

**TENABLE, INC.**  
**MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT**

This is a legal agreement ("Agreement") between Tenable, Inc., a Delaware corporation having offices at 7021 Columbia Gateway Drive, Suite 500, Columbia, MD 21046 ("Tenable"), and you, the party licensing Software and/or receiving services ("You"). This Agreement covers Your permitted use of the Software, as well as other matters. **BY CLICKING BELOW YOU INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT AND YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE TO BE LEGALLY BOUND BY THEM.** The Software may be provided to You by Tenable or Tenable's designated vendor (the "Vendor").

**1. Definitions.**

(a) "Host" means any scanned device that can have a unique tag pushed to it (via a registry entry, text file, etc.), one that can have a unique identifier (CPU ID, Instance ID, Agent ID, IP Address, MAC Address, NetBIOS Name, etc.) pulled from it, or is addressable via URI or URL (i.e., <http://www.tenable.com>).

(b) "Plug-In" means any individual program or script used to analyze for and/or identify specific security vulnerabilities.

(c) If You are licensing SecurityCenter, the following terms apply:

(1) "Purpose" means to seek and assess information technology vulnerabilities and intrusion detection events up to the number of Hosts for which the Licensed Product is licensed.

(2) "Licensed Product" means SecurityCenter 4.x or higher.

(3) Subject to Section 8, You may install the Licensed Product on only one (1) production computer or machine.

(4) For the avoidance of doubt, the Licensed Product may be used by You to distribute Plug-Ins (as defined below) only to Tenable Nessus 5.x or higher or Tenable Nessus Network Monitor scanner exclusively controlled by the instance of SecurityCenter licensed hereunder.

(d) If You are licensing the Log Correlation Engine, the following terms apply:

(1) "Purpose" means to receive and assess information technology logs and security events.

(2) "Licensed Product" means Log Correlation Engine 4.x or higher.

(3) Subject to Section 8, You may install the Licensed Product on only one (1) production computer or machine.

(4) If You license the Licensed Product as a part of SecurityCenter Continuous View (i.e., not as a standalone product listed as a separate line-item on an invoice): (i) You may only use the Licensed Product with SecurityCenter; and (ii) Your right to use the Licensed Product will terminate automatically upon termination of the SecurityCenter license.

(5) You may only use any high availability version of the Licensed Product on a temporary basis in the event of a failover. Any other use of the high availability version of the Licensed Product is not permitted under this Agreement.

(e) If You are licensing the Nessus Network Monitor, the following terms apply:

(1) "Purpose" means to seek and assess information technology vulnerabilities.

(2) "Licensed Product" means Nessus Network Monitor 5.x or higher and any Plug-In owned by Tenable and received or downloaded directly from Tenable.

(3) Subject to Section 8, You may install the Licensed Product only on the number of computers for which you have paid the applicable License Fee.

(4) If You license the Licensed Product as part of SecurityCenter Continuous View (i.e., not as a standalone product listed as a separate line-item on an invoice): (i) You may install up to 512 copies of the Licensed Product; (ii) You may only use the Licensed Product with SecurityCenter; and (iii) Your right to use the Licensed Product will terminate automatically upon termination of the SecurityCenter license.

(f) If You are licensing Nessus, the following terms apply:

(1) "Purpose" means to seek and assess information technology vulnerabilities and misconfigurations.

(2) “Licensed Product” means Nessus 5.x or higher and any Plug-In owned by Tenable and received or downloaded directly from Tenable.

(3) You may install up to 512 copies of the Licensed Product, provided that: (i) You may only use the Licensed Product through the interface provided by SecurityCenter 4.x or higher; and (ii) You may only use the Licensed Product with Plug-Ins provided by Tenable. For the avoidance of doubt, this Agreement does not cover the license of standalone Nessus subscriptions or Tenable.io subscriptions, which are governed by the terms of a separate agreement.

(4) Depending on Your purchase, Your license may also include a license to use Nessus agents. Nessus agents are available only on a subscription basis.

(5) The Support Services will include an appropriate subscription to provide additional Plug-Ins to You on a regular basis.

(6) Your license to use the Licensed Product will automatically terminate upon the termination of Your license to use SecurityCenter for any reason.

(g) If You are licensing Industrial Security, the following terms apply:

(1) “Purpose” means to seek and assess information technology and/or operational technology vulnerabilities up to the number of Assets for which the Licensed Product is licensed.

(2) “Licensed Product” means Industrial Security 1.x or higher.

(3) “Asset” means any of Your systems that can be uniquely identified (including, but not limited to, a server with an IP address, CPU ID, Instance ID, Agent ID, IP Address, MAC Address, NetBIOS Name, an Asset record imported from a CMDB, a Web Application URL).

