SAN BERNARDINO COUNTY

Contract Number
24-826

SAP Number

Innovation and Technology Department

Department Contract Representative	Jeremiah Thomas
Telephone Number	(909) 388-0641
Contractor	Xecurify Inc. DBA (miniOrange Security Software Private Limited)
Contractor Representative	N/A
Telephone Number	N/A
Contract Term	December 7, 2021 through December 6, 2026
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	Non-financial
Cost Center	1200604048

Briefly describe the general nature of the contract: End User License Agreement with Xecurify Inc., DBA miniOrange Security Software Pvt Ltd., including non-standard terms, replacing Contract No. 21-922, for the use of enhanced website performance software known as miniOrange WordPress plugin retroactively effective January 5, 2024, and continuing until terminated.

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► *Bonnie Uphold*	►	►
Bonnie Uphold, Deputy Supervising County Counsel		
Date 8/30/2024	Date	Date

Non-Standard Contract Coversheet

Revised 7/1/24

End User License Agreement

This End User License Agreement(EULA) is between **you ('either an individual or an entity / Customer')** and **Xecurify Inc (DBA miniOrange Security Software Private Limited)**. PLEASE READ THIS AGREEMENT BEFORE USING ANY **XECURIFY SOFTWARE OR SERVICES**. BY DOWNLOADING, INSTALLING OR USING ANY **XECURIFY** SOFTWARE OR SERVICES YOU **(the Customer)** SIGNIFY ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. **Customer** or **you** agree to the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its Affiliates to this Agreement. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use the Service. This Agreement is effective as of that date that you accept it. NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. DEFINITIONS

1. **1.1. Customer** means the legal entity or individual that agrees to the terms of this Agreement. The individual who physically signs the **Agreement** and warrants that he/she has the legal authority to agree to the terms and conditions contained herein.
2. **1.2. Customer Data** means all electronic data submitted by or on behalf of Customer to the Xecurify Service.
3. **1.3. Documentation** means Xecurify's user guides and other end user documentation for the Service available on the online help feature of the Service, as may be updated by Xecurify from time to time including without limitation the materials available at www.miniorange.com.
4. **1.4. Email Order** means an order of requirement with respect to the software which is raised by the customer that specifies the Service, Training Services, Support Services, and/or Professional Services purchased by Customer under this Agreement that is entered into by Customer (or any Affiliate) and Xecurify (or any Affiliate). Email Order shall be subject solely to and incorporate by reference the terms of this Agreement.
5. **1.5. Professional Services** means implementation and configuration services provided by Xecurify in connection with the Service, as described more fully in a Statement of Work. Professional Services shall not include the Service.
6. **1.6. Service** means the products and services purchased by Customer and provided by Xecurify, as specified on an Order Form. **Service** excludes the Professional Services, Free Trial Service, and Non-Xecurify Applications.

1. **(i)** copy, rent, sell, lease, distribute, pledge, assign, or otherwise transfer, or encumber rights to the Service, or any part thereof, or make it available to anyone other than its Users;
2. **(ii)** Customer shall be responsible for its usage of the Software and shall comply with all applicable laws and regulations with respect to its usage of the Software, including its transferring, storing or processing of Personal Data via the Software;
3. **(iii)** send or store infringing or unlawful material in connection with the Service;
4. **(iv)** breach, circumvent, tamper with or disable any security or other technological features or measures of the Xecurifys Services;
5. **(v)** attempt to probe, scan or test the vulnerability of any systems related to the Xecurify Services, including penetration or load tests, without Xecurify's prior written approval for each test instance;
6. **(vi)** send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs to the Service;
7. **(vii)** attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Service or the data contained therein;
8. **(viii)** modify, copy or create derivative works based on the Service, or any portion thereof;
9. **(ix)** access the Service for the purpose of building a competitive product or service or copying its features or user interface; or
10. **(x)** delete, alter, add to or fail to reproduce in and on the Service the name of Xecurify and any copyright or other notices appearing in or on the Service or which may be required by Xecurify at any time.

