



## END USER SERVICES AGREEMENT FOR AWS MARKETPLACE

This End User Services Agreement for AWS Marketplace (“**Agreement**”) sets forth the terms and conditions applicable to the purchase of Product from The Escal Institute of Advanced Technologies, Inc. /dba SANS Institute (“**SANS**”) by the party purchasing a Product (“**Customer**”), through the AWS Marketplace and constitutes a legal agreement. SANS and Customer may be referred to individually as a “**Party**” and together as the “**Parties**”. The offer of the Product Subscription on the AWS Marketplace, and Customer purchase of the corresponding Product Subscription on the AWS Marketplace, constitutes each Party’s respective acceptance of this Agreement. By providing payment for the Product Subscription and/or registering for Training, Customer and User agree to be bound by the terms of this Agreement. IF CUSTOMER DOES NOT AGREE TO THIS AGREEMENT, SANS SHALL NOT SELL SUBSCRIPTIONS TO CUSTOMER, AND CUSTOMER MUST DISCONTINUE THE PURCHASING PROCESS NOW.

### 1. DEFINITIONS

- 1.1. **Applicable Data Protection Legislation** means any data protection regulation that may apply in the context of the Agreement, including, where applicable, (i) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (“GDPR”) and the laws and regulations adopted to implement the GDPR, (ii) the U.K. General Data Protection Act, (iii) the California Consumer Privacy Act and (iv) any other laws or regulations relating to the Processing, as defined in Addendum B, of Personal Data.
- 1.2. **AWS Marketplace** means the marketplace operated by Amazon Web Services, Inc., which is currently located at <https://aws.amazon.com/marketplace>, as it may be updated or relocated from time to time.
- 1.3. **Confidential Information** means any information that is proprietary or confidential to a Party and either marked as confidential or identified as such to the other Party, including, but not limited to, business or technical data or know-how, customer and prospective customer lists, secrets, ideas, concepts, designs, drawings, flow charts, diagrams, financials, and other intellectual property, in whatever form including, documented information, machine readable or interpreted information transmitted in any form including, in writing, orally, or visually. Any abstracts, summaries or compilations are included in this definition of Confidential Information. For avoidance of doubt, Confidential Information includes details of SANS training courses or exams, pricing, courseware, user information, and the business relationship between the Parties.
- 1.4. **Course Materials** means SANS' educational materials including, but not limited to, online, written, and visual materials.
- 1.5. **Courseware** means SANS' Course Materials and verbal instruction.
- 1.6. **Disclosing Party** means the Party that discloses its Confidential Information to the Receiving Party under this Agreement.
- 1.7. **GIAC** means Global Information Assurance Certification.
- 1.8. **Personal Data** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
- 1.9. **Product Listing** means the descriptions of Product listed on the AWS Marketplace and offered by SANS.
- 1.10. **Product** means the specific SANS Training course identified in the applicable AWS Marketplace Product Listing, including associated course materials and AWS-hosted lab environments.
- 1.11. **Receiving Party** means the Party that receives Confidential Information of the Disclosing Party under this Agreement.
- 1.12. **SANS IP** means any and all domestic and international rights in and to (i) registered or unregistered trademarks, service marks, social media handles and associated accounts, hashtags, internet domain names, together with the goodwill associated therewith, (ii) patents, patent disclosures, patentable subject matter, inventions, any improvements or modifications thereof or know-how; (iii) registered or unregistered copyright, copyrightable works, derivative works thereof, including any copyrights moral rights, and other sui generis rights in and to any of the foregoing; (iv) trade secrets including without limitation any customers, market strategy, sales initiatives and costs; (v) to the extent permitted by applicable law, other proprietary intellectual property (of every kind and nature and however designated), whether arising by operation of law, contract, license or otherwise, worldwide (including moral rights); and (vi) all registrations, applications, renewals, extensions, continuations, continuations-in-part, divisions or reissues of the foregoing now or hereafter in force or hereafter acquired or adopted. For the avoidance of doubt, “SANS IP” includes the Training and associated course materials, storyboards, scripts, educational material in any format, and GIAC test exam questions.
- 1.13. **Subscription** means a single-user license granting one User access to a Product for the defined term.
- 1.14. **Training** means the SANS provided OnDemand Cloud Security cybersecurity training courses and related GIAC exams as detailed in the Product Listing and provided in accordance with this Agreement.
- 1.15. **User** means the individual authorized by Customer to access the Product. Each Subscription is assigned to a single User and may not be shared.

