

MASTER CLOUD SERVICES AGREEMENT *(Terms and Conditions)*

This **MASTER CLOUD SERVICES AGREEMENT** is effective as of the date last executed below and is entered into by and between Qualys (as defined below), on behalf of Qualys Inc. or its Affiliates, and Customer as identified below.

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. **"Control,"** for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Cloud Services Agreement.

"Assets" means the IP addresses, domain names, web applications and other assets to which Customer directs the Cloud Services.

"Authorized Representative" means a Receiving Party's or a Receiving Party's Affiliate's employees, professional advisors (e.g., lawyers and accountants), consultants, agents, and/or contractors who have signed confidentiality agreements with the Receiving Party, or are similarly bound, containing protections not materially less protective of the Confidential Information than those protections afforded herein.

"Beta Services" means Qualys services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

"Cloud Services" means the products and services, including any data, that are ordered by Customer under an Order Form and made available online by Qualys, including any offline components. Cloud Services shall not include any Beta Services

"Customer" means the customer named above and its Affiliates that have signed Order Forms.

"Customer Data" means electronic data and information regarding Customer's Assets that Qualys obtains solely as a result of its provision, and the Customer's use, of the Cloud Services. Reports shall be deemed to be Customer Data.

"Documentation" means the usage guides and policies made available by Qualys to Customer, as updated from time to time.

"Hardware" means the servers that are included with certain subscriptions to Cloud Services.

"No Charge Services" means Cloud Services provides to Customer at no cost. In no event shall support or ancillary services that Qualys provides as part of, or related to, Cloud Services where the pricing is bundled within the pricing for Cloud Services be deemed to be No Charge Services. Please note that the No Charge Services have modified terms as indicated within this Agreement.

"Order Form" means an ordering document or online order, including but not limited to Qualys quote or a Customer purchase order, work order or similar document, specifying the Cloud Services to be provided by Qualys that is provided by Customer to Qualys based on a Qualys quote and that is accepted by Qualys.

"Personal Data" are any information which are related to an identified or identifiable natural person.

"Qualys" means the entity from which services are purchased by Customer pursuant to an Order Form.

"Reports" means the reports made available to Customer that summarize the findings regarding the Assets.

"Reseller" means an entity that has entered into an agreement with Qualys that permits such entity to resell the Cloud Services to Customers.

"Software" means the software loaded onto Hardware provided herein and/or software that is loaded onto Customer's servers to allow virtual scanning or connection to the Cloud Services

"Subscription Term" means term of each subscription as specified in the applicable Order Form.

"User" means an individual who is authorized by Customer to use a Cloud Services and to whom Customer has supplied a user identification and password. Users may include, for example, employees, Affiliates, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

2. QUALYS RESPONSIBILITIES

2.1 Provision of Cloud Services. Qualys will (a) make the Cloud Services available to Customer for the applicable Subscription Term, in accordance with this Agreement and the applicable Order Forms, (b) provide Customer with Qualys standard support for the Cloud Services, (c) make the Cloud Services available pursuant to the standard Qualys Service Level Agreement and (d) provide the Cloud Services in accordance with laws and government regulations applicable to Qualys' provision of the Cloud Services.

2.2 Protection of Customer Data. Qualys will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data.

3. ORDERING, USE OF CLOUD SERVICES, HARDWARE, AND SOFTWARE

3.1 Ordering. The Qualys ordering process shall be as follows:

3.1.1. Customer may place Orders for the Cloud Services by confirming an Order Form to Qualys or to a Reseller. The subscriptions ordered by Customer may be used by Customer's Affiliates solely for the Customer Affiliates' internal use provided that Customer shall ensure that such Customer Affiliates comply with all applicable terms in this Agreement including, without limitation, Section 3.3.

3.1.2. Customer's Affiliates may also confirm Order Forms either directly to Qualys or to a Reseller. Upon confirmation of an Order Form by a Customer Affiliate, such Customer's Affiliate's rights and obligations relating to the Cloud Services shall be governed by the terms of this Agreement as if such Affiliate were "Customer".

3.1.3. Customer hereby agrees that Customer shall be liable for any breach of this Agreement by a Customer Affiliate as if the breach were committed by Customer itself. Only Customer and not Customer Affiliates shall have a claim against Qualys for any breach of this Agreement.

