalent; or (iv) terminate any Subscription Licenses effective immediately upon notice and cancel all future Subscription Fee responsibilities of CUSTOMER.

**14.2 Customer Indemnification.** CUSTOMER shall indemnify and hold harmless FUDO and its Affiliates from and against any claims, actions, losses, damages, or other liabilities that arise out of or result from any claim of any third party relating to: (i) any dispute between CUSTOMER and a Customer Client; (ii) any breach by CUSTOMER of any covenant, representation, or warranty set forth in this Agreement; and (iii) any violation by CUSTOMER of any law.

**15. Limitation of Liability**

**15.1 Limited Liability.** FUDO SHALL NOT BE LIABLE TO CUSTOMER UNDER, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE FOR ANY: (I) INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF BUSINESS); (II) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS; (III) LOSS OF GOODWILL OR REPUTATION; (IV) USE, INABILITY TO USE, INTERRUPTION, DELAY, OR DAMAGE RESULTING FROM SYSTEM FAILURE, MALFUNCTION, SHUTDOWN, FAILURE TO ACCURATELY TRANSFER OR READ INFORMATION, FAILURE TO PROVIDE CORRECT INFORMATION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES RESULTING FROM OR RELATED TO THE USE OR INABILITY TO USE FUDO ENTERPRISE, HOWEVER CAUSED; (V) LOSS, INABILITY TO USE, OR RECOVERY OF ANY CUSTOMER DATA, OR BREACH OF CUSTOMER DATA OR SYSTEM SECURITY; OR (VI) COST OF REPLACEMENT GOODS OR SERVICES. THIS LIMITATION OF LIABILITY WILL APPLY WHETHER FUDO WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

**15.2 Aggregate Liability.** CUSTOMER AGREES THAT THE TOTAL LIABILITY OF FUDO TO CUSTOMER ARISING OUT OF, IN CONNECTION WITH, OR RELATING TO THIS AGREEMENT OR CUSTOMER'S USE OF FUDO ENTERPRISE WILL NOT EXCEED, IN THE AGGREGATE FOR ALL SUCH LIABILITIES, ONE THOUSAND U.S. DOLLARS (\$1,000), OR THE TOTAL AMOUNT OF FEES, IF ANY, ACTUALLY PAID BY CUSTOMER FOR USE OF FUDO ENTERPRISE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE





MOST RECENT ACT OR OMISSION GIVING RISE TO FUDO LIABILITY. CUSTOMER RELEASES FUDO FROM ALL OBLIGATIONS, LIABILITY, CLAIMS, OR DEMANDS IN EXCESS OF THE LIMITATION. THIS LIMITATION SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED WARRANTY OR REMEDY HEREUNDER IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

**15.3 Allocation of Risk.** CUSTOMER acknowledges and agrees that FUDO provides Fudo Enterprise in reliance upon the disclaimers of warranty and limitation of liability provisions provided herein and that the terms of this Agreement reflect an allocation of risk between CUSTOMER and FUDO (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the provisions herein form an essential basis of the bargain between CUSTOMER and FUDO. If CUSTOMER is subject to applicable laws that prohibit CUSTOMER from entering into the risk allocation arrangement as set forth herein, then the terms will apply to CUSTOMER to the fullest extent permitted by applicable law, it being understood that CUSTOMER and FUDO wish to enforce the provisions of this Agreement to the maximum extent permitted by applicable law.

## **16. General Provisions**

**16.1 Entire Agreement.** This Agreement, together with all exhibits and addenda hereto, which are incorporated herein by reference, comprise the entire agreement between the Parties relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement.

**16.2 Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument.

**16.3 Amendments.** This Agreement may not be modified or amended except in writing, signed by a duly authorized representative of each Party; no other act or custom shall be deemed to amend or modify this Agreement.

**16.4 Rights Cumulative.** No right or remedy conferred upon or reserved to either of the Parties is intended to be exclusive of any other right or remedy (unless such intent is expressly set forth in such provision), and every right and remedy shall be cumulative and in addition to any other right or remedy, now or hereafter legally existing upon any default.

**16.5 Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the Parties shall mutually agree on an alternate, legally valid, and enforceable provision. The remainder of this Agreement shall continue in full force and effect to the extent that continued operation under this Agreement without the unenforceable provision is consistent with the intent of the Parties as expressed in this Agreement.

**16.6 Waiver.** No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent is in writing and signed by the Party that has given such waiver or excused such breach.