(4) Subject to Section 8, You may install the Licensed Product on only one (1) production computer or machine.

(5) For the avoidance of doubt, the Licensed Product may be used by You to distribute Plug-Ins only to Tenable Nessus (including Nessus Scanners and Nessus Agents) or Tenable Nessus Network Monitor exclusively controlled by the instance of Industrial Security licensed hereunder.

(h) If You are licensing the 3D Tool, the following terms apply:

(1) “Purpose” means to visualize information technology vulnerabilities and intrusion detection events.

(2) “Licensed Product” means 3D Tool 2.x or higher.

(3) You may install the Licensed Product on only one (1) production computer or machine.

(4) Your license to use the Licensed Product will automatically terminate upon the termination of Your license to use SecurityCenter for any reason.

(i) “Professional Services Specifications” means the document produced with Your quote detailing the professional services to be provided.

(i) “Services” means Professional Services and Support Services.

## **2. Grant of Software License.**

(a) Subject to the terms and conditions of this Agreement and upon Your payment of the applicable license fee (the “License Fee”) and receipt of the appropriate acknowledgment from Tenable, Tenable grants to You for the License Term (as defined below) a non-exclusive, non-transferable license in object code form only to use the Software solely for Your internal operations and internal security Purpose. Your right to use the Software will start on the date on the invoice produced from an accepted purchase order (the “Order Date”), and is limited to the term stated on Tenable’s invoice issued in response to an accepted purchase order (the “License Term”). Your right to install the Software is limited to use with the computers or machines for which the Software is registered for use. If You are a partner to whom a “Not For Resale” or “NFR” license has been granted, Your right to use the NFR Software will terminate automatically when Your Partner Agreement is terminated. Any rights in Software not granted in this Agreement are expressly reserved by Tenable.

### **(b) Definition of Software.**

(1) The term “Software” means (1) each Licensed Product that You download from any Tenable website, or obtain via CD or any other method; (2) any individual program (“Agents and/or Clients”) or script used to analyze for and/or identify specific security events or used to correlate events owned by Tenable; (3) the associated user manuals and user documentation made available at Tenable’s Support Portal (“Documentation”), if any, as well as any patches, updates, improvements, additions, enhancements and other modifications or revised

versions of the Licensed Product, and associated Plug-Ins and Agents and/or Clients that may be provided to You by Tenable from time to time; and (4) any command line interfaces, and/or any graphical user interfaces You obtain from Tenable;

(2) The Software may include code or other intellectual property provided to Tenable by third parties, including Plug-Ins that are not owned by Tenable, (collectively, “Third Party Components”). Any Third Party Component that is not marked as copyrighted by Tenable is subject to other license terms that are specified in the Documentation available on Tenable’s website ([http://static.tenable.com/prod\\_docs/Tenable\\_License\\_Declarations.pdf](http://static.tenable.com/prod_docs/Tenable_License_Declarations.pdf) or a successor location). By using the Software, You hereby agree to be bound by such other license terms as specified in the Documentation.

(c) If You have licensed a lab license, You are entitled to use a separate installation for the Licensed Product, provided that usage of such Licensed Product is strictly limited to a lab environment only. Such Licensed Products are not licensed for, and may not be used in a production environment, or in conjunction with products used in a production environment.

(d) If You are accessing any Licensed Product in an evaluation capacity: (i) You have no obligation to make payment for such Licensed Product for such evaluation usage; (ii) the License Term will expire at the end of the agreed-upon evaluation period, at which time You must either return or destroy the evaluated Licensed Product; and (iii) Tenable will provide support only as mutually agreed by the parties. This Section 2(d) will take precedence over any directly contradictory language in this Agreement as it relates to an evaluation of any Licensed Product.

(e) Tenable may collect scan data from You (including results, configurations, and gathered artifacts) for Tenable’s reasonable business purposes, including product support, license validation and research and development. Tenable will not use such technical information in any form that personally identifies You.

### **3. Professional Services.**

(a) Tenable may agree with you to provide certain services, such as start-up services, security consulting services and/or on-site or virtual training courses (collectively, the “Professional Services”). Professional Services Specifications will be provided with or referenced in a quote, or as scoped and defined in a separate Statement of Work signed by

the parties. Except as otherwise agreed to by the parties in writing, all Professional Services Specifications or signed Statements of Work will be governed by this Agreement. In the event of inconsistency between this Agreement and a signed Statement of Work, the Statement of Work shall govern.

(b) Incidental to Professional Services, Tenable may provide slides, documents, examples, and other materials (the “Materials”) for use in conjunction with the Software and Professional Services. Subject to payment in full for the applicable Services and Materials, Tenable grants You a non-exclusive, non-transferable right to use the Services and Materials for Your internal use and solely in conjunction with the Software.