### 2. SANS RESPONSIBILITIES



- 2.1. Services. SANS will provide, perform, and/or deliver all Products to Customer in accordance with this Agreement.
- 2.2. Compliance with Laws. In connection with its obligations under this Agreement, SANS agrees to comply with all federal, state, and local laws, constitutions, codes, statutes and ordinances of any governmental authority that may be applicable to SANS, its activities under this Agreement, including all applicable sanctions and export control laws and regulations.

### 3. SUBSCRIPTIONS

- 3.1. Customer purchases a Subscription for a specific Product as identified in the AWS Marketplace Product Listing. Each Subscription entitles one User to access the Product during the Subscription term.
- 3.2. Access to the Product includes course content, course materials, and AWS-hosted lab environments where applicable.
- 3.3. Subscriptions are valid for the period specified in the Product Listing, non-transferable, and non-refundable except as expressly stated in the applicable Product Listing.
- 3.4. Each Subscription may only be used by the assigned User and may not be shared or reassigned once access to the Product has been initiated.
- 3.5. The Product is delivered through SANS' cloud-based training platform, and any instructional components are provided in support of access to the platform and associated lab environments.

### 4. COURESEWARE AND COURSE MATERIALS

- 4.1. Customer may not distribute Courseware to Customer's employees who did not access Training and may not use the Courseware to conduct its own in-house courses. SANS Training cannot be recorded, streamed, or set up for video conferencing by Customer or its Users except as agreed to by SANS.
- 4.2. SANS grants to each individual User enrolled in Training a worldwide, non-transferable, non-sublicensable, perpetual, irrevocable, non-exclusive, limited license directly to use such Courseware associated with such Training in connection with the User's employment by Customer. Neither Customer nor its Users may copy, reproduce, distribute, display, modify or create derivative works based upon all or any portion of the Courseware in any medium, whether printed, electronic, or otherwise, for any purpose, including, but not limited to, for purposes of teaching any computer or electronic security courses to any third party, without the express written consent of SANS.
- 4.3. Course Materials are guaranteed to be in good working condition for the duration of the User's attendance in the Training for which the User is registered; provided, SANS is not responsible for any loss, damage, or performance limitation caused in whole or in part by User abuse, mishandling, misuse, negligence, improper storage, servicing or operation, or unauthorized attempts to repair or alter the Course Materials in any way.
- 4.4. For the avoidance of doubt, following termination, Users shall be permitted to keep any Course Materials licensed to them by their access to SANS Training or GIAC exam.

### 5. CANCELLATION POLICY

- 5.1. Transfers. A User may request to transfer to other Training available through the AWS Marketplace Product Listing at any time prior to accessing the online Course Materials, by submitting a transfer request via e-mail to [registration@sans.org](mailto:registration@sans.org). Processing fees will apply.
- 5.2. Substitutions: A User may request another person to substitute their registration at any time prior to accessing the online Course Materials by submitting a substitution request via e-mail to [registration@sans.org](mailto:registration@sans.org). Processing fees apply. When substituting a User, only the person identified in the e-mail may be substituted for the original person registered. Once the substitution is complete, the original registrant may only attend by paying the full tuition fee.

### 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. Customer acknowledges that SANS or its licensors are the sole and exclusive owners or licensees of the SANS IP, including any improvements and enhancements thereto and derivations thereof. Nothing in this Agreement transfers any ownership interests in the SANS IP to Customer. In addition, nothing in this Agreement grants Customer any right to license or sell any SANS IP to any third parties.

### 7. TERM AND TERMINATION

- 7.1. Term. Unless terminated earlier as described elsewhere herein, this Agreement will become effective as of Customer's purchase of Subscription(s) through the AWS Marketplace ("Effective Date") and will continue until the conclusion of the Subscription(s); unless terminated by either Party as provided in this Agreement ("Term").
- 7.2. Termination.
  - 7.2.1. For Breach. If either Party materially breaches this Agreement, the other Party may terminate a Subscription or this Agreement upon thirty (30) days prior written notice to the breaching Party of such material breach, provided that the breaching Party has not cured such material breach by the end of the thirty (30) day period.
  - 7.2.2. Immediate. Either Party may terminate a Subscription or this Agreement immediately upon written notice to the other Party in the event the other Party: (a) becomes insolvent; (b) makes an assignment for the benefit of creditors; (c) files a voluntary bankruptcy petition; (d) acquiesces to any involuntary bankruptcy petition; (e) is adjudicated bankrupt; or (f) ceases to do business.
- 7.3. Effect of Termination. In the event of termination, Customer shall pay SANS for all Products received up to the date of termination, as well as all fees accrued prior to the date of termination.