**16.7 Headings.** The headings in this Agreement and any and all addenda are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement or any addenda hereto.

**16.8 Assignment.** FUDO may freely transfer and/or assign this Agreement at its discretion without the consent of CUSTOMER. CUSTOMER may not assign or otherwise transfer its rights and/or obligations under this Agreement or any addenda without the prior written consent of FUDO. Notwithstanding the foregoing, no consent shall be required for an assignment of this Agreement and all applicable addenda made pursuant to a merger, consolidation, or the acquisition of all or substantially all of the business and assets of FUDO or CUSTOMER. This Agreement will bind and inure to the benefit of the Parties and their successors and permitted assigns.

**16.9 Independent Contractors.** The relationship of the Parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be construed to constitute a partnership between or joint venture of the Parties, nor shall either Party be deemed the agent of the other Party or have the right to bind the other Party in any way without the prior written consent of such Party, except as specifically provided in this Agreement.

**16.10 Injunctive Relief.** CUSTOMER acknowledges that a breach of the Proprietary Rights Section of this Agreement could cause irreparable injury to FUDO that may not be adequately compensated in monetary damages. In the event of such a breach, the FUDO shall be entitled to seek equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief.

**16.11 Dispute Resolution.** For any dispute with FUDO, CUSTOMER agrees first to contact FUDO at [legal@fudosecurity.com](mailto:legal@fudosecurity.com) and attempt to resolve this dispute with FUDO informally. In the event the Parties are unable to resolve the dispute informally, FUDO and CUSTOMER agree that any controversy or claim arising out of or relating to this Agreement (except for actions seeking injunctive relief) shall be settled by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator to be selected by agreement of the Parties not later than ten (10) days after delivery of the demand for arbitration or, failing such



agreement, appointed pursuant to the Commercial rules of the American Arbitration Association. Unless otherwise agreed upon by the Parties, such arbitrator shall be a retired judge or attorney licensed to practice law in the State of California, as applicable, with substantial experience in litigation or disputes of similar substance. The arbitration shall be conducted in Alameda County, California, unless otherwise agreed by the Parties. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The prevailing Party in any arbitration shall be entitled, in addition to any other rights or remedies it may have, to reimbursement for its expenses incurred thereby including arbitration costs, reasonable attorneys' fees, and arbitrators' fees. This arbitration provision is governed by the Federal Arbitration Act.

**16.12 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflicts of law. Any dispute between the Parties that is excluded from the arbitration agreement or that cannot be heard in small claims court shall be resolved in the federal courts located in the County of Alameda County, California, and the Parties agree and submit to the personal and exclusive jurisdiction and venue of these located in the Northern District of California.

**16.13 Force Majeure.** Neither Party shall be liable for any failure or delay in its performance under this Agreement or any and all addenda due to circumstances beyond its reasonable control (other than the payment of sums due), provided that it notifies the other Party as soon as practicable and uses its best efforts to resume performance (such a "Force Majeure Event"). A Force Majeure Event includes, without limitation, strikes, lock-outs, labor troubles, inability to procure materials or services, including substantial price increases in materials or services, impacts of pandemics, epidemics, failure of power, riots, insurrection, war, or other reasons of like nature not the fault of such Party. The Party shall immediately provide notice to the other Party of such delay, and the performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Each Party agrees to strive to develop and maintain adequate backup systems, procedures, and resources to assure their respective performance. Whether an event is a Force Majeure Event shall be at the sole discretion of FUDO.

**16.14 Notices.** FUDO may deliver notice to CUSTOMER under this Agreement using electronic mail or a general notice on or through the FUDO website. CUSTOMER may give notice to FUDO at any time by letter delivered by first-class postage prepaid mail or overnight courier to the following addresses:

**For Purchases Inside the United States**

Fudo Security, Inc.  
3900 Newpark Mall Road, Suite 318  
Newark, CA 94560

CUSTOMER may contact FUDO at the above addresses for questions regarding this Agreement or by email to: [legal@fudosecurity.com](mailto:legal@fudosecurity.com). Either Party may at any time designate another address for the receipt of notice by notifying the other Party in accordance with this subsection.

**16.15 Survival.** Any provision of this Agreement which contemplates performance subsequent to the expiration or earlier termination of this Agreement, or which expressly states that it shall survive termination of the Agreement, shall so survive such expiration or termination and shall continue in full force and effect until fully satisfied.