(c) If You or Your designated attendees (“Attendees”) do not attend a scheduled training session or cancel a Professional Services engagement without providing proper notice, Tenable shall have no obligation to perform the Professional Services or provide a refund. You must provide Tenable at least ten (10) business days’ notice to reschedule. Tenable reserves the right to reject requests for rescheduling submitted with less than ten (10) business days’ notice. For training courses, you may substitute different individuals for scheduled Attendees provided Tenable is properly notified at least three (3) business days in advance. Tenable is not obligated to provide any services except as mutually agreed in a Professional Services Specifications or Statement of Work.

(d) For Professional Services occurring on Your site, Tenable agrees to comply with Your reasonable security procedures provided You inform Tenable of such procedures in advance.

(e) Some of the Professional Services may require You to provide to a Tenable employee access to key information and network resources in order to perform the required tasks and deliverables. You may also have to provide a key individual as a point of contact who shall have specialized knowledge about Your network. Additionally, You must meet particular software or hardware requirements (for example, appropriate computers or appliances, stable Internet connection, verification of network communication paths, receipt of applicable software license keys, up-to-date web browser, operating system, etc.). In order to use the Software or receive Professional Services, You shall be required to meet or exceed the specifications found in the Tenable General Requirements document, available at [http://static.tenable.com/prod\\_docs/Tenable\\_General\\_Requirements.pdf](http://static.tenable.com/prod_docs/Tenable_General_Requirements.pdf) or a successor location. You are

responsible for assessing the suitability of the Professional Services. Tenable will not provide any refund based on a failure to meet prerequisites. If technical issues arise during the Professional Services, Tenable will use commercially reasonable efforts to resolve such problems, but will have no liability based on Your failure to meet technical requirements.

(f) The Services will be deemed satisfactory and accepted by You unless within ten (10) calendar days after the Services have been performed, You give Tenable written notice of the respects in which the results do not conform to the applicable requirements. Upon confirmation by Tenable of inadequacy of the Services, Tenable's entire liability and Your exclusive remedy will be for Tenable to use its reasonable efforts to re-perform the Services within a reasonable period of time; provided that if Tenable is unable to re-perform the Services, Tenable may elect to refund all payments actually received by Tenable from You for the particular Services deemed unacceptable, in full satisfaction of Tenable's obligations.

(g) Professional Services must be scheduled within three (3) months of the Order Date, and completed within six (6) months of the Order Date. If you do not schedule Professional Services within this time frame, Tenable shall have no obligation to perform the Professional Services or provide a refund.

#### **4. Term.**

This Agreement commences on the date on which the parties execute this Agreement or You download, install or use the Software (whichever occurs first) (the "Effective Date") and continues for the duration of the License Term unless it is terminated according to the terms of this Agreement. Your right to use the Licensed Product will terminate at the end of the applicable License Term or upon termination of this Agreement. So long as Tenable is offering licenses of the Licensed Product and this Agreement has not been terminated, You may renew the License Term according to Tenable's then-current terms (available for review at [http://static.tenable.com/prod\\_docs/tenable\\_slas.html](http://static.tenable.com/prod_docs/tenable_slas.html) or a successor location) and paying the applicable fee for a new License Term.

#### **5. Maintenance and Support.**

(a) Subscription Software. If you are licensing the Software on a subscription basis, Tenable will provide the Support Services at no additional charge beyond Your License Fee for the duration of the

Term. If You license the Software on a subscription basis, the Maintenance Term (as defined below) will be coterminous with Your License Term.

(b) Perpetual Software. If You are licensing the Software on a perpetual basis, upon Your payment of the applicable annual support and maintenance fee (the "Support Fee"), starting on the Order Date, Tenable will supply You for the maintenance period described on the invoice issued to You (the "Maintenance Term") with the Support Services described herein.

(c) Support Services. Support will be provided in accordance with Tenable's then-current Support Documentation, available for review at [http://static.tenable.com/prod\\_docs/tenable\\_slas.html](http://static.tenable.com/prod_docs/tenable_slas.html) or a successor location, and Tenable will make available to You on Tenable's web site any bug fixes, updates or enhancements that Tenable makes generally available to licensees of the Software (collectively, the "Support Services"). While Tenable is offering Support Services for the Software, Tenable will continue to supply You with the Support Services for subsequent periods upon payment in advance of the Support Fee for each such period. The Support Services shall include the provision to You of new minor (Example: 1.1.x to 1.2.x, etc.) and major version releases of the Software (Example: 1.x to 2.x, etc.).

(d) Renewal Fees. After the initial Maintenance Term, any renewal of annual Support Fees (for perpetual licenses) or License Fees (for subscription licenses) shall be at Tenable's then-current pricing at time of renewal. If during the course of a perpetual license You terminate or fail to renew the Support Services, You may at any time during the term of this Agreement request that Tenable reinstate the Support Services provided that You pay a one-time reinstatement fee equal to the total fees You would have paid for the Support Services between the time You terminated or failed to renew such Support Services and the then-current date.