4. YOUR MEMBERSHIP

During Customers purchase, Xecurify will create an account for Customers in Xecurify's membership area. Customers must keep their login credentials secret. Customers are prohibited from distributing, giving away, lending or re-selling it. Xecurify reserves the right to monitor levels of customers membership activity and take any necessary action in the event of abnormal usage being detected.

5. PRICE AND PAYMENT

1. **5.1 Fees:** The fees for Software, Professional Services, and Support and Maintenance Services shall be paid by the customer as per their requirement based on the prices displayed on the licensing page of the website and can also directly contact Xecurify via email for any specific requirements. The customer can place an order on the website or can directly place an order for purchase of the software via email to Xecurify. If the customer chooses to contact Xecurify for a plugin license directly, Xecurify shall provide the customer, statement of work/quotations as per the requirements of the customers. The fees required to be paid hereunder do not include any amount for taxes, duties or import/export fees. If withheld by a

8. RELATIONSHIP BETWEEN THE PARTIES

The relationship between Customer and Xecurify Inc is that of licensee/licensor. Xecurify may use Customer's name and logo to identify the Customer Company as a customer of Xecurify. Xecurify's use of the name and logo does not create any ownership right therein and all rights are granted and reserved by the Customer. Customers reserve the right to request at info@xecurify.com to update or remove the logo from the public website. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity. Nothing in this Agreement shall be construed to limit either party's right to independently develop or distribute software that is functionally similar to the other party's products, so long as proprietary information of the other party is not included in such software.

9. RESERVATION OF RIGHTS

Xecurify reserves to itself all rights in and to the Xecurify Services and Documentation not expressly granted to customers under this Agreement.

10. CONFIDENTIALITY

Each party (**Receiving Party/Recipient**) may, during the course of its provision and use of the Service or provision of Professional Services hereunder, receive, have access to, and acquire knowledge from discussions with the other party (**Disclosing party**) which may not be accessible or known to the general public, such as technical and business information concerning hardware, software, designs, specifications, techniques, processes, procedures, research, development, projects, products or services, business plans or opportunities, business strategies, finances, costs, vendors, penetration test results and other security information; defect and support information and metrics; and first and third party audit reports and attestations (**Confidential Information**). Confidential Information shall not include, and shall cease to include, as applicable, information or materials that

1. **(a)** were generally known to the public on the Effective Date;
2. **(b)** become generally known to the public after the Effective Date, other than as a result of the act or omission of the Receiving party;
3. **(c)** were rightfully known to the Recipient prior to its receipt thereof from the Disclosing party;
4. **(d)** are or were disclosed by the Disclosing party generally without restriction on disclosure;
5. **(e)** the Recipient lawfully received from a third party without that third party's breach of agreement or obligation of trust; or
6. **(f)** are independently developed by the Recipient as shown by documents and other competent evidence in the Recipient's possession. The Recipient shall not:

3. The Customer is not eligible for the refund under all the following circumstances:
    1. **a)** The Software is not used in accordance with Xecurify's instructions;
    2. **b)** The Software defect has been caused by any of Customer's malfunctioning equipment or Customer provided software;
    3. **c)** Customer has made modifications to the Software not expressly authorized in writing by Xecurify;
    4. **d)** Software is not working due to customers environmental changes;
    5. **e)** Combined the software with other products;
    6. **f)** Customer no longer requires the software after the purchase or changes his/her requirements towards the services;
    7. **g)** In cases where the Customer has willingly purchased the software after taking the demo/trial from the Xecurify team.

If refunded, Customer's license in the use of the defective Software shall be terminated and the defective Software shall be returned to Xecurify immediately after receipt of the refund. Xecurify does not warrant and explicitly states that the operation of the Software will be uninterrupted or error free, or that all software defects can be corrected.

13. COPYRIGHT

The Plugin is owned by Xecurify Inc. and is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Plugin is licensed, not sold, to You for use solely subject to the terms and conditions of this Agreement.