**16.16 No Advice from Fudo.** CUSTOMER acknowledges that it has had the opportunity to review this Agreement and the transactions contemplated by it with its own legal counsel. CUSTOMER relies solely on its counsel and not on any statements or representations of FUDO or any of its agents for legal advice concerning the transactions contemplated by this Agreement except for the warranties and covenants expressly stated herein.



## Exhibit A

# Definitions

**"Affiliates"** means any partnership, joint venture, subsidiary, and other affiliated entities (whether incorporated or unincorporated) in which a Party has an ownership, managerial, or operational interest or which now or hereafter directly or indirectly Controls, is Controlled by, or is under common Control with, such Party, including multiple levels of Controlled corporations. CUSTOMER shall notify FUDO in writing of the identity of its Affiliates and shall be jointly and severally liable for such Affiliate's performance of its obligations under this Agreement.

**"Authorized Servers"** means the number of servers that may be monitored by Fudo Enterprise under this Agreement and for whom CUSTOMER purchased a Subscription License or Perpetual License, as applicable. Authorized Servers are limited to CUSTOMER's or its Affiliate's servers.

**"Authorized Users"** means the number of individuals who are authorized to use Fudo Enterprise under the rights granted to CUSTOMER by FUDO pursuant to this Agreement and for whom CUSTOMER purchased a Subscription License or Perpetual License, as applicable. Authorized Users may include CUSTOMER's employees, Affiliates, contractors, or agents with whom CUSTOMER transacts business. CUSTOMER is responsible for the access and use of Fudo Enterprise by CUSTOMER's Authorized Users as if the Authorized User was a Party to this Agreement.

**"Confidential Information"** means all nonpublic information disclosed under this Agreement, including, without limitation, proprietary and confidential matters concerning Fudo Enterprise, non-public features of Fudo Enterprise, and FUDO's current or proposed business operations, security and financial information, technical data, inventions, developments, research, marketing strategies, business methods, information related to pricing, the terms and conditions of this Agreement, and other similar information gained in connection with this Agreement, as well as technology, ideas, formulae, know-how, Documentation, procedures, algorithms and trade secrets embodied in Fudo Enterprise, technical documentation, solution methodology, user manuals, and other content related to Fudo Enterprise (including any future Updates, Upgrades, developments and adaptations to Fudo Enterprise). For purposes of this Agreement, "Confidential Information" shall also include third-party nonpublic information that is disclosed by either Party under this Agreement or through Fudo Enterprise. Confidential Information shall not include any information that: (a) is or becomes generally known or available to the public through no fault of the receiving Party; (b) is already known by the receiving Party at the time of disclosure through no wrongful act of the receiving Party; or (c) is independently developed by the receiving Party without the use of or reference to the Confidential Information provided herein.

**"Control"** means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Customer Client"** means any third party who has shared or entrusted CUSTOMER with Personal Data which is stored, read, or otherwise made available through Fudo Enterprise.

**"Customer Data"** means all of CUSTOMER's or Customer Clients' content, information, and data input into CUSTOMER's instance of Fudo Enterprise, including, without limitation, any: (i) transactional data; (ii) contact data; (iii) market or account data; (iv) Personal Data; (v) Confidential Information; and (vi) proprietary information or information related to the Intellectual Property Rights of CUSTOMER or Customer Clients.

**"Documentation"** means any materials provided by FUDO to CUSTOMER to assist CUSTOMER with the use of Fudo Enterprise, whether or not created before, during, or after the term of this Agreement, and includes, without limitation, any operational, functional, and technical specifications and any standard guides, manuals, or related materials.

**"Feedback"** means any input, suggestions, communications, or materials sent or transmitted from CUSTOMER to FUDO suggesting or recommending changes to Fudo Enterprise, including, without limitation, suggestions for new features or functionality or any comments, questions, or the like.

**"Fees"** means, collectively, all fees required to be paid by CUSTOMER to FUDO under this Agreement or any applicable addenda. Unless stated otherwise, all Fees are payable in US Dollars. If CUSTOMER purchases Fudo Enterprise from a Fudo Partner, FUDO will look first to the applicable Fudo Partner for payment of all applicable Fees.

**"FUDO"** means Fudo Security, Inc., a Delaware Corporation, and FUDO's Affiliates, including Fudo Security Sp. z o.o., a Polish Corporation.

**"Fudo Enterprise"** means FUDO's modified FreeBSD operating system delivered as an image and software currently developed by FUDO and any later-developed software or applications that FUDO incorporates into Fudo Enterprise.