#### **6. Intellectual Property.**

This Agreement does not transfer to You any title to or any ownership right or interest in the Software. You acknowledge that Tenable owns and retains all right, title and interest in and to the Software, Services, and Materials. As between You and Tenable, all enhancements, modifications and derivative works that Tenable or any Tenable-authorized third party makes to the Software or accompanying Documentation, and all intellectual property rights therein, will be the property of

Tenable. If You provide any comments, suggestions, questions, concerns, or other feedback regarding the Software, Services, and/or Material, all such intellectual property rights therein, will be the property of Tenable. Your rights with respect to the Software are limited to the right to use the Software pursuant to the terms and conditions in this Agreement.

## **7. No Reverse Engineering, Other Restrictions.**

Except as expressly allowed herein; You may not directly or indirectly: (i) sell, lease, redistribute or transfer any of the Software on a stand-alone basis; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive, obtain or modify the source code of the Software; (iii) reproduce, modify, translate or create derivative works of all or any part of the Software; (iv) rent, lease or loan the Software in any form to any third party or otherwise allow a third party to use the Software; (v) sublicense any of the rights granted to You in this Agreement; or (vi) remove, alter or obscure any proprietary notice, labels, or marks on the Software. You are responsible for all use of the Software and for compliance with this Agreement; any breach by You or any user using the Software on Your behalf shall be deemed to have been made by You.

## **8. Limited Right to Copy.**

You may make a reasonable number of copies of the Software, in whole or in part, only for backup or archival purposes or to replace a worn or defective original or copy. You may not operate in production a copy of the Software at the same time as the original or another copy. You may make a reasonable number of copies of the Documentation solely to support Your allowed use of the Software hereunder. You acknowledge that the Documentation is provided to You under copyright protection. You agree to maintain appropriate records of the location of the original Software and Documentation and any copy made by You.

## **9. Managed Security Service Providers (“MSSPs”); Restrictions on Third Party Use and Access.**

(a) Managed Security Service Provider (“MSSP”). If You use the Software to scan third party networks as part of a service You deliver to Your customers (“MSSP Services”), the following additional terms apply: (i) You may only scan those networks for which You have received appropriate authorization from the owner of the network; (ii) You

may only use SecurityCenter or SecurityCenter Continuous View (as well as any Software they exclusively control) to offer MSSP Services; (iii) You may service multiple customers on the same console provided that You create separate repositories for each customer; (iv) You are solely responsible for securing and segregating Your customer data; (v) You must provide Your own portal or delivery mechanism, and may not allow Your customers to access the SecurityCenter console; (vi) You must inform Tenable in advance regarding any Software that will be shipped, downloaded, or otherwise transferred to any country other than the United States or Your home country; (vii) You must further provide a monthly report showing the location of each installation of the Software; (viii) You must use a supported version of the Software; (ix) Tenable has no obligation to provide Support Services to Your customers; and (x) You agree that Tenable will have no liability to Your customers.

(b) You agree to use Your best efforts and to take all reasonable steps to ensure that no unauthorized parties have access to the Software and that no unauthorized copy, publication, disclosure or distribution of the Software, in whole or in part, in any form is made by You or any third party. You agree to notify Tenable of any unauthorized access to, or use, copying, publication, disclosure or distribution of, the Software.

(c) Notwithstanding the foregoing, and subject to all other terms of this Agreement, You may permit a third party (a “Third Party”) to (a) use the Software to perform security services for Your business, or (b) administer the Software, each provided that: (i) any such Third Party use or administration is for Your sole benefit of and on Your behalf; (ii) You acknowledge that You shall be legally responsible for the Third Party’s use of the Software including without limitation any obligations arising from such use and any breach by the Third Party of the terms and conditions of this Agreement, including Section 10 (Confidentiality); (iii) the total number of copies of the Software licensed by You and used by either You and/or any Third Party does not at any given time exceed the number of licenses legally licensed. Upon sixty (60) days’ notice, Tenable shall have the right to withdraw its consent to the use of any Third Party in its reasonable discretion.

