

# FireMon Cloud Services Addendum

FIREMON, LLC (HEREINAFTER "FIREMON") PROVIDES THE CLOUD SERVICES ADDENDUM SOLELY ON THE TERMS AND CONDITIONS SET FORTH HEREIN (THE "AGREEMENT") AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY INSTALLING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE CLOUD SERVICES, YOU AGREE AS AN AUTHORIZED REPRESENTATIVE THAT THE LICENSEE HEREBY AGREES TO BE BOUND BY THIS AGREEMENT. ON BEHALF OF LICENSEE, YOU HEREBY (A) ACCEPTS THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY ON BEHALF OF LICENSEE TO ENTER INTO THIS AGREEMENT AND BIND LICENSEE TO ITS TERMS. IF YOU LACK AUTHORITY OR LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, FIREMON WILL NOT AND DOES NOT GRANT ANY LICENSE TO THE CLOUD SERVICES TO LICENSEE AND LICENSEE MUST NOT INSTALL OR USE THE SOFTWARE OR SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR LICENSEE'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY CLOUD SERVICES THAT LICENSEE DID NOT ACQUIRE LAWFULLY. THIS AGREEMENT IS EFFECTIVE AS OF THE DATE THE CLOUD SERVICES ARE MADE AVAILABLE TO THE LICENSEE (THE "EFFECTIVE DATE").

## 1. Grant of License

Subject to the terms and conditions of this Agreement, FireMon grants to Licensee a limited, non-exclusive, non-transferable, revocable license to access and use the Cloud Services solely for internal purposes in connection with FireMon Security Manager software which has been licensed on a subscription basis from FireMon (the "Cloud Services").

## 2. Term and Termination

The license granted herein shall be valid during the subscription license term for your FireMon Security Manager instance. This Agreement will automatically terminate upon expiration of the FireMon Security Manager subscription licenses or if earlier terminated by either party without cause upon written notice to the other party. Upon termination, Licensee shall cease all use of the Cloud.

## 3. Restrictions and Obligations

Licensee agrees to:

- Use the Cloud Services solely for internal business purposes as set forth in the applicable documentation;
- Not make any unauthorized modifications or copies of the Cloud Services;
- Not decompile, reverse engineer, disassemble, or otherwise attempt to derive source code from the Cloud Services;
- Not sublicense, rent, lease, assign, or otherwise transfer the Cloud Services;
- Protect the Cloud Services and its contents as Confidential Information;
- Prevent any unauthorized access, use, or disclosure of the Cloud Services.

## 4. No Warranty; Disclaimer

CLOUD SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND. FIREMON DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## 5. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, FIREMON SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OF THE SOFTWARE.

## 6. Export Control

Licensee shall comply with all applicable U.S. export control laws and regulations.

## 7. Proprietary Rights.

- 7.1. FireMon and our licensors own all worldwide right, title and interest in the Cloud Services including all related copyrights, trademarks, service marks, patents, trade secrets, know-how, moral rights and all other proprietary rights, including registrations, applications, renewals and extensions of such rights existing anywhere in the world, whether registered or unregistered ("Intellectual Property Rights"). The Cloud Services is valuable trade secrets and constitute our Confidential Information. Except for the rights explicitly granted to Licensee in this Agreement, all right, title and interest in the Cloud Services are reserved and retained by FireMon and/or our licensors. Licensee does not acquire any intellectual property or other rights in the Cloud Services as a result of accessing or using the Cloud Services except as specified in this Agreement.
- 7.2. Subject to the rights granted herein, Licensee or Licensee's licensors shall own right, title and interest in the Telemetry Data.

