

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

This is a legal agreement ("Agreement") between Tenable Network Security, 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. ***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 Passive Vulnerability Scanners 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 Passive Vulnerability Scanner, the following terms apply:

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

(2) "Licensed Product" means Passive Vulnerability Scanner 3.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 Nessus Cloud 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 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.

## **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, 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) Appliance Specific Terms.**

The term "Appliance" means the physical appliance in which the Software is embedded, if You have purchased such an appliance from Tenable. Tenable will ship the Appliances in accordance with good commercial practices. Title and risk of loss or damage to the Appliances will pass to You upon Tenable's delivery to a common carrier. You will bear any and all shipping and handling costs. Tenable's shipping will be standard ground service, unless otherwise agreed by the parties. Tenable has no obligation to unpack and install the Appliance.

**3. Services.**

(a) Tenable may agree with you to provide start-up services (the "QuickStart Services"), security consulting services (the "Security Consulting Services") and/or training courses and certification testing (the "Training Services"), each as scoped and defined in a separate Statement of Work (collectively, the "Services"). Incidental to Services, Tenable may provide slides, documents, examples, and other materials (the "Materials") for use in conjunction with the Software and 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. If You or Your designated attendees ("Attendees") do not attend a scheduled training session without properly rescheduling, payment for such Training Services is forfeited. For on demand Training and exams, You must use the Training Services during the defined period in which the access code is valid. 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 an executed Statement of Work. Except as otherwise agreed to by the parties in writing, all executed Statements of Work will be governed by this Agreement.

(b) For Services occurring on Your site, Tenable agrees to comply with Your reasonable security procedures provided You inform Tenable of such procedures in advance. Some of the Services may require You to have specialized knowledge or 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 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 Services. Tenable will not provide any refund based on a failure to meet prerequisites. If technical issues arise during the Services, Tenable will use commercially reasonable efforts to resolve such problems, but will have no liability based on Your failure to meet technical requirements.

(c) You may request a change in the scheduled date of Services, if You give Tenable sufficient notice. You will not receive a refund if You attempt to cancel Services but can request a change as described herein.

(d) 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 will refund all payments actually received by Tenable from You for the particular Services deemed unacceptable, in full satisfaction of Tenable's obligations.

**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 and paying the applicable fee for a new License Term.

**5. Maintenance.**

(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) Services. If You are eligible to receive Support Services, Tenable shall supply you with reasonable telephone and email support 24 hours a day, 7 days a week, for the Software and 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) Appliance Support. If Tenable, after receiving a request for Support Services, determines that an error in the functionality of the Appliance is not caused by a Software problem, Tenable will turn the request over to its authorized hardware support vendor in accordance with the applicable support plan. Your further support for such error will be directed by such hardware support vendor. To provide hardware Support Services and resolve Appliance warranty issues through its return to depot service, Tenable may require information applicable to the specific Appliance, including model and serial number, problem description, troubleshooting performed on-site, and shipping address for replacement. In the case of a dead-on-arrival Appliance in the first thirty (30) days after shipment, You must return the defective Appliance within ten (10) calendar days of receipt of a replacement Appliance, complete with the defective Appliance's original packaging and documentation. Upon receipt of a "Return Material Authorization" or "RMA" approval from Tenable, You may return defective units to Tenable for repair. All returns covered under the terms of the return to depot program must be returned freight pre-paid to Tenable's designated repair facility, except during the first year when

Tenable will cover standard (2 day ground) shipping costs. Except as otherwise specified, all inbound and outbound Appliance shipping charges under this warranty (not considered dead-on-arrival) will be paid by You. In addition, changes to Appliances may incur additional costs for re-imaging, re-configuration, addition or subtracting components or changes to packaging and documentation. In no event will Tenable be responsible for normal wear and tear of the Appliance or any Appliances that have been subject to misuse, unauthorized modification, neglect, improper testing or installation, attempts to repair, accident, flood, fire, radiation or other hazard; including, but not limited to, any shipping, processing or refurbishing charges.