3.2 Rights. Subject to Customer's compliance with the terms and conditions of this Agreement, Qualys grants Customer a limited, non-exclusive, non-transferable right during the applicable Subscription Term to: (i) access the user interface of the Cloud Services with an industry standard web browser (like MS IE, Firefox, Chrome, Safari, etc.) and to use the Cloud Services, solely for Customer's own internal business purposes; (ii) access, use, and internally distribute the Documentation; and (iii) grants Users the right to access the Cloud Services solely for Customer's (or the Affiliate's, if applicable) own internal business purposes.

3.3 Restrictions. Customer shall not (i) modify, adapt, alter, translate or create derivative works of the Cloud Services or Documentation; (ii) reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code used in connection with the Cloud Services and/or any aspect of Qualys' technology; (iii) access and/or engage in any use of the Cloud Services in a manner that abuses or materially disrupts the Assets, networks, security systems, of any third party; (iv) interfere with, overburden, or disrupt the integrity or performance of the Cloud Services; (v) rent, lease or loan the Cloud Services to, or allow the use of the Cloud Services by, a third party via timesharing or as a service bureau; (vi) market, offer to sell, sell, and/or otherwise resell the Cloud Services to any third party; (vii) use the Cloud Services other than in accordance with the Documentation and this Agreement; (viii) use the Cloud Services to scan an Asset for which Customer does not have the right or consent to scan; (ix) remove, alter or obscure any proprietary notices on the Cloud Services or the Documentation; (x) introduce software or agents or other related materials to the Qualys' Cloud Services which may create multiple accounts, generate automated searches, requests, and queries, or to strip, scrape, deep link, or mine content or material from the Qualys' Cloud Services; (xi) use the Cloud Services in violation of applicable law; or (xii) allow any unauthorized use or disclosure of User credentials.

3.4 Information Provided to Qualys. Customer hereby acknowledges and agrees that as it relates to any Personal Data shared by or for Customer with Qualys either directly or through the use of the Cloud Services, Customer is the controller of Personal Data and Qualys is the processor of Personal Data under this Agreement. Customer bears the sole responsibility and liability for obtaining the required consents from the data subjects of such Personal Data to be used as anticipated by this Agreement. Customer agrees that Customer shall not provide any Personal Data outside of what is strictly needed for the provisioning or use of the Cloud Services, including but not limited to protected health information or sensitive Personal Data. Personal Data shared by the Customer shall be governed by the Data Privacy Addendum found at: <https://cdn2.qualys.com/docs/mktg/qualys-dpa-agreement.pdf>

3.5 Usage Limits. Use of the Cloud Services are subject to limits on the number of Assets as specified in an Order Form. If Customer exceeds a usage limit, then Qualys will work with Customer to seek to reduce Customer's usage to conform to the applicable limit. If, notwithstanding Qualys' efforts, Customer is unable or unwilling to abide by a usage limit, then Customer shall be liable for the fees for such excess usage in accordance with the "Invoicing and Payment" section below.