## **10. Confidentiality.**

As used in this Agreement, “Confidential Information” means any and all information and material that: (i) is marked “Confidential,” “Restricted,” or “Confidential Information” or other

similar marking; (ii) is known by You to be confidential or proprietary; or (iii) from all the relevant circumstances, should reasonably be assumed by You to be confidential or proprietary. Confidential Information includes the Software. Confidential Information does not include any information that You can prove: (a) was already known to You without restrictions at the time of its disclosure by Tenable; (b) after its disclosure by Tenable, is made known to You without restrictions by a third party having the right to do so; (c) is or becomes publicly known without violation of this Agreement; or (d) is independently developed by You without reference to the Confidential Information. Confidential Information will remain the property of Tenable, and You will not be deemed by virtue of this Agreement or any access to the Confidential Information to have acquired any right, title or interest in or to the Confidential Information. You may not copy any Confidential Information without Tenable's prior written permission. You may not remove any copyright, trademark, proprietary rights or other notices included in or affixed to any Confidential Information. Other than using the Software in accordance with the terms of this Agreement, You may not use the Confidential Information for Your or a third party's benefit, competitive development or any other purpose. You agree: (I) to hold the Confidential Information in strict confidence; (II) to limit disclosure of the Confidential Information to Your own employees or those of any Third Party, as specified in Section 7 (No Reverse Engineering; Other Restrictions) having a need to know the Confidential Information for the purposes of this Agreement; (III) to use the Confidential Information solely and exclusively in accordance with the terms of this Agreement in order to carry out Your obligations and exercise Your rights under this Agreement; (IV) to afford the Confidential Information at least the same level of protection against unauthorized disclosure or use as You normally use to protect Your own information of a similar character, but in no event less than reasonable care; and (V) to notify Tenable promptly of any unauthorized use or disclosure of the Confidential Information and to cooperate with and assist Tenable in every reasonable way to stop or minimize such unauthorized use or disclosure. You agree that if a court of competent jurisdiction determines that You have breached, or attempted or threatened to breach, Your confidentiality obligations to Tenable or Tenable's proprietary rights, Tenable will suffer irreparable harm and that monetary damages will be inadequate to compensate Tenable for such breach. Accordingly, Tenable, in addition to and not in lieu of any other rights, remedies or

damages available to it at law or in equity, shall be entitled to seek appropriate injunctive relief and other measures restraining further attempted or threatened breaches of such obligations without requirement to post any bond.

## **11. Warranty and Disclaimer.**

(a) Tenable warrants that, for a period of thirty (30) days from the Order Date of Software (the "Software Warranty Period"), the unmodified Software will, under normal use, substantially perform the functions described in its technical Documentation.

(b) ALL SERVICES, MATERIALS AND OTHER INFORMATION PROVIDED BY TENABLE IN CONNECTION WITH ANY SERVICES PERFORMED UNDER THIS AGREEMENT ARE FURNISHED ON AN "AS-IS" BASIS. THE FOREGOING EXPRESS WARRANTIES REPLACE AND ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS BY THE PARTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, INTEGRATION, PERFORMANCE AND ACCURACY AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. TENABLE MAKES NO WARRANTY THAT ANY SOFTWARE WILL OPERATE ERROR-FREE, FREE OF ANY SECURITY DEFECTS OR IN AN UNINTERRUPTED MANNER. THE WARRANTY MADE BY TENABLE MAY BE VOIDED BY YOUR ABUSE OR MISUSE.

## **12. Exclusive Remedy.**

Tenable's sole obligation and liability, and Your sole and exclusive remedy under the warranties set forth in Section 11, shall be for Tenable to use commercially reasonable efforts to remedy the problem, or to replace the defective product, provided that Tenable is notified in writing of all warranty problems during the applicable Software Warranty Period.

## **13. Limitation of Liability.**

IF YOU SHOULD BECOME ENTITLED TO CLAIM DAMAGES FROM TENABLE (INCLUDING FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION AND OTHER CONTRACT OR TORT CLAIMS), TENABLE WILL BE LIABLE ONLY FOR THE AMOUNT OF

YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (IN THE AGGREGATE FOR ALL CLAIMS) THE FEES YOU PAID TO TENABLE OR ITS RESELLER FOR THE SPECIFICALLY DEPLOYED LICENSED PRODUCT OR THE SPECIFIC SERVICES, FOR THE MOST RECENT LICENSE TERM, THAT GIVE RISE TO SUCH LIABILITY AND ARE THE SUBJECT OF THE CLAIM.

#### **14. Exclusion of Other Damages.**

UNDER NO CIRCUMSTANCES WILL TENABLE BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, ANY DAMAGES RESULTING FROM LOSS OF DATA, SECURITY BREACH, PROPERTY DAMAGE, LOSS OF REVENUE, LOSS OF BUSINESS OR LOST SAVINGS), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE SOFTWARE OR TENABLE'S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT, WHETHER OR NOT TENABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ARE SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE SECURITY, ACCURACY AND ADEQUACY OF ANY OUTPUT FROM THE SOFTWARE, AND FOR ANY RELIANCE THEREON.

