

FireMon

Software License and Service Agreement

FIREMON, LLC (HEREINAFTER “FIREMON”) PROVIDES THE SOFTWARE AND SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS SOFTWARE LICENSE AND SERVICES AGREEMENT (THE “AGREEMENT”) AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY CLICKING THE “ACCEPT” BUTTON OR BY INSTALLING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE SOFTWARE, YOU AGREE AS THE “LICENSEE” TO BE BOUND BY THIS AGREEMENT. YOU HEREBY (A) ACCEPTS THIS AGREEMENT AND AGREES THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENTS AND WARRANTS 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 LICENSE THE SOFTWARE 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 SOFTWARE THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF FIREMON’S SOFTWARE.

1. GRANT OF RIGHTS. Subject to the terms and conditions of this Agreement, FireMon hereby grants Licensee a limited, non-exclusive and non-transferable right and license to install and use the Software for the applicable License Term. Licensee shall use the Software solely for Licensee’s own internal business.

1.1 Limitations. The Software furnished under this Agreement is licensed, not sold, to Licensee. Licensee shall (and shall require any user of the Software shall): (i) not make any unauthorized modifications to or copies of the Software; (ii) not violate any quantity or type restrictions on the licenses as set forth in the applicable Purchase Order; (iii) refrain from taking any steps, including, without limitation, copying, decompiling, reverse engineering, reverse assembly or reverse compilation, to derive or to seek to derive a source code equivalent of the Software provided in object code format; (iv) not remove or obscure, all proprietary notices, if any, on all permitted copies of the Software; (v) not redistribute, rent, lease, license, sublicense, assign, lend, or otherwise transfer the Software or Licensee’s rights under this Agreement to any party; (vi) not use the Software in a managed services or outsourced environment to support third parties regardless of who owns the network and /or security devices (e.g. firewalls, routers, load balancers, security management devices; and/or (vii) protect the contents of the Software as Confidential Information of FireMon and prevent any unauthorized disclosure or use.

1.2 Audit Rights. Upon reasonable advance written notice to Licensee and then no more than once in any calendar year, FireMon reserves the right to audit Licensee's deployment and use of the Software to ensure conformance with this Agreement during normal business hours and in a manner not to unreasonably interfere with Licensee's business operations.

1.3 Transferability. Licensee may only install and use the Software in conjunction with the same quantity and type of devices as identified in the applicable Purchase Order. Licensee may not transfer or rotate licenses between production devices in order to avoid additional Fees. For the avoidance of doubt, Licensee may transfer the licenses to a substitute device within Licensee's organization provided Licensee complies with all other terms and conditions of this Agreement.

1.4 Revocability. In the event Licensee breaches the material terms of this Agreement, in addition to exercising any other available legal remedy available to FireMon, FireMon may terminate any and all Software licenses granted to Licensee under this Agreement including, but not limited to Software licensed pursuant to a perpetual License Term.

1.5 MSP. Notwithstanding Section 1.1(vi) above, in the event Licensee procures Software for use in a managed services or outsourced environment to support third parties. The acquisition and use in such case shall be solely governed by the terms set forth as www.firemon.com/msp and not by this Agreement.

2. SERVICES. Subject to Licensee's payment of the applicable Fees, FireMon will use commercially reasonable efforts to provide Services in accordance with the applicable Service Description.

3. FEES AND PAYMENT. This Section 3 shall only apply to Software and/or Services purchased directly from FireMon.

3.1 Fees. Except as otherwise specified herein or in a Purchase Order, Licensee shall pay all Fees annually in advance. Fees are based on services purchased, not actual usage, and must be used within twelve (12) months of invoice date. Payment obligations are non-cancelable, and Fees paid are non-refundable. Licensed quantities cannot be decreased from those stated in the Purchase Order during the License Term. FireMon shall issue invoices annually at least fifteen (15) days prior to each renewal anniversary. In the event that FireMon is required to travel in connection with the performance of Services, Licensee agrees to pay any travel expenses, such as airfare, lodging, meals and local transportation incurred by FireMon in accordance with the then-current standard FireMon travel and expense policies, which FireMon will provide to Licensee upon request. FireMon shall invoice Licensee for such expenses as incurred.