- 3.6 Hardware.** If the Cloud Services on an Order Form include Hardware, then Qualys will provide the Hardware to Customer on a subscription basis and only for the limited use as permitted herein and in accordance with the Documentation and the applicable Order. Customer acknowledges that not all Cloud Services subscriptions include Hardware. Qualys will select the carrier and bear the cost of shipment, insurance and duties for delivery of such Hardware to the location Customer designates. In order to provide the Cloud Services and to support the Hardware, Qualys may access the Hardware remotely at any time, or, with Customer's agreement on Customer's premises during the Subscription Term and solely as necessary to provide the Cloud Services and related support. Qualys shall not be liable for any failure to maintain or update Hardware that is caused by Customer's delay or refusal to allow Qualys access to the Hardware. At the end of any Subscription Term that is not renewed, Customer will select the carrier and bear the cost of shipment, insurance and duties for return of such Hardware to the location Qualys designates. Hardware must be returned to Qualys within thirty (30) days after the end of the Subscription Term. In the event that Customer does not return the Hardware within thirty (30) days after the end of the Subscription Term, then Qualys shall invoice Customer, and Customer shall pay such invoice in accordance with Section 5, for a non-return fee of Three thousand dollars (\$3,000) per piece of Hardware.
- 3.7 Rights and Possession of Hardware.** If the Cloud Services listed on an Order Form include Hardware, Qualys retains title, ownership and all rights and interests to such Hardware. Customer shall be liable for any misuse, abuse, neglect, or failure to use or protect such Hardware in accordance with the Documentation provided to Customer. Customer has no right to relocate Hardware without Qualys's consent and only in accordance with Qualys' instructions.
- 3.8 Software.** Any Software provided hereunder is provided as part of the Cloud Services on a subscription basis and only for the limited use as permitted herein and in accordance with the related Cloud Services. At the end of any Subscription Term that is not renewed, Software must be uninstalled within thirty (30) days of the end of the Subscription Term
- 3.9 Open Source.** Qualys provides some of its services with the help of open source software code. Qualys will provide a list of the then-current list of Open Source used by Qualys to provide the Cloud Services within thirty (30) days after Customer's written request.
- 3.10 Future Functionality.** Customer agrees that its purchases are not contingent on any oral or written public comments made by Qualys regarding future functionality or features not present in the Cloud Services as of the Effective Date.
- 4. ADDITIONAL TERMS FOR CONSULTANTS –** This Section 4 is only applicable if Customer has a Consultant subscription ("Consulting Edition")
- 4.1. Consultant Definitions.** Qualys offers its Cloud Services to Customers who are Consultants focused on servicing SMB/SME Market ("Consulting Edition"). For purposes of this Agreement, "SMB/SME Market" shall mean companies whose clients do not individually exceed either (i) 5000 employees, (ii) 5120 Ips or (iii) 200 URLs. For purposes of this Agreement, the term "Consultant" shall mean a Customer who is a Consultant and/or Managed Service Provider ("MSP") who purchases subscriptions solely to provide Consulting Services (as defined herein) to its clients ("Consulting Clients"), and not for internal use. For purposes of this Agreement, Consulting Clients are SMB/SME Market companies. For purposes of this Agreement, "Consulting Services" means the consulting services offered by Consultant to its Consulting Clients whereby, during a definitive period of time and using the Cloud Services, Consultant shall audit and analyze the security level of a customer's computer network and, upon completing such audit and analysis renders a summary report containing recommendations for improving such customer's network security.
- 4.2. Additional Consultant Requirements.** Consultant acknowledges and agrees that it will not use the Cloud Services for internal use (except as utilized in connection with submission for testing and approval by PCI Co in the PCI Scanning Vendor Compliance Test Program ("ASV Program")) or its employer's organization. Consultant will use the Cloud Service solely on behalf of its Consulting Clients and solely as a tool to conduct its Consulting Services. Consultant further acknowledges and agrees that: (i) use of the Qualys API is solely pursuant to this Agreement and is limited to the Consultant only, (ii) API data cannot be directly or indirectly pulled from Consultant by the Consultant Client, (iii) API communication is not permitted by Consultant Client, and (iv) this Agreement is solely for use as permitted herein and is not an agreement for resale of Qualys Cloud Services. Consultant will be required to purchase a network subscription for each Consultant Client, regardless of the scanning method or services purchased for such Consultant Client.
- 4.3. Consultant Agreements.** Consultant will enter into a written agreement with each Consulting Client that includes the following terms that protect Qualys: (i) a statement that Qualys owns the Cloud Services and that

the Consulting Client will not receive any license or right to the use the Cloud Services; (ii) a statement that the Cloud Services are provided by Qualys "AS IS" and that Qualys disclaims all express or implied warranties regarding the Cloud Services; and (iii) a statement that Qualys shall not have any liability for either direct or consequential damages to Consulting Client ("Minimum Terms and Conditions"). Consultant agrees that it will not enter into an agreement with a Consulting Customer that conflicts or limits in any way the rights of Qualys or the obligations of the customer under the Minimum Terms and Conditions and that, notwithstanding the foregoing, the Minimum Terms and Conditions shall prevail in the event of a conflict between another agreement and the Minimum Terms and Conditions. Consultant shall, upon request from Qualys, provide proof of Consultant's compliance with this provision.