(e) 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. 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.**

(a) 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 Recipient to be confidential or proprietary; or (iii) from all the relevant circumstances, should reasonably be assumed by Recipient to be confidential or proprietary. For purposes of this Section 10(a), the "Recipient" is the party to this agreement who receives or is in possession of the other's Confidential Information, and the "Discloser" is the party providing Confidential Information to the Recipient. Confidential Information includes the Software. Confidential Information does not include any information that Recipient can prove: (a) was already known to Recipient without restrictions at the time of its disclosure by Discloser; (b) after its disclosure by Discloser, is made known to Recipient 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 Recipient without reference to the Confidential Information. Confidential Information

will remain the property of Discloser, and Recipient 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. Recipient may not copy any Confidential Information without Discloser's prior written permission. Recipient may not remove any copyright, trademark, proprietary rights or other notices included in or affixed to any Confidential Information. Other than in accordance with the terms of this Agreement, Recipient may not use the Confidential Information for Recipient's or a third party's benefit, competitive development or any other purpose. Recipient agrees: (I) to hold the Confidential Information in strict confidence; (II) to limit disclosure of the Confidential Information to Recipient's own employees or those of any third party having a need to know the Confidential Information for the purposes of this Agreement, provided such third party agrees to hold the Confidential Information in accordance with the terms 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 Recipient's obligations and exercise Recipient's rights under this Agreement; (IV) to afford the Confidential Information at least the same level of protection against unauthorized disclosure or use as Recipient normally use to protect Recipient's own information of a similar character, but in no event less than reasonable care; and (V) to notify Discloser promptly of any unauthorized use or disclosure of the Confidential Information and to cooperate with and assist Discloser in every reasonable way to stop or minimize such unauthorized use or disclosure. Recipient agrees that if a court of competent jurisdiction determines that Recipient has breached, or attempted or threatened to breach, Recipient's confidentiality obligations to Discloser or Discloser's proprietary rights, Discloser will suffer irreparable harm and that monetary damages will be inadequate to compensate Discloser for such breach. Accordingly, Discloser, 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.

(b) Notwithstanding the foregoing, Tenable acknowledges and agrees any disclosures of its information that Tenable makes under this Agreement that are not otherwise protected by applicable law are subject to the Oregon Public Records Laws, including ORS 192.410-192.505, and

the provisions for the custody and maintenance of public records, ORS 192.005 – 192.170. Consequently, You may disclose and provide copies of Tenable information to the extent disclosure is required by the Oregon Public Records Law (ORS 192.410 to 192.505). If You receive from a third party any request under the Oregon Public Records Law for the disclosure of information previously identified by Tenable as proprietary, You will notify Tenable within a reasonable period of time of the request. Tenable is exclusively responsible for defending Tenable's position concerning the confidentiality of the requested information. Notwithstanding the foregoing, while You are not required to actively assist Tenable in opposing disclosure of proprietary information, You will cooperate in good faith to the extent reasonably practicable with Tenable's efforts to protect its proprietary information.

#### **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) If You will be using a physical Appliance, Tenable warrants to You that, for a period of one (1) year after shipment (the "Appliance Warranty Period"), the Appliance will be free from defects in materials and workmanship.

(c) 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 OR APPLIANCE 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 or, if Tenable is unable to remedy the problem or replace the defective product, to allow You to return the defective product in exchange for a pro rata refund of any prepaid Fees paid for the defective product, provided that Tenable is notified in writing of all warranty problems during the applicable Software or Appliance Warranty Period.

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

IF EITHER PARTY SHOULD BECOME ENTITLED TO CLAIM DAMAGES FROM THE OTHER PARTY (INCLUDING FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION AND OTHER CONTRACT OR TORT CLAIMS), THE LIABLE PARTY WILL BE LIABLE ONLY FOR THE AMOUNT OF THE OTHER PARTY'S 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 APPLIANCE 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 EITHER PARTY BE LIABLE TO THE OTHER PARTY 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 APPLIANCE OR TENABLE'S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT, WHETHER OR NOT THE ALLEGEDLY LIABLE PARTY 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 (i) Your breach of Section 7 (No Reverse Engineering, Other Restrictions), (ii) either party's breach of Section 10 (Confidentiality), (iii) Tenable's obligations under Section 16 (Intellectual Property Infringement Indemnification), or (iv) 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) Tenable will have control of the defense and settlement of any claim that is subject to Section 16(a); however, neither Tenable nor any attorney engaged by Tenable will defend the claim in the name of the State of Oregon or any Agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Oregon Attorney General, nor will Tenable settle any claim without the approval of the Attorney General.<sup>1</sup> The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Tenable is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

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

<sup>1</sup> See generally ORS Chapter 180. ORS 180.220(b) provides that only the DOJ may represent state agencies. ORS 180.140(5) permits the AG to appoint private "special assistants" under the direction and control of the AG.

## **17. Indemnification.<sup>2</sup>**

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 and Appliance 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 or Appliances 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 or the Appliance during such scanning. As between You and Tenable, You are (and Tenable is not) responsible for the success or failure of such security solution.