3.2 Payment Terms. Licensee will pay Fees specified in the applicable Purchase Order, plus any applicable Tax, within thirty (30) days from the date of the Purchase Order. For purposes of this Agreement, "Taxes" means taxes, however denominated, including any interest, penalties

or additions to tax that may become payable in respect thereof, imposed by any federal, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all sales, use, gross receipts, value added, GST, import duty, personal property or other taxes. Taxes shall not include taxes payable on the income of FireMon or paid for FireMon's privilege of doing business.

3.3 Failure to Pay Outstanding Fees. In addition to all other rights that FireMon may have under the law or at equity, in the event that Licensee fails to pay FireMon any Fees hereunder when due, FireMon will have the right to withhold delivery of any Services. Licensee will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by FireMon to collect any amount that is not timely paid. FireMon may accept any check or payment in any amount without prejudice to FireMon's right to recover the balance of the amount due or to pursue any other right or remedy. All amounts payable under this Agreement are denominated in U.S. currency.

4. OWNERSHIP. Except for the rights expressly granted hereunder to Licensee, FireMon retains all right, title and interest in and to all Intellectual Property Rights in the (i) Software as well as any modifications, upgrades, updates, or enhancements made thereto whether permitted or not under this Agreement (ii) any materials, information or work product arising out of or in connection with the Services excluding any Licensee Confidential Information. Any rights not expressly granted to Licensee by this Agreement are hereby expressly reserved by FireMon. Licensee further agrees that the licensing of the Software does not constitute a royalty for any tax purposes.

5. WARRANTIES; DISCLAIMER.

5.1 FireMon hereby warrants and represents that: (A) FireMon owns or otherwise has the right to license the Software; and (B) for the duration of the Warranty Period: (i) the operation of the Software shall be free from defects in material and workmanship under normal use and materially perform in accordance with the Documentation; and (ii) the Software as delivered by FireMon shall not contain any type of software routine or other element which is intentionally designed to prevent use of the Software, permit unauthorized access to or intrusion upon, or erasure of any software or data except for purposes of enforcing license restrictions.

5.2 The foregoing warranties shall not apply to the extent the (i) Software has been modified without the prior written approval of FireMon or (ii) non-conformities are caused by third party products or services.

5.3 FireMon's sole obligation under Section 5.1(B) shall be to use commercially reasonable efforts to remedy material defects in the Software identified by Licensee in writing during the Warranty Period. In the event FireMon fails to remedy such material defects, Licensee's sole and exclusive remedy (and FireMon's sole and exclusive liability) shall be to receive a refund of

any fees paid for the portion of the Software, if any, which does not materially conform to the documentation.

5.4 The warranty set forth under Section 5.1(B) shall only apply to the initial provision of Software to Licensee and specifically excludes (i) additional add-on Software licenses purchased by Licensee after the initial purchase of the system and (ii) any incremental software provided in connection with Software support services.

5.5 Upon expiration of the applicable Warranty Period, FireMon shall provide the Services to support and maintain the Software for the remainder of the applicable License Term.

THE FOREGOING WARRANTIES ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY FIREMON. WITH THE EXCEPTION OF THE FOREGOING WARRANTIES, THE SOFTWARE AND SERVICES ARE PROVIDED “AS IS.” FIREMON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUIET ENJOYMENT, AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. FIREMON DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE SOFTWARE OR SERVICES WILL MEET LICENSEE’S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS IN THE SOFTWARE OR SERVICES, IF ANY, WILL BE CORRECTED.

6. LIMITATION OF LIABILITY.

6.1 TO THE EXTENT PERMITTED BY APPLICABLE LAW, FIREMON’S TOTAL CUMULATIVE LIABILITY TO LICENSEE, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO FIREMON UNDER THE APPLICABLE PURCHASE ORDER GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. IN NO EVENT WILL EITHER PARTY BE LIABLE TO OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE, DATA, OR PROFITS, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SOFTWARE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT FIREMON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY REMEDY IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

6.2 WITHOUT LIMITING THE FOREGOING, FIREMON WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY BUSINESS INTERRUPTION OR LOSS OF DATA ARISING FROM THE TERMINATION OF THE LICENSE RIGHTS GRANTED HEREIN.