**"Fudo Hardware Appliance"** means a device provided by FUDO with Fudo Enterprise installed.





**"Fudo Partner"** means FUDO's channel partners, managed service providers (MSPs), or other service providers who have entered into an agreement with FUDO for the distribution of Fudo Enterprise.

**"Intellectual Property Rights"** means all of the following in any and all jurisdictions throughout the world (whether registered or unregistered): (i) patents and patent applications (including continuations, continuations-in-part, divisional, reexaminations, reissues, and extensions thereof); (ii) copyrights; (iii) trademarks, trade dress, service marks and other similar designations of source of origin, together with the goodwill symbolized by or associated with the foregoing; (iv) trade secrets; and (v) all other proprietary or intellectual property rights under any law or international convention throughout the world, including all registrations of, and applications for, any of the items described in clauses (i)-(iv) (inclusive).

**"License"** means either the Subscription License or Perpetual License, as applicable, purchased by CUSTOMER. The License is limited to the number of Authorized Users and/or Authorized Servers purchased by CUSTOMER. CUSTOMER's right to the License shall not be construed as granting any additional rights or privileges other than as expressly set forth in this Agreement or applicable addenda.

**"License Term"** means the Subscription Period (in the case of a Subscription License) or perpetuity (in the case of a Perpetual License).

**"Malicious Code"** means viruses, worms, time bombs, Trojan horses, and other harmful code, files, scripts, agents, or programs that restrict, interfere with, or circumvent the operation of Fudo Enterprise.

**"Marks"** means all trademarks, service marks, and trade names of FUDO, its partners, and licensors, including, without limitation: Fudo Privileged Access Management (PAM), Fudo Enterprise, Fudo One, and the associated designs and logos.

**"Open Source Software"** or **"OSS"** means all software that is distributed as "open source software" or under similar licensing or distribution terms (including, without limitation, to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Affero General Public License (AGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License).

**"Perpetual License"** means License to Fudo Enterprise in perpetuity upon payment of a one-time Perpetual License Fee and all applicable Support Fees.

**"Perpetual License Fee"** means the fee charged to CUSTOMER by FUDO for each Perpetual License and excluding Support Fees applicable to the Perpetual License.

**"Personal Data"** means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number, or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "HIPAA"); and (iv) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation.

**"Purchase Order"** means any documentation that specifies the Licenses purchased by CUSTOMER and related terms, including, without limitation, Subscription Fees, Subscription Period, and Required Third-Party Services entered into between FUDO and CUSTOMER from time to time. Purchase Orders shall be deemed incorporated herein by reference.

**"Related Data"** means data or information (excluding Customer Data) associated with or arising out of the use of Fudo Enterprise (including, without limitation, data associated with requests made to, and responses generated in connection with, Fudo Enterprise).

**"Required Third-Party Services"** means the Third-Party Services that are identified in the Documentation as required for the proper functionality of Fudo Enterprise.

**"Specific Cloud Image"** means a Fudo Enterprise image prepared by FUDO for the specific platform specified by CUSTOMER at the time of purchase of Fudo Enterprise that can be installed by CUSTOMER in a cloud environment, such as Amazon Web Services, Google Cloud, or Microsoft Azure.

**"Subscription Fees"** means the fees paid by CUSTOMER to FUDO for a Subscription License.

**"Subscription License"** means a License to Fudo Enterprise paid on an ongoing basis and subject to payment of all Subscription Fees.



**"Subscription Period"** means the period of time for which CUSTOMER is subscribed to Fudo Enterprise under a Subscription License.

**"Support Fees"** means the fees charged by FUDO to CUSTOMER for Support Services for a single Perpetual License.

**"Support Services"** means the maintenance, technical support, or other work performed by FUDO for CUSTOMER under a Perpetual License.

**"Third-Party Services"** means any application, software, or service that is provided by third parties, interoperates with Fudo Enterprise, or is identified as Third-Party Services in the Documentation.

**"Update"** means all new versions, updates, revisions, bug fixes, patches, or other alterations of Fudo Enterprise that are intended to correct an error in Fudo Enterprise or are required to correct a breach of warranty or other violation of this Agreement or applicable law.

**"Upgrade"** means all new versions, updates, revisions, or other alterations to Fudo Enterprise that are intended to improve, expand, or otherwise enhance the functionality of Fudo Enterprise.

**"Virtual Appliance Image"** means a Fudo Enterprise image sent by FUDO to CUSTOMER that can be installed in a virtual environment, such as VMware.