- 4.4. Additional Consultant Payment Terms.** As a Qualys Customer, Consultant shall pay Qualys in accordance with Section 5 of this Agreement. Consultant acknowledges and agrees that Consultant's obligation to remit payment to Qualys is not dependent upon Consultant's collection of payments from Consultant's Clients and is due and payable regardless of Consultant's receipt of payment from Consultant Clients.

5. FEES AND PAYMENT *[This Section 5 is applicable to Customers that purchase direct from Qualys. For Customers that purchase through an authorized Reseller or third party, the fees, invoicing and payment rights and obligations shall be as set forth between Reseller or third party and Customer]*

- 5.1 Fees.** Customer will pay all fees as specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Cloud Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term. If Customer is purchasing the Cloud Services through a Reseller, then the fees shall be as set forth between Customer and Reseller; and the applicable fees shall be paid directly to the Reseller.
- 5.2 Invoicing and Payment.** Fees will be invoiced in advance in accordance with the relevant Order Form and this Agreement. Unless otherwise stated in the Order Form, fees are due net thirty (30) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Qualys and notifying Qualys of any changes to such information. If Customer is purchasing the Cloud Services through a Reseller, then the payment terms shall be as set forth between Customer and Reseller; and, the applicable fees shall be paid directly to the Reseller. Payment from Reseller to Qualys is not dependent upon collection of payments from any of Reseller's customers and is due and payable regardless of Reseller's receipt of payment from the same. Notwithstanding the foregoing, until such time as Qualys can establish an appropriate credit history with Reseller, Qualys may require that all fees payable under this Agreement be paid in advance ("Pre-Payment"). No orders will be accepted until such Pre-Payment has been received by Qualys.
- 5.3 Overdue Charges.** If any invoiced amount is not received by Qualys by the due date, then without limiting Qualys' rights or remedies, those charges may accrue late interest at the rate of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, provided that Qualys has given Customer at least ten (10) days' prior notice that its account is overdue. Such notice may be in the form of an email.
- 5.4 Suspension of Service.** If any charge owing by Customer is thirty (30) days or more overdue, Qualys may, without limiting its other rights and remedies, suspend Cloud Services until such amounts are paid in full provided that Qualys has given Customer at least ten (10) days' prior notice that its account is overdue. Such notice may be in the form of an email.
- 5.5 Payment Disputes.** Qualys will not exercise its rights under the "Overdue Charges" or "Suspension of Service" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 5.6 Taxes.** Qualys' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, HST, GST, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**").
- 5.6.1** Customer is responsible for any and all Taxes payable to any local, state, provincial, federal, or foreign jurisdiction assessed in connection with this Agreement and its performance, except for Taxes payable on Qualys's net income, assets, payroll, property, and employees. Customer will promptly reimburse Qualys for all Taxes that Qualys may be required to pay on Customer's behalf in connection with this Agreement or its performance. When applicable, Customer will provide Qualys with appropriate resale certificates and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any Taxes.

5.6.2 Customer's payment is considered a payment for the use of Qualys' Cloud Services and software and should generally be characterized as an automated service payment for tax purposes frequently referred to as 'business profits' under the applicable income tax treaty. Customer acknowledges that Customer's payment does not represent a license or royalty payment and should not be subject to local country withholding tax. Customer is granted a right to access Qualys's Cloud Services and Software and Qualys is not transferring any right, title or interest in or to the Cloud Services and/or Software. To the extent that any amounts payable by Customer are subject to withholding Taxes as required by the applicable local country tax law, and that cannot otherwise be mitigated, the amount payable by Customer shall be automatically grossed up such that the amount paid net of withholding Taxes equals the amount invoiced by Qualys. Customer shall provide Qualys with any applicable withholding tax certificate(s) to substantiate the withholding Taxes paid.

5.6.3. Either party is entitled to contest the amount or validity of the imposition of any Taxes at its own expense or as mutually agreed upon, and each party agrees to furnish reasonable cooperation to the contesting party in any proceeding contesting the amount or validity of imposition of such Taxes. Both parties shall mutually cooperate to minimize the Taxes by availing any exemptions or treaty benefits, as applicable under the relevant laws of each jurisdiction.