7.4. Survivability. 7 (Intellectual Property Rights), 8 (Term and Termination), 10 (Audit), 11 (Confidentiality), 12 (Privacy), 13 (Data Protection), 15 (Indemnification), 16 (Intellectual Property Indemnification), 17 (Disclaimer Of Warranty and Limitation Of Liability), and 21 (Governing Law, Disputes) will survive the termination or expiration of this Agreement.

## 8. ORDERS AND PAYMENT TERMS

8.1. Order Placement and Processing. Customer shall order Subscription(s) from SANS using the AWS Marketplace. All orders are subject to acceptance by SANS. SANS shall notify Customer in writing if SANS rejects an order.

8.2. Failure to Pay. If Customer fails to pay amounts due within 30 days after notice, SANS reserves the right to suspend Customer's or a User's right to access or use any portion or all of the Training immediately.

## 9. AUDIT

9.1. During the Term, SANS will keep true and accurate books and records relating to this procurement (collectively, "Records"). Records will include such information necessary for the Customer to verify the accuracy of the invoicing, billing, and payments in connection with the ordered Products and Services, but not the underlying costs and financial data used in calculating the same. At the Customer's reasonable request, SANS will provide access to the Records, as necessary, to verify the fees and other amounts charged to the Customer, which shall be accomplished through electronic means.

## 10. CONFIDENTIALITY

10.1. The Receiving Party may be given Confidential Information from the Disclosing Party in order to perform its obligations under this Agreement. The Receiving Party will protect the confidentiality of the Disclosing Party's Confidential Information during the Term of this Agreement and indefinitely thereafter by (a) using the same means it uses to protect its own Confidential Information, but in any event, not less than reasonable means, and (b) using the Disclosing Party's Confidential Information solely in connection with this Agreement. The Receiving Party shall not copy or disclose this Agreement and the Disclosing Party's Confidential Information except to those employees, officers, directors, subcontractors, agents, or affiliated entities of the Receiving Party ("Representatives") who have a need to know such Confidential Information as required in connection with this Agreement; provided, such Representatives are advised of and agree to abide by the confidentiality obligations set forth in this Agreement. Compliance by Representatives with the confidentiality and use obligations in this Agreement will remain the responsibility of Receiving Party, and both Receiving Party and Representatives shall be liable for any breach of this Agreement by Representatives.

10.2. Confidential Information will not include any information or data which:

10.2.1. was rightfully in the Receiving Party or its Representatives' possession prior to receipt from the Disclosing Party;

10.2.2. becomes rightfully available to the Receiving Party or its Representatives from a source other than the Disclosing Party who is free to lawfully disclose such information to the Receiving Party;

10.2.3. is independently developed by the Receiving Party or its Representatives, without the use of the Disclosing Party's Confidential Information; or

10.2.4. is legally required to be disclosed to a regulatory agency or pursuant to an order of a court of competent jurisdiction, provided that, where permissible, the Disclosing Party be given an opportunity to seek a protective order.

## 11. PRIVACY

11.1. In accordance with SANS' Privacy Policy, all information collected from a User related to Training taken from SANS will be kept confidential except as may be disclosed (i) as permitted by applicable law, (ii) as consented to by the User, or (iii) to Customer as the sponsor of User's training at SANS. Please see SANS's Privacy Policy for additional information (<https://www.sans.org/privacy/>).

## 12. DATA PROTECTION

12.1. Each Party undertakes to comply on their own with Applicable Data Protection Legislation, exercising individual's rights, conducting impact assessments, taking commercially reasonable efforts to prevent and manage data breaches appropriately, maintaining confidentiality, limiting the processing to the Products or Services delivered under this Agreement, maintaining the ability to demonstrate compliance with Applicable Data Protection Legislation, implementing appropriate data retention procedures and adhering to data transfer requirements, and maintaining industry-standard administrative, physical and technical safeguards to protect the security, confidentiality and integrity of such Personal Data.

12.2. In the event that either Party needs to provide any Personal Data under any Applicable Data Protection Law to the other Party to perform a Party's obligations under this Addendum, then the Parties acknowledge and agree that they are each acting as separate and Independent Controllers of such Personal Data shared. A Party shall not share any Personal Data with the other Party unless such Party confirms that it is legally permitted to share such Personal Data.

12.3. To the extent that Personal Data is provided from a Party to the other Party and such disclosure requires a data processing agreement between the Parties under an applicable data protection law, the Parties agree that the SANS DPA is incorporated into and attached to this Agreement by reference.