14. INDEMNIFICATION

1. **14.1** If a third party makes a claim against the Customer that the Software infringes any patent, copyright or trademark, or misappropriate any trade secret (**Claim**), Customer shall (a) promptly notify Xecurify of the Claim, (b) provide Xecurify with the sole control of the defense and settlement of the Claim, and (c) provide the assistance, information and authority reasonably requested by Xecurify in such defense and settlement. Xecurify shall defend Customer and its directors, officers and employees against the Claim at Xecurify's expense and Xecurify shall pay all losses, damages and expenses (including reasonable legal fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Xecurify, to the extent arising from the Claim.
2. **14.2** Exclusions from Obligations: Xecurify will have no obligation under this Section 13 for any infringement or misappropriation to the extent that it arises out of or is based upon (a) not supplied by Xecurify, (b) that are modified by Customer after delivery (c) use of the Xecurify's Services in combination with other products, services, processes or materials where the alleged infringement relates to such combination which were unauthorized by Xecurify;

17. EXCLUDED DAMAGES

IN NO EVENT WILL EITHER PARTY BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, COVER, LOST PROFITS OR REVENUES, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING EXCLUSIONS WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

18. TERM AND TERMINATION

1. **18.1 Term**: This Agreement shall commence on the Effective Date and shall continue in effect unless terminated as set forth herein.
2. **18.2 Termination:** This Agreement, or a license granted hereunder, may be terminated (i) by mutual agreement of Xecurify and Customer, (ii) by either party if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days following receipt of breach notice, or (iii) by either party if the other party becomes insolvent or is adjudged as bankrupt; makes an assignment for the benefit of creditors; has a receiver appointed; or files a petition of bankruptcy.
3. **18.3 Effect of Termination:** Upon termination of this Agreement or expiration or termination of a license, all rights granted to Customer for the applicable license(s) shall cease and Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) return the applicable Software to Xecurify together with all Documentation and other materials associated with the Software and, or destroy such items, (iii) cease using the Maintenance Services associated with the applicable License(s), (iv) give Xecurify a written certification that Customer has complied with all of the foregoing obligations, and (v) in case of termination due to an uncured Customer breach, Customer will pay Xecurify or the applicable Partner all amounts due and payable.

19. GENERAL

1. **19.1 Anti-Bribery/Corruption:**
   1. **a)** Xecurify shall ensure that, in relation to this Agreement and general business practices, it shall not engage in any activity, practice or conduct which may constitute an offense under any applicable Anti-Corruption Laws. In particular, Xecurify shall not offer, promise or pay to, or

obligations) on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, including denial-of-service attacks, strikes, shortages, widespread security breaches (e.g., heartbleed bug), riots, fires, flood, storm, earthquakes, explosions, acts of God, war, terrorism, and governmental action (**Force Majeure**) so long as that party uses all commercially reasonable efforts to avoid or remove the causes of non-performance.

9. **19.9 Compliance with Laws:** Customers will use the Xecurify Services and Documentation in compliance with all applicable laws and regulations. Xecurify will comply with all applicable laws and regulations in its performance of this Agreement.

10. **19.10 stroModification of Agreement:** The customer acknowledges that this Agreement may be amended or modified without prior notice to the customer by Xecurify from time to time and the customer further agrees to adhere and abide by such amendments and modifications .

11. **19.11 Governing Law:** This User Agreement shall be construed in accordance with the applicable **laws** of the USA. The Courts at Wyoming USA shall have exclusive jurisdiction in any proceedings arising out of this agreement.

12. **19.12 Signatures:** This Agreement may be executed in multiple counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission (including via pdf) will be effective as delivery of a manually executed counterpart.

BY SIGNING THIS AGREEMENT, THE CUSTOMER AGREES TO ABIDE BY THE TERMS AND CONDITIONS OF THE NON DISCLOSURE AGREEMENT AS WELL AS THE PRIVACY POLICY WHICH IS PUBLISHED ON THE MINIORANGE WEBSITE.