6. PROPRIETARY RIGHTS

6.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Qualys, its licensors reserve all of their right, title and interest in and to the Cloud Services including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

6.2 Consent by Customer to Host Customer Data and Applications. Customer grants Qualys a Customer's consent to Qualys hosting, copying, transmitting and displaying Customer Data as necessary for Qualys to provide the Cloud Services, including without limitation, the provision of the standard support and the use of worldwide Qualys' Affiliates to provide the Cloud Services. Subject to consent herein, Qualys acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data. Customer shall be solely responsible for the statements, comments text, data, materials, or other information including but not limited to provided on or through the Cloud Services by Customer or the Users.

6.3 License by Customer to Use Feedback. Customer grants to Qualys and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Qualys' or its Affiliates' services ("**Feedback**"), provided such feedback is on an anonymized basis and does not include Customer's Confidential Information. Qualys may share Customer's business contact information with third parties for marketing related activities such as reviews.

7. CONFIDENTIALITY

7.1 Definition of Confidential Information. "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Qualys includes the Cloud Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party in a non-confidential manner without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of Disclosing Party's Confidential Information.

7.2 Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its Authorized Representatives who are not competitors of the Disclosing Party and who need that access in their professional duties for purposes consistent with this Agreement. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Authorized Representatives without the other party's prior written consent, provided that a party that makes any such

disclosure to its Authorized Representative will remain responsible for such Authorized Representative's compliance with this "Confidentiality" section. If Receiving Party becomes aware of a loss or unauthorized disclosure of Confidential Information, whether intentional, by inadvertence, or by theft, Receiving Party shall notify Disclosing Party immediately and provide commercially reasonable efforts assistance to Disclosing Party in the retrieval of the lost or improperly disclosed Confidential Information.

- 7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law, statute, rule or regulation of any governmental authority or pursuant to any order of any court of competent jurisdiction to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted), a reasonable opportunity to obtain a protective order or other form of protection, and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 7.4 Injunctive Relief.** A breach of Section 7 of this Agreement may result in irreparable and continuing damage to the Disclosing Party for which there may be no adequate remedy at law. The Disclosing Party is therefore entitled to seek injunctive relief without posting bond for any breach or threatened breach of those sections, as well as such other and further relief as may be appropriate.
- 7.5 Return or Destruction of Qualys Confidential Information.** Subject to Section 11.4, at the end of the Subscription Term or upon the termination of the Agreement, each Receiving Party will promptly, and without undue delay, delete or return to the Disclosing Party all Confidential Information in its possession or control, and if requested by the Disclosing Party, deliver to the Disclosing Party a confirmation of compliance with the return or destruction obligation under this Section 7. For the avoidance of doubt, upon termination of subscription, Customer shall destroy all Qualys security findings and documents provided to Customer, including but not limited to, SOC Reports, assessments, questionnaires, audit findings, security reports, security findings and any non-public information provided by Qualys to Customer. Notwithstanding the foregoing and with the exception of any SOC Reports, security assessments, and any security analysis or documentation resulting from third party security assessments, the Receiving Party may retain an archival copy of the Confidential Information to the extent necessary to comply with applicable law or archival policies, provided that such retained Confidential Information shall remain subject to all confidentiality obligations under this Agreement and shall not be used for any commercial purposes.
- 7.6 Ownership and Retention of Rights.** Each party has reserved all rights to its respective Confidential Information not expressly granted herein. No intellectual property rights in the Confidential Information are granted to Receiving Party. For the avoidance of doubt, except as required for provision or use of the Cloud Services, the Receiving Party acquires and retains no rights in or to any Confidential Information of Disclosing Party, including any license implied or otherwise suggested. Copying of any Confidential Information is permitted only to the extent that such copies are recorded and necessary for the purposes of provision or use of the Cloud Services to Disclosing Party. Receiving Party also agrees not to apply for any patents or other intellectual property rights based on any Confidential Information of Disclosing Party without the prior written consent of Disclosing Party.
- 8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**
- 8.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 8.2 Qualys Warranties.** Qualys warrants that during each applicable Subscription Term (a) the Cloud Services will perform materially in accordance with the applicable Documentation, (b) Qualys will not materially decrease the functionality of the Cloud Services, (c) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. These warranties shall not apply to No Charge Services which are provided "As Is".
- 8.3 Hardware and Software Warranty.** Qualys warrants that the Hardware and Software provided hereunder, when operated by Customer in accordance with this Agreement and the Documentation, will operate in substantial conformity with the applicable Documentation. Customer's sole and exclusive remedy for breach of this warranty is to notify Qualys of the non-conformity in writing, whereupon Qualys, as its sole obligation and liability, will at its election, either: (i) correct the affected Hardware or Software to render it conforming to the applicable Documentation within a reasonable period of time or replace such Hardware, or Software or in the event that (i) is not commercially reasonable, (ii) allow Customer to terminate the applicable Order and refund Customer a pro-rata portion of the fees paid for such item. This section sets forth Customer's sole and exclusive remedy and Qualys' entire liability to Customer for any Software or Hardware non-conformity. These warranties shall not apply to No Charge Services which are provided "As Is".