## 8. Confidential Information.

- 8.1. Confidential Information.** "Confidential Information" means any non-public information disclosed by one party to the other party in connection with this Agreement and any information that is marked "confidential" or "proprietary" at the time of disclosure; if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure or would be deemed to be confidential or proprietary to a reasonable recipient. Previews are Confidential Information. Confidential Information includes copies of such information, but excludes information that: (a) is or becomes a part of the public domain through no action or omission of the receiving party ("Recipient"); (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party from the disclosing party ("Discloser"); (c) is lawfully disclosed to the receiving party by a third-party without restriction on the disclosure; or (d) is independently developed by the receiving party without reference to Confidential Information. Subject to applicable law, FireMon Confidential Information includes, but is not limited to, this Agreement, Cloud Services, trade secrets, know-how, Cloud Services roadmap, source code, software, Cloud Services and technology-related information, customer lists, financial information, sales, pricing information, marketing and business plans.
- 8.2. Treatment.** Confidential Information shall remain the property of the Discloser. Each party shall have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. Each party agrees: (a) to hold the other party's Confidential Information in confidence for a period of three (3) years from the date of disclosure, except confidentiality obligations will continue indefinitely regarding Confidential Information considered as trade secrets under applicable law to the extent such Confidential Information remains a trade secret; and (b) to disclose the other party's Confidential Information only to those employees, Partners, or agents or the Affiliates' employees, Partners, or agents on a need to know basis provided that they are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those specified herein. Recipient shall protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and in any event with at least a reasonable degree of care. Recipient may disclose the other party's Confidential Information to the extent that such disclosure is required pursuant to a judicial or administrative proceeding, provided that, prior to such disclosure, Recipient gives Discloser prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.
- 8.3. Return or Destruction.** Upon termination of this Agreement or Discloser's written request, all Confidential Information (including all copies thereof) of Discloser shall be returned or destroyed and provide written certification of this destruction, unless Recipient is required to retain such information by law, and the receiving party shall certify its compliance with this Section 10.3.
- 8.4. Injunctive Relief.** Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information may cause irreparable harm to the disclosing party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 10, without the necessity of posting any security. Recipient will notify Discloser in writing upon the receiving party becoming aware of any unauthorized use or disclosure of Confidential Information.
- 8.5. Telemetry Data.** Licensee hereby acknowledges, agrees, and expressly consent to FireMon's collection and use of Telemetry Data. FireMon does not claim ownership of any Telemetry Data. Licensee hereby grants to FireMon a royalty-free, perpetual, irrevocable, transferable, worldwide non-exclusive right to reproduce, analyze, review, process, diagnose, or otherwise use the Telemetry Data (in whole or in part) for the purpose of supporting, maintaining, and providing the Cloud Services (the "Telemetry Data License"). FireMon will not disclose the Telemetry Data to any third parties and will only use the Telemetry Data in accordance with the Telemetry Data License, except that FireMon may provide Telemetry Data to third parties providing services relating to the Cloud Services to FireMon (which will protect the Telemetry Data on terms and conditions that are commensurate in scope with this Agreement). In addition to the rights granted under the Telemetry Data License, Licensee acknowledges and agrees that FireMon has the right transform Telemetry Data to Aggregated Anonymous Data which data will thereafter be solely governed by Section 8.6.
- 8.6. Aggregated Anonymous Data.** FireMon shall own all rights, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Aggregated Anonymous Data. For the avoidance of doubt, FireMon may use, sell, license, access, disclose, modify, and create derivative works of the Aggregated Anonymous Data in perpetuity for any purpose, including, without limitation, to generate industry benchmarks and to develop and improve FireMon's products and services.