#### **15. Additional Provisions Regarding Liability.**

The limitations of liability set forth in Sections 13 and 14 will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this Agreement. The parties agree that the foregoing limitations will not be read so as to limit any liability to an extent that would not be permitted under applicable law and specifically will not limit any liability for gross negligence, intentional tortious or unlawful conduct or damages for strict liability that may not be limited by law.

#### **16. Intellectual Property Infringement Indemnification.**

(a) Tenable shall, at its sole cost and expense, defend (or at its option, settle) and indemnify You and Your subsidiaries and affiliates, and their officers, directors, employees, representatives and agents, from and against any and all third party

claims brought against You based upon a claim that use of the Software in accordance with this Agreement infringes such third party's United States patent, copyright or trademark or misappropriates any trade secret, and shall pay all settlements entered into and damages awarded to the extent based on such claim or action, provided that You give Tenable (i) prompt notice of such action or claim; (ii) the right to control and direct the investigation, defense, and/or settlement of such action or claim; and (iii) reasonable cooperation.

(b) If Your use of the Software is, or in Tenable's opinion is likely to be, the subject of an infringement claim, or if required by settlement, Tenable may, in its sole discretion and expense, (i) substitute for the Software substantially functionally similar non-infringing software; (ii) procure for You the right to continue using the Software; or (iii) terminate this Agreement, accept return of the Software and provide a pro rata refund to You. The pro rata refund will be calculated as follows: (1) for subscriptions, Tenable will provide a refund of any prepaid License Fees for the unused remainder of the license term; and (2) for perpetual licenses, Tenable will refund the License Fee for the Software less allowance for amortization over a thirty-six (36) month period, straight-line method as well as a pro rata refund of any prepaid Support Fee.

(c) Tenable has no liability with respect to patent, copyright or trademark infringement or trade secret misappropriation described in Section 16(a) arising out of: (i) modifications of the Software made to Your order or specification, or not made by Tenable or any party under its control; (ii) Your use of the Software in combination with other software or equipment if such combination or other software or equipment gives rise to the infringement; (iii) Your failure to use any new or corrected versions of the Software made available by Tenable; or (iv) Your use of the Software in a manner not permitted by this Agreement.

(d) This Section 16 sets forth Tenable's sole liability and Your sole and exclusive remedy with respect to any claim of intellectual property infringement.

#### **17. Indemnification.**

(a) Each of the parties acknowledges and agrees that by entering into and performing its obligations under this Agreement, Tenable will not assume and should not be exposed to the business and operational risks associated with Your business. You acknowledge that Your use of the Software is only a portion of Your overall security solution and

that Tenable is not responsible for Your overall security solution. The parties acknowledge that the use of Software designed for vulnerability scanning may affect network operation during such scanning. Tenable shall not be liable to You for any impairment of the operation of any network arising from Your use of Software during such scanning. As between You and Tenable, You are (and Tenable is not) responsible for the success or failure of such security solution.

(b) You agree that You will, at Your expense, indemnify, defend and hold Tenable harmless in all claims and actions that seek compensation of any damages that arise out of or relate to (i) Your security solutions, (ii) Your use of the Software, or (iii) a breach of Your obligations under Section 9(a) or 20. You also agree to pay all settlements, costs, damages, legal fees and expenses finally awarded in all such claims and actions.

#### **18. Verification.**

For the term of this Agreement and one (1) year thereafter, You agree that Tenable or its designee shall have the right, at its own expense and under reasonable conditions of time and place, to audit and copy all records of Your use of the Software. Tenable or its designee may also require You to complete accurately a self-audit questionnaire in a form provided by Tenable. If an audit reveals unlicensed use of the Software, a breach of this Agreement or underpayment of any Fees by You or Your employees or agents, You must, in addition to such other rights and remedies as may be available to Tenable as the result of such breach, promptly order and pay for sufficient licenses (at Tenable's then-current price for such licenses) to permit all usage disclosed and pay the full cost of such audit and copying. Tenable will use information obtained from such audit only to verify and enforce Your compliance with the terms of this Agreement, to comply with any governmental reporting requirements and for such other purposes as required by law.

#### **19. Your Payment Obligations.**

You agree to pay any and all amounts due or incurred by You, including any License Fee or Support Fee or any other applicable charge, as are specified in an invoice provided by Tenable or its Vendor in consideration for Your license of the Software (the "Fees"). You further agree to pay any and all amounts due or incurred for any Professional Services as set forth in an applicable Statement of Work or detailed on a quote. Payment for Software is due (a) within thirty (30) days of the Order Date,