8.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. MUTUAL INDEMNIFICATION

9.1 Indemnification by Qualys. Qualys will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Cloud Services or Software infringes or misappropriates such third party's intellectual property rights (a **"Claim Against Customer"**), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Qualys in writing of, a Claim Against Customer, provided Customer (a) promptly gives Qualys written notice of the Claim Against Customer, (b) gives Qualys sole control of the defense and settlement of the Claim Against Customer (except that Qualys may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Qualys all reasonable assistance, at Qualys' expense. If Qualys receives information about an infringement or misappropriation claim related to the Cloud Services or Software and in addition to the defense and indemnification obligations set forth herein, Qualys may in its discretion and at no cost to Customer (i) modify the Cloud Services or Software so that it is no longer claimed to infringe or misappropriate, without breaching Qualys' warranties under "Qualys Warranties" above, (ii) obtain a license for Customer's continued use of the Cloud Services or Software in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Cloud Services or Software immediately upon written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from Customer's breach of this Agreement, the Documentation or applicable Order Forms. This Section 9.1 states Customer's sole and exclusive remedy for intellectual property claims relating to the Cloud Services or Software.

9.2 Indemnification by Customer. Customer will defend Qualys against any claim, demand, suit or proceeding made or brought against Qualys by a third party alleging or arising from Customer's use of the Cloud Services in breach of Section 3.3(viii) and/or 3.3(xii), or not in accordance with applicable law, (a **"Claim Against Qualys"**), and will indemnify Qualys from any damages, attorney fees and costs finally awarded against Qualys as a result of, or for any amounts paid by Qualys under a settlement approved by Customer in writing of, a Claim Against Qualys, provided Qualys (a) promptly gives Customer written notice of the Claim Against Qualys, (b) gives Customer sole control of the defense and settlement of the Claim Against Qualys (except that Customer may not settle any Claim Against Qualys unless it unconditionally releases Qualys of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense.

10. LIMITATION OF LIABILITY

10.1 Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE GREATER OF THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER FOR THE CLOUD SERVICES IN THE TWELVE MONTHS PRECEDING THE APPLICABLE INCIDENT OUT OF WHICH THE LIABILITY AROSE OR ONE THOUSAND DOLLARS (\$1000), PROVIDED THAT IF CUSTOMER IS RECEIVING NO CHARGE SERVICES, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF QUALYS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED ONE HUNDRED DOLLARS (\$100). THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

10.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10.3 Exclusions. The limitation set forth above shall not apply to (i) either Party's indemnification obligation, (ii) damages for a breach of a party's confidential obligations hereunder that result in an actual unauthorized use or unauthorized disclosure of Confidential Information, (iii) damages related to either party's unauthorized use, disclosure, or distribution of the other party's intellectual property provided however that these exclusions shall not apply to Qualys' liability related to No Charge Services which shall be governed by Sections 10.1 and 10.2.