## 9. Governing Law and Jurisdiction.

- 9.1. Governing Law and Jurisdiction.** This Agreement shall be deemed executed in and shall be governed by and construed in accordance with, the laws of the State of Kansas, United States of America. The sole and exclusive venue and jurisdiction for any and all claims or disputes arising under this Agreement or in connection with the Cloud Services shall be in Johnson County, Kansas. Licensee hereby irrevocably submits and consents to personal jurisdiction in the foregoing location.:
- 9.2. Exclusion.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

## 10. General.

- 10.1. Third-Party and Open-Source Software.** The Cloud Services may contain components of copyrighted third-party software or open-source software. Third party and open-source software that is provided in connection with the Cloud Services is included in the warranty, support and indemnification provisions applicable to the Cloud Services. Licensee's internal use of open-source software included in the Cloud Services without modification and in compliance with this Agreement will not result in the imposition of "copyleft" obligations with respect to Licensee's intellectual property.
- 10.2. Entire Agreement.** This Agreement (including any documents expressly referenced herein, the terms of which are hereby incorporated by reference) sets forth the entire agreement and understanding between the parties pertaining to the subject matter hereof and merges all prior written or oral discussions between them. The terms and conditions of and license agreement for FireMon Security Manager will not apply to the Cloud Services.
- 10.3. Feedback.** Licensee hereby acknowledges and agrees that any feedback, suggestions, or ideas provided by Licensee relating to the Cloud Services or Services ("Feedback") shall become the sole and exclusive property of FireMon. Licensee hereby assigns to

FireMon all right, title, and interest in and to any Feedback, including all intellectual property rights therein. FireMon shall be free to use, modify, and incorporate any Feedback into its products or services, including for the development of derivative works, without any obligation to Licensee or compensation to Licensee.

- 10.4. **Modifications.** FireMon reserves the right to modify or amend the terms of this Agreement from time to time and at anytime ("Modifications"). FireMon will provide a minimum of five (5) business days' notice of any Modifications and if Licensee may notify FireMon that it does not accept such Modifications via email causing this Agreement to immediately terminate.
- 10.5. **Severability.** If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. In the event such provision cannot be reformed to make it enforceable, the remaining terms and provisions of this Agreement shall remain in full force and effect, and such unenforceable provision shall be deemed not to be part of this Agreement.
- 10.6. **Assignment.** FireMon may assign this Agreement in connection with the sale, merger or disposition of its assets and/or business operations.
- 10.7. **No Waiver.** Except as specifically provided in a written waiver signed by a duly authorized representative of the party seeking enforcement, the failure to enforce or the waiver of any term of this Agreement shall not constitute the waiver of such term at any time or in any circumstances and shall not give rise to any restriction on or condition to the prompt, full and strict enforcement of the terms of this Agreement.
- 10.8. **Force Majeure.** FireMon will not be liable to Licensee for failure to fulfill obligations hereunder if such failure is due to causes beyond its control, including, without limitation, acts of God, earthquake, fire, flood, embargo, catastrophe, sabotage, utility or transmission failures, governmental prohibitions or regulations, national emergencies, insurrections, riots or wars, or viruses which did not result from the acts or omissions of FireMon, its employees or agents, strikes, work stoppages or other labor difficulties.
- 10.9. **Parties Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement. The parties remain independent contractors and have no power or authority to bind the other or to create any obligation or responsibility on behalf of the other. Under no circumstances will any employee of one party be deemed to be the employee of the other for any purpose.
- 10.10. **Non-exclusive Dealings.** Each party acknowledges and agrees that the rights granted to the other party in this Agreement are nonexclusive and that without limiting the generality of the foregoing, nothing in this Agreement shall be deemed or construed to prohibit either party from participating in similar business arrangements as those described herein.
- 10.11. **Headings.** In this Agreement: (a) any headings are for reference purposes only and shall not be used in the construction and interpretation of this Agreement; (b) the singular number shall include the plural, the plural number shall include the singular; (c) if a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb); (d) "includes", "including", "for example", "such as" and similar terms are not words of limitation; (e) any monetary amount is in U.S. dollars; and (f) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement. English (as commonly interpreted in the United States) will be the language used in all written communications between the parties pursuant to this Agreement, including all notices, reports, reviews, consents, authorizations, and approvals under this Agreement.
- 10.12. **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be given in writing, effective upon receipt and delivered personally, by electronic mail, by overnight courier, or by registered or certified United States mail, postage prepaid.