(b) in accordance with Your payment terms with an applicable Vendor, if any, or (c) in such other period of time as agreed to in writing by the parties. Unless otherwise agreed to in writing or as detailed in a signed Statement of Work, payment for Professional Services is due within thirty (30) days from the Order Date. You agree to pay directly or reimburse Tenable and Vendor for any taxes (including, sales or excise taxes, value added taxes, landing fees, import duties and the like), however designated and whether foreign or domestic, arising out of this Agreement, imposed on the Software or the use thereof, or Tenable's or Vendor's performance under this Agreement. You agree to pay Tenable's and Vendor's invoices without deducting any present or future taxes, withholdings or other charges except those deductions You are legally required to make. If You are legally required to make any deductions, You agree to pay Tenable such amounts as are necessary to make the net amounts remaining after such deductions equal to the stated amount due under this Agreement. The payments or reimbursements will be in such amounts as are sufficient to relieve Tenable from owing any further taxes, either directly or on the basis of the payments made under this Agreement. Notwithstanding the foregoing, Tenable will be solely responsible for its income tax obligations and all employer reporting and payment obligations with respect to its personnel. You agree to pay any interest and penalties imposed by any taxing authorities to the extent such interest and penalties are applicable to taxes not paid at Your request or as a result of reliance by Tenable on Your representations. If a certificate of exemption or similar document or proceeding is necessary in order to exempt any transaction from a tax, You will obtain such certificate or document. You agree to pay for actual travel and living expenses for Professional Services where Tenable is conducting on-site work. Payment for travel and living expenses is due thirty (30) days from the date You receive a proper invoice. You agree to promptly pay or reimburse Tenable or its Vendor, as applicable, for all costs and expenses, including all reasonable attorneys' fees, related to any breach of Your obligations under this Agreement.

#### **20. Legal Compliance; Restricted Rights.**

The Software is provided solely for lawful purposes and use. You are solely responsible for, and agree to perform Your obligations in a manner that complies with all applicable national, federal, state and local laws, statutes, ordinances, regulations, codes and other types of government authority (including those governing export control, unfair



competition, anti-discrimination, false advertising, privacy and data protection, and publicity and those identifying and requiring permits, licenses, approvals, and other consents) ("Laws"). If a charge is made that You are not complying with any such Laws, You will promptly notify Tenable of such charges in writing. Without limiting the foregoing, You agree to act as the exporter of record and comply with all U.S. export Laws (including the International Traffic in Arms Regulation ("ITAR"), 22 CFR 120-130, and the Export Administration Regulation ("EAR"), 15 CFR Parts 730 *et seq.*) and applicable export Laws of Your locality (if You are not in the United States), to ensure that no information or technical data provided pursuant to this Agreement is exported or re-exported directly or indirectly in violation of Law or without first obtaining all required authorizations or licenses. You will, at Your sole cost and expense, obtain and maintain in effect all permits, licenses, approvals and other consents related to Your obligations under this Agreement. You agree, at Your expense, to comply with all foreign exchange and other Laws applicable to You. The Software (1) was developed solely at private expense, (2) contains "restricted computer software" submitted with restricted rights in accordance with FAR 52.227-19 Commercial Computer Software-Restricted Rights (June 1987) sections (a) through (d) and its successors, and (3) in all respects is proprietary data belonging to Tenable, its affiliates or their licensors or suppliers. For Department of Defense units, the Software is considered commercial computer software in accordance with DFARS section 227.7202-3 and its successors, and use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in this Agreement. The parties further agree to comply with sanctions administered by the Department of Treasury's Office of Foreign Assets Control ("OFAC") and shall not engage in prohibited trade to persons or entities on the Specially Designated Nationals ("SDN") list.

## **21. Termination.**

This Agreement and Your license to use the Software shall terminate (a) on thirty (30) days' notice and opportunity to cure if Tenable materially breaches any of its obligations under this Agreement, or (b) automatically if You fail to comply with any term or condition of this Agreement, provided that such termination will not extinguish any future payment obligations to which You may have agreed. Immediately after termination of this Agreement, You shall return to Tenable the Software, together with all copies, modifications and merged portions of the Software in any form, and shall certify to Tenable in writing that through Your best efforts and to the

best of Your knowledge all such materials have been returned to Tenable and removed from host computers on which Software resided. The removal and deletion provisions of this Section 21 do not apply to copies of the Software that are made pursuant to Your reasonable back-up and archival policies (under which back-up tapes that will be overwritten in due course may contain copies of the Software), provided that (i) such copies are only retained by You in the course of Your back-up procedures, (ii) such copies will be deleted within a reasonable period of time in the normal course of overwriting under the back-up process, and (iii) such copies never be used to exceed the license restrictions under this Agreement. Any Statement of Work or Professional Services obligation shall terminate (x) at either party's convenience upon thirty (30) days' notice to the other party, or (y) if, after thirty (30) days' notice and opportunity to cure, a party has failed to cure a material breach of a Statement of Work or Professional Services Specifications. Upon such termination for Tenable's breach or by Tenable for convenience, You will only pay Tenable all fees earned up until the point of termination as well as all reimbursable expenses.