## **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 and subject to your reasonable security restrictions, 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, as Tenable's sole remedy 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.**

(a) You agree to pay any and all undisputed amounts due or incurred by You, including any License Fee or Support Fee or any other applicable

<sup>2</sup> Article XI, section 7 of the Oregon Constitution prohibits the State from incurring debt. Accordingly, the State may incur obligations only to the extent the legislature has appropriated funds to pay for those obligations. An indemnity provision creates an unconditional obligation to expend funds potentially in excess of appropriations.



charge (which may include shipping and insurance charges if You have purchased an Appliance), as are specified in an invoice provided by Tenable or its Vendor in consideration for Your license of the Software or purchase of the Appliance (the "Fees"). You further agree to pay any and all undisputed amounts due or incurred for any Services as set forth in an applicable Statement of Work. Payment is due within thirty (30) days of the Order Date, or such other period of time as agreed to in writing by the parties. 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. 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.

(b) By issuing a purchase order, You represent that You have sufficient funds currently available and authorized for expenditure to pay the amounts set forth in the purchase order. Tenable understands and agrees that your payment obligation for Software and Services is limited to those Software and Services specified in purchase orders that you issue.

(c) You will pay interest on late payments only as set forth in ORS 293.462.

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

The Software and Appliance are 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 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 either party materially breaches any of its obligations under this Agreement, or (b) immediately upon notice if You breach Sections 7 (No Reverse Engineering, Other Restrictions) or 10 (Confidentiality). 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. If You have been using an Appliance, immediately after termination of this Agreement You may no longer use the Appliance and Tenable has no further obligation to support the Appliance. If You want to use the hardware portion of the Appliance outside of this Agreement, You must remove and destroy the Software in the Appliance, together with all copies, modifications and merged portions of the Software in any form. Once the Software is removed and destroyed, none of the restraints on transfer set forth in this Agreement will apply to the physical device constituting the remainder of the Appliance after the Software is permanently removed. 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 shall terminate (y) at either party's convenience upon thirty (30) days' notice to the other party, or (z) if, after thirty (30) days' notice and opportunity to cure, a party has failed to cure a material breach of such Statement of Work. Upon termination of any Statement of Work other than for Tenable's breach, You will promptly pay Tenable all fees earned up until the point of termination as well as all expenses reimbursable under such Statement of Work.

## **22. Governing Law.**

This Agreement is governed by the laws of the State of Oregon, USA, without regard to principles of conflict of laws. 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.**

Any claim, action, suit, or proceeding (collectively, "Claim") between You (or any other Agency or department of the State of Oregon) and Tenable that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.<sup>3</sup> TENABLE BY EXECUTION OF THIS AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION. In no event may this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

<sup>3</sup> See ORS 15.320.

## **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. Reserved.**

## **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 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 You agree in writing, Tenable may not use Your name 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. 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. Reserved.**

## **31. Provisions Required by Law.**

(a) Your performance under the Agreement is conditioned upon Tenable's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.

(b) Tenable represents that it has complied with and will continue to comply with the tax laws of the State of Oregon and political subdivisions of the State of Oregon consistent with and subject to Your remedies for failure to do so as set forth in ORS 279B.045.

(c) The individual signing on behalf of Tenable hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that: (a) the number shown on this form is Tenable's correct taxpayer identification; (b) Tenable is not subject to backup withholding because (i) Tenable is exempt from backup withholding, (ii) Tenable has not been notified by the IRS that Tenable is subject to backup withholding as a result of a failure to report

all interest or dividends, or (iii) the IRS has notified Tenable that Tenable is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Tenable, s/he has authority and knowledge regarding Tenable's payment of taxes, and to the best of her/his knowledge, Tenable is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; and (d) Tenable is an independent contractor as defined in ORS 670.600; and (e) the supplied Tenable data under this Section 31(c) is true and accurate.<sup>4</sup>

Tenable's Federal Tax Number: \_\_\_\_\_

Oregon Tax Number \_\_\_\_\_

<sup>4</sup> See ORS 305.385(6) and (7); and OAR 150-305.385(6)-(A) through (C).

IN WITNESS WHEREOF, You and Tenable have each caused this Agreement to be signed and delivered by its duly authorized officer.

By: 

Printed Name: Toby Giddings

Title: State Procurement Analyst

Date: 4/8/16

TENABLE NETWORK SECURITY, INC.

By: 

Printed Name: JOHN C. HUFFARD, JR.

Title: PRESIDENT

Date: 4/11/16