



Spikes Security, Inc.

End-User License Agreement (“Agreement”)

IMPORTANT

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE INSTALLING OR USING ANY SOFTWARE PROGRAMS (“PROGRAMS”) FROM SPIKES SECURITY, INC. (“SPIKES”). BY INSTALLING OR USING SUCH PROGRAMS, YOU ACCEPT THESE TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. **IF YOU DO NOT AGREE WITH THESE TERMS, YOU MAY NOT INSTALL OR USE THE PROGRAMS AND YOU MUST DESTROY ALL COPIES OF THE PROGRAMS IN YOUR POSSESSION.**

1) LICENSE

Subject to your full compliance with all the terms and restrictions set forth in this Agreement, Spikes hereby grants to you a non-exclusive, non-transferable (except as expressly permitted below), non-sublicensable license to use the Programs delivered to you and any accompanying documentation solely in connection with your use of Spikes’ hardware products for secure browsing activities.

2) PROPRIETARY RIGHTS

Spikes and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs. The Programs in source code form remain a confidential trade secret of Spikes and its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, know-how, techniques, processes, ideas, algorithms, and software design and architecture (“Proprietary Information”). As between the parties, such Proprietary Information shall belong solely to Spikes. During and after the term of this Agreement, you shall hold in confidence and protect, and shall not use (except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

3) RESTRICTIONS ON USE AND TRANSFER

- a) The Programs may be used solely in conjunction with Spikes’ hardware products for secure browsing purposes and may be copied solely for installation and back-up purposes in support of your use of such hardware products. You may not modify the Programs in any manner without the prior written approval of Spikes. You may physically transfer the Programs and this Agreement to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Agreement, (iii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to Spikes, and (iv) you comply with all applicable laws including any import/export control regulations.
- b) You shall not (and you shall not permit others to), directly or indirectly, modify, translate, decompile, disassemble, or reverse engineer the Programs (except to the extent applicable laws specifically prohibit such restriction) or any copy, in whole or in part, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Programs; copy (except for the purposes set forth above), rent, lease, distribute, or otherwise transfer rights to the Programs; or remove any proprietary notices or labels on the Programs.
- c) You shall not disclose any Proprietary Information, including any information relating to the performance or operation of the Programs (including any benchmarking or other testing results) or to any third party without the express prior written consent of Spikes.



4) **[LIMITED WARRANTY;] WARRANTY DISCLAIMER**

- a) [Subject to the limitations and conditions set forth herein, Spikes warrants that for a period of ninety (90) days commencing from the date the Programs are delivered by Spikes to you (but in case of resale by an approved reseller other than Spikes, commencing not more than ninety (90) days after original delivery by Spikes to such reseller): (a) the media on which the Programs are furnished will be free of defects in materials and workmanship under normal use; and (b) the Programs will substantially conform to the applicable documentation. Except for the foregoing, the Programs are provided "AS IS". Your sole and exclusive remedy and the entire liability of Spikes and its suppliers and resellers under this limited warranty will be (i) replacement of defective media and/or (ii) at Spikes' option, repair, replacement, or refund of the purchase price of the Programs, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to the Spikes within the warranty period. This warranty does not apply if the Programs (a) have been altered, except by Spikes or its authorized representative; (b) have not been installed, operated, or maintained in accordance with instructions supplied by Spikes; or (c) are licensed for beta, evaluation, testing or demonstration purposes.]
- b) SPIKES AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE. [EXCEPT FOR THE EXPRESS WARRANTY ABOVE,] THE PROGRAMS ARE PROVIDED TO YOU WITH NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. SPIKES IS NOT RESPONSIBLE FOR THE CONTENT OF WEBSITES VISITED IN CONNECTION WITH USE OF SPIKES' SECURE BROWSING PRODUCTS.

5) **THIRD PARTY SOFTWARE**

If the Programs contain any software provided by third parties, then such third party software is provided "AS IS" and without any warranty of any kind. If such third party software is licensed under an open source license, then this Agreement does not apply to such open source software, and nothing in this Agreement shall be construed as a limitation of any right granted to you under such open source license.

6) **LIMITATION OF LIABILITY**

IN NO EVENT AND UNDER NO LEGAL THEORY SHALL SPIKES' OR ITS SUPPLIERS' OR RESELLERS' AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS PAID BY YOU FOR THE PROGRAMS. IN NO EVENT WILL SPIKES OR ITS SUPPLIERS OR RESELLERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR YOUR USE OF THE PROGRAMS OR OTHER SPIKES PRODUCTS, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, COMPUTER FAILURE OR MALFUNCTION, LOSS OF GOODWILL, OR BUSINESS INTERRUPTION, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

7) **INDEMNIFICATION**

You agree to indemnify, defend and hold harmless Spikes and its affiliates and their respective officers, employees, directors, agents, successors and assigns from and against any and all liability, costs, losses, damages, and expenses (including reasonable attorneys' fees and expenses) arising out of any claim, suit, or cause of action relating to (a) your breach of any term of this Agreement; (b) your violation of any rights of any third party; or (c) your use or misuse of the Programs.



8) **TERM**

- a) This Agreement is effective for the duration of the license to the Programs you have purchased, or until earlier terminated in accordance with this Agreement. Spikes may terminate this Agreement for any reason or for no reason upon thirty (30) days' notice. Spikes may terminate this Agreement immediately if you fail to comply with any term or condition of this Agreement. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. You agree that upon such termination, you will destroy all copies of the Programs and related documentation. Provided that this Agreement is not terminated for convenience by Spikes, early termination of this Agreement shall not entitle you to a refund of any portion of the license fees paid or payable for the Programs.
- b) Sections 2, 4(b), 5, 6, 7(b), 8 and 9 shall survive the termination or expiration of this Agreement.

9) **EXPORT CONTROLS**

You agree to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. Specifically, you covenant that you shall not -- directly or indirectly -- sell, export, re-export, transfer, divert, or otherwise dispose of any software, source code, or technology (including products derived from or based on such technology) received from Spikes under this Agreement to any country (or national thereof) subject to antiterrorism controls or U.S. embargo, or to any other person, entity, or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

10) **MISCELLANEOUS**

- a) You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and restrictions. You further agree that this license is the complete and exclusive statement of your agreement with Spikes relating to the subject matter of this license, and that it supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this license. You may not assign or transfer this Agreement, or any rights or obligations hereunder, to any third party without the prior written consent of Spikes. Spikes may assign this Agreement, in whole or in part, in connection with a merger, acquisition, or other sale or disposition of all or substantially all of the business or assets to which this Agreement relates. This Agreement may only be modified or amended by written agreement of the parties hereto. This Agreement shall be governed by and construed under the laws of the state of California, without regard to conflict of laws principles, and this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
- b) Except as provided below, any disputes arising from or relating to the subject matter of this Agreement shall be resolved by, and you hereby consent to, binding arbitration conducted in the English language in San Francisco, California, USA pursuant to California law and the rules of the Judicial Arbitration and Mediation Service (JAMS.) Judgment upon any award so rendered may be entered in any court having jurisdiction, or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right at any time to seek injunctive or other forms of equitable relief from any court of competent jurisdiction.