11. TERM AND TERMINATION

- 11.1 Term of Agreement.** This Agreement shall be binding once signed by both parties and effective on the date of the last signature below ("**Effective Date**"). This Agreement commences on the Effective Date and continues until sixty (60) days after all subscriptions hereunder have expired or have been terminated.
- 11.2 Term of Subscriptions.** Each Order Form will automatically renew for an additional one (1) year terms unless Customer or Qualys provides written notice that it does not intend to renew the Order Form not later than sixty (60) days prior to the end of the then-current Subscription Term. For each auto-renewed Subscription Term, the per-unit pricing during such Subscription Term will not increase more than eight percent (8%) above the applicable pricing other than Special Pricing (as defined below) in the immediately preceding Subscription Term. "Special Pricing" shall mean promotional, discount or one-time pricing as provided in an Order Form. Any change in the renewal to the type of Services or reduction in volume will result in re-pricing at renewal. For purposes of clarity, a Subscription Term shall auto-renew at the expiration of the applicable period specified as the Subscription Term.
- 11.3 Termination.** A party may terminate this Agreement for cause (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.4 Customer Data Portability and Deletion.** Upon request by Customer made within sixty (60) days after the effective date of termination or expiration of this Agreement, Qualys will make Customer Data available to Customer for export or download as provided in the Documentation. After such sixty (60) day period, Qualys will have no obligation to maintain or provide any Customer Data, and as provided in the Documentation will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.
- 11.5 Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, Customer will: (i) cease all use of the Cloud Services; (ii) promptly and fully destroy, delete, or uninstall any Software provided herein or certify such destruction; and (iii) promptly return all Hardware provided herein in accordance with Section 3.6. For purposes of clarity and notwithstanding the foregoing, Customer may retain and use Reports after termination, subject to the terms and conditions of this Agreement.
- 11.6 Surviving Provisions.** The sections titled "Fees and Payment," "Proprietary Rights," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Customer Data Portability and Deletion," "Effect of Termination or Expiration", "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

12. GENERAL PROVISIONS

- 12.1 Export Compliance.** The Cloud Services and other Qualys technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Qualys and Customer each represents that it is not named on any U.S. government denied-party list. In the event that Customer or any of Customer's Users is added to any such list during the term of this Agreement, then Customer shall provide Qualys with legal written notice in accordance with Section 12.6 below within ten (10) days of being named on such list. Customer will not permit any foreign national who is, or allow any User to access or use the Cloud Services, from a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Syria or Crimea), by persons or entities prohibited from receiving U.S. exports, or in violation of any U.S. export law or regulation.
- 12.2 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 12.3 Entire Agreement.** This Agreement and any applicable Order Form(s) are the entire agreement between Qualys and Customer regarding Customer's use of Cloud Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties hereby agree that any term other than the Cloud Services ordered and applicable pricing that differ from or are additional to those set forth in this Agreement are hereby rejected. The terms in any Customer purchase order or business form are solely for Customer's internal administrative purposes and shall not amend the legal terms and conditions agreed to herein.
- 12.4 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 12.5 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

- 12.6 Marketing.** Customer hereby grants Qualys the right to use Customer's name, logo, and related marks in marketing, sales materials, and communications solely to identify Customer as a Qualys customer.
- 12.7 Notices.** Except as otherwise specified in this Agreement and in this Section 12.6, all notices related to this Agreement ("Legal Notices") will be in writing and will be effective upon (a) personal delivery, or (b) the second business day after mailing via two-day mail. Legal Notices to Customer will be addressed to Customer and be clearly identifiable as Legal Notices. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer and may be sent via email. System-related notices may be sent via email or made available in release notes.
- 12.8 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 12.9 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 12.10 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent, but with notice to the other Party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party or to a party that cannot meet the terms, conditions and obligations herein, including the Order Forms, then such other party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 12.11 Governing Law.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.
- 12.12 Venue.** The provincial and federal courts located in San Francisco, California will have exclusive jurisdiction over any dispute relating to this Agreement, and each party consents to the exclusive jurisdiction of those courts.
- 12.13 Counterparts.** This Agreement may be executed electronically and in counterparts, each of which shall be deemed to be an original and all such counterparts shall together constitute one and the same instrument.
- 12.14 Force Majeure.** For purposes of this Agreement, "Force Majeure Event" shall mean an event beyond the reasonable control of the affected party and which the effects of which could not have been avoided by a party's compliance with its obligations under this Agreement. No Party shall be liable for any failure to perform its obligations where such failure is because of a Force Majeure Event, provided that Customer's payment obligations shall remain.
- 12.15 Updated Terms.** Qualys reserves the right to update these terms. Such terms shall apply to Customer upon posting of the updated terms.