## 13. REPRESENTATIONS AND WARRANTIES

13.1. Such representations and warranties shall be continuing throughout the Term of this Agreement.

13.1.1. it is duly organized and in good standing in the jurisdiction in which it is incorporated or organized;

13.1.2. it has full right and power to enter into this Agreement; and



13.1.3. it is not prohibited by any regulatory authority from carrying out its duties and obligations under this Agreement.

#### **14. INDEMNIFICATION**

14.1. Each Party (an "Indemnifying Party") hereby agrees to indemnify, defend and hold the other Party, its affiliated entities, and its and their officers, directors, employees, and agents (each an "Indemnified Party") harmless from and against any action, claim, suit, investigation or other proceeding (each, a "Claim") brought against an Indemnified Party by a third party based on: (a) breach of any applicable law by such Indemnifying Party or (b) gross negligence or willful misconduct by such Indemnifying Party.

#### **15. INTELLECTUAL PROPERTY INDEMNIFICATION**

15.1. Subject to the limitations of liability in Section 14 (Disclaimer of Warranty and Limitation of Liability) of the Agreement, SANS shall defend, indemnify, and hold Customer and its officers, directors, employees, and agents (each a "Customer Indemnitee") harmless from and against any third party claims, demands, suits, proceedings, and resulting liabilities, direct damages, and expenses (collectively "Claims"), to the extent that SANS IP infringe any patent, copyright, trademark, trade secret or other intellectual property interest of a third party. SANS shall, in its sole discretion and at no additional charge to Customer, make commercially reasonable efforts to replace, in whole or in part, the infringing materials or Services with substantially compatible and functionally equivalent materials or Services, modify them to avoid the infringement, or secure the right for Customer to continue their use. In the event that SANS determines that the foregoing actions are not commercially practicable, then either Party may terminate the applicable order and SANS shall refund to the Customer the applicable fees for periods after the effective date of termination.

15.2. The foregoing obligations are conditioned on (i) the Customer Indemnitee providing prompt notification of the Claim to SANS, (ii) Customer allowing SANS to control the defense and settlement of the Claim (except that SANS may not agree to any settlement or consent to any judgment that would admit fault, wrongdoing or liability on the part of the Customer without such Customer's prior written consent), and (iii) the Customer's cooperation with the SANS as reasonably requested by SANS (at SANS' expense) in the defense and any related settlement of the Claim.

#### **16. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY**

16.1. Except as specifically provided herein, SANS disclaims any and all representations and warranties, oral or written, expressed, implied, or statutory, including without limitation, any implied warranties of fitness for a particular purpose or of merchantability. In no event shall SANS be liable for any incidental, indirect, consequential, exemplary, special, or punitive damages, whether or not foreseeable, and regardless of whether liability is based on agreement, tort, or otherwise.

16.2. EXCEPT IN THE EVENT OF BREACH OF SECTION 7 (INTELLECTUAL PROPERTY RIGHTS), IN NO EVENT SHALL EITHER PARTY, ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, OR ANY OF THEIR AFFILIATE'S LIABILITY IN ANY MANNER ARISING UNDER THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE TOTAL PAYMENT RECEIVED BY SANS FOR PRODUCTS OR SERVICES UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE WHEN CAUSE OF ACTION ARISES, INCLUDING ATTORNEY FEES.

#### **17. COMPLIANCE WITH LAWS**

17.1. Each Party will, at its sole expense, obtain all permits and licenses, pay all fees, and comply with all federal, state, and local laws, ordinances, rules, regulations, codes, and orders applicable to it in the performance of this Agreement.

17.2. Each Party shall conduct operations in compliance with applicable laws, rules and regulations in exercising rights and obligations under any part of this Agreement. Laws may include but not be limited to the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and local anticorruption legislation that may apply. Neither party is listed by any government agency as debarred, suspended, proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs. In exercising rights and obligations under any part of this Agreement, neither party nor anyone acting on its behalf shall make, offer, promise or authorize payment of anything of value directly or indirectly to any of the following prohibited parties for the purpose of unlawfully influencing their acts or decisions: a) employees, consultants, or representatives of the other Party, b) government officials or employees, c) political party officials or candidates, d) officers or employees of any public international organization, e) immediate family member of such persons (or any other person) for the benefit of such persons.