## **22. Governing Law.**

This Agreement shall be governed in all respects by the laws of the State of Maryland, USA, without regard to choice-of-law rules or principles. No aspect or provision of the Uniform Computer Information Transactions Act, as implemented under Maryland law, shall apply to this Agreement. You expressly agree with Tenable that this Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

## **23. Dispute Resolution.**

You and Tenable submit to the exclusive jurisdiction of the courts of Howard County, Maryland, and the United States District Court for Maryland, Baltimore Division, for any question or dispute arising out of or relating to this Agreement. Due to the high costs and time involved in commercial litigation before a jury, the parties waive all right to a jury trial with respect to any and all issues in any action or proceeding arising out of or related to this Agreement.

## **24. Notices.**

Any notices or other communication required or permitted to be made or given by either party pursuant to this Agreement will be in writing, in English, and will be deemed to have been duly

given when delivered if delivered personally or sent by recognized overnight express courier, to the address specified herein or such other address as a party may specify in writing. Tenable may also provide notices to You via an email address You have provided to Tenable. All notices to Tenable shall be sent to the attention of the Legal Department (unless otherwise specified by Tenable).

## **25. Non-Solicitation.**

For a period of one (1) year after completion of Professional Services, You will not, either directly or indirectly, employ or solicit for employment any person employed by Tenable or any of its affiliates then or at any time within the preceding twelve (12) months with whom You have worked in the course of Professional Services performed for You under this Agreement.

## **26. Assignment.**

You may not assign or otherwise transfer this Agreement without Tenable's prior written consent which will not be unreasonably withheld.

## **27. General.**

This Agreement constitutes the entire agreement between the parties, and supersedes all other prior or contemporaneous communications between the parties (whether written or oral) relating to the subject matter of this Agreement. No purchase order shall supersede, modify, or supplement this Agreement. Any amendment to the terms of this Agreement must be in writing and signed by the parties. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. Section headings are for convenience only and shall not be considered in the interpretation of this Agreement. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties. Unless Tenable agrees otherwise, You agree that Tenable may use Your name and/or logo in a customer list. Neither party shall be liable for any loss or delay (including failure to meet the service level commitment) resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, Internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery date shall be extended to the extent of any delay

resulting from any force majeure event. The parties are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. No failure or delay by a party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If a party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the party may have under this Agreement. Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive the expiration or termination of this Agreement, including Sections 3 through 4 and 11 through 23 and Section 25. "Including" and its derivatives (such as "include" and "includes") mean including without limitation; this term is as defined, whether or not capitalized in this Agreement.

## **28. Language.**

The language of this Agreement is English and all notices given under this Agreement must be in English to be effective. No translation, if any, of this Agreement or any notice will be of any effect in the interpretation of this Agreement or in determining the intent of the parties. The parties have expressly agreed that all invoices and related documents be drafted in English.

## **29. Third Parties.**

This Agreement is not intended nor will it be interpreted to confer any benefit, right or privilege in any person or entity not a party to this Agreement. Any party who is not a party to this Agreement has no right under any Law to enforce any term of this Agreement.

## **30. Government Entities.**

(a) If You are prohibited by law, regulation, or relevant attorney general opinion from (collectively, "Restrictions"), the following sections shall be modified to the extent necessary to allow You to comply with such Restrictions:

(b) Section 10 (Confidentiality) may be amended to comply with any public records statute with which You are bound to comply.

(c) Section 17 (Indemnification), subpart (b) may be deleted in its entirety.

(d) Section 22 (Governing Law) may be modified to remove reference to a specific jurisdiction's laws, but the parties' agreement to

reject from application the Uniform Computer Information Transactions Act, and the U.N. Convention on Contracts for the International Sale of Goods, shall remain.

(e) Section 23 (Dispute Resolution) may be modified to remove (i) reference to venue in a specific jurisdiction, and/or (ii) the waiver of a jury trial.

**ADDENDUM A**  
**TENABLE PUBLIC SECTOR LLC**

If You (a) are an agency or instrumentality of the United States Government, (b) are an applicable Federal Systems Integrators (“FSI”), (c) receive a quote or invoice for Software or Services governed by the Agreement from Tenable Public Sector LLC, or (d) issue an ordering document for Software or Services governed by the Agreement to the attention of Tenable Public Sector LLC, then Your Agreement is with Tenable Public Sector LLC, a Delaware limited liability company, not Tenable, Inc. For the avoidance of doubt, any reference in the Agreement to “Tenable” shall mean Tenable Public Sector LLC.

If You have a question about which Tenable affiliate Your contract is with, please contact [sales@tenable.com](mailto:sales@tenable.com).

All provisions of the Agreement other than those explicitly changed by this Addendum shall remain in full force and effect.