17.3. Each Party warrants that neither it nor its controlling owners is listed on any (i) sanction programs list maintained by the U.S. Office of Foreign Assets Control within the U.S. Treasury Department ("OFAC"), or (ii) denied party list maintained by the U.S. Bureau of Industry and Security within the U.S. Department of Commerce ("BIS"). Customer agrees it shall not allow Users access to any SANS product, service, or technology provided under this Agreement to any person or entity in a U.S. embargoed country or in violation of a U.S. export control law or regulations. Customer agrees to cooperate with SANS as necessary for SANS to comply with export requirements and recordkeeping required by OFAC, BIS, or other governmental agency.

#### **18. GOVERNING LAW; DISPUTES**

18.1. This Agreement will be governed by and construed in accordance with the laws of the State of Maryland, USA. Each Party hereby irrevocably consents to exclusive personal jurisdiction and venue in the state and federal courts located in Maryland. Both Parties exclude the application of the Uniform Computer Information Transactions Act ("UCITA"), the United Nations Convention on the International Sale of Goods ("CISG") and any law of any jurisdiction that would apply UCITA or CISG or terms equivalent to UCITA or CISG to this Agreement. The Parties agree to settle all disputes promptly by negotiation between executives in good faith. Should good faith negotiations fail, any controversy or claim arising out of or relating to this Agreement, or breach thereof, will be exclusively settled by binding arbitration in Montgomery County, Maryland, USA administered by the American Arbitration Association in accordance with its Commercial Arbitration



Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Either Party may initiate arbitration by written notice if negotiations have failed to resolve the matter within 30 days of initiation. The language of the arbitration will be English.

## 19. NOTICES

19.1. All notices or reports required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, facsimile transmission, a nationally recognized overnight delivery service, by certified or registered mail, return receipt requested, or by electronic mail to be confirmed in writing delivered by one of the methods described herein, and shall be deemed given upon personal delivery, electronic confirmation of electronic mail or facsimile transmission, or signature evidencing receipt of overnight delivery or registered mail, as applicable. Notices and communications between Customer and SANS shall be in English to the following addresses of the Parties or to such other addresses as the Party concerned may subsequently notify in writing to the other Party. Notice hereunder for SANS shall be delivered to the SANS address as follows. Notice hereunder for Customer is the address for Customer in the AWS Marketplace with attention to the Legal Department.

If to SANS:  
SANS Institute  
Attn: Contracts Administration  
11200 Rockville Pike, Suite 200  
North Bethesda, MD 20852  
Contractadmin@sans.org

## 20. MISCELLANEOUS

- 20.1. Assignment; No Third-Party Beneficiaries. Neither Party may assign this Agreement or its rights or obligations thereunder without the written consent of the other Party, which consent will not be unreasonably withheld, except that a Party may assign upon written notice to a successor by merger, acquisition, or sale of substantially all of such Party's business or assets. In addition, SANS may assign this Agreement or applicable order in whole or part to an affiliated entity without written consent of Customer. SANS may subcontract all or any part of its obligations under this Agreement or applicable order but shall remain responsible for the acts and omissions of its subcontractors as though they were acts of SANS itself. Except as specifically provided herein, there are no third-party beneficiaries to this Agreement, and nothing in this Agreement shall benefit or create any right on behalf of any person or entity other than Customer and SANS.
- 20.2. Waiver. The failure of either Party to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision or a waiver of the right of such Party to thereafter enforce each and every provision of this Agreement.
- 20.3. Severability. If a particular provision of this Agreement is terminated or held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that provision of the Agreement will be enforced to the maximum extent legally permissible and the remainder of this Agreement will continue in full force and effect.
- 20.4. Headings. The headings or titles preceding the text of the sections and subsections of this Agreement are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.
- 20.5. Independent Contractor. SANS is an independent contractor and not an employee, agent, affiliate, partner or joint venturer with or of Customer.
- 20.6. Force Majeure. Neither Party shall be liable to the extent that its performance of this Agreement is prevented, or rendered so difficult or expensive as to be commercially impracticable, by reason of an Act of God, labor dispute, unavailability of transportation, goods or services, governmental restrictions or actions, war (declared or undeclared) or other hostilities, pandemic, or by any other event, condition or cause which is not foreseeable on the Effective Date and is beyond the reasonable control of the Party, provided that such Party promptly informs the other Party of such event, and makes diligent efforts to work around the event and resume performance. In the event of non-performance or delay in performance attributable to any such causes, the period allowed for performance of the applicable obligation under this Agreement will be extended for a period equal to the period of the delay.
- 20.7. Entire Agreement. This Agreement contains the full and entire agreement between the Parties. It supersedes all prior negotiations, and proposals, written or otherwise, relating to its subject matter. Any modifications, revisions or amendments to this Agreement must be set forth in writing signed by authorized representatives of both Parties.