6.3 FIREMON IS ACTING ON BEHALF OF FIREMON AND ITS AUTHORIZED RESELLERS FOR THE PURPOSE OF DISCLAIMING, EXCLUDING AND LIMITING OBLIGATIONS, WARRANTIES AND LIABILITY.

6.4 THE FOREGOING LIMITATIONS WILL NOT APPLY TO DAMAGES ARISING OUT OR IN CONNECTION WITH (i) EITHER PARTY'S WILLFULL MISCONDUCT OR GROSS NEGLIGENCE; (ii) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; (iii) EITHER PARTY'S INFRINGEMENT OR MISAPPROPRATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE SECRETS; OR (iv) LICENSEE'S PAYMENT OBLIGATIONS.

7. INDEMNIFICATION.

7.1 During the term of this Agreement, FireMon will, at its own expense, indemnify Licensee against any and all claims, actions, and expenses (including reasonable attorneys' fees) the extent that such action is based on a claim by a third party that Licensee's use of the Software as expressly authorized under this Agreement, infringes the United States patent rights of such third party, provided Licensee promptly notifies FireMon in writing of any such claim.

7.2 FireMon's obligations set forth in this Section 7 shall not apply to any action based on any claim relating to: (i) any customization or modification made by Licensee to the Software; and/or (ii) infringement caused by a combination of the Software with third party hardware or software not provided by FireMon; and/or (iii) infringement to the extent it would have been avoided had Licensee installed updates provided by FireMon; and/or (iv) such claim would have been avoided by use of the then current release of the Software made available to Licensee.

7.3 FireMon shall have sole control of the indemnification process, defense and all related settlement negotiations, and Licensee shall reasonably cooperate with FireMon in the defense and/or settlement thereof. In no event shall Licensee settle any claim or proceeding without FireMon's prior written approval.

7.4 If any Software, or any material portion thereof, is held by a court of competent jurisdiction to infringe, or if FireMon believes that the Software may be subject to a claim or held to infringe, FireMon shall, in its discretion and at its expense (i) replace or modify the Software so as to be non-infringing, provided that the replacement Software provides substantially similar functionality; (ii) obtain for indemnitee a license to continue using the Software; or (iii) if modifications or a license to use the Software cannot be obtained upon commercially reasonable terms, FireMon may (a) terminate the license for the affected Software and (b) upon return of the Software by indemnitee or certification of its destruction, refund a pro-rated portion of the Fees paid by indemnitee to FireMon (or the Authorized Reseller) for such Software for the remainder of the current License Term. The indemnity provided herein states FireMon's and its Authorized Reseller's entire liability and indemnitees' sole and exclusive remedy for any claim of intellectual property infringement by, or with respect to, the Software.

7.5 Licensee will, at Licensee's own expense, indemnify FireMon from and against any and all claims, actions, liabilities, costs, and expenses (including reasonable attorneys' fees) resulting from or pertaining to Licensee's violation of Sections 1 or 9 or any negligence or willful misconduct of Licensee or its employees and/or agents.

8. RENEWAL AND TERMINATION.

8.1 The License Term of each subscription for Software shall be as specified in the applicable Purchase Order. Except as otherwise specified in a Purchase Order, subscriptions for Software will automatically renew directly with FireMon for additional periods equal to one year, unless either party gives the other written notice (email acceptable) at least 45 days before the end of the current term. Renewal fees will not exceed six percent (6%) of the prior term's pricing unless otherwise specified in the Purchase Order.

8.2 This Agreement is effective until terminated. FireMon may terminate this Agreement at any time when Licensee is not actively subscribed to Software or Services by providing thirty (30) days written notice. Either party may terminate this Agreement for a material breach by the other party or its obligations under this agreement if such breach is not cured within thirty (30) days of receiving written notice. FireMon shall have the right to terminate this Agreement for material breach if Licensee fails to timely pay undisputed Fees to FireMon (or an Authorized Supplier, if applicable) if such breach is not cured within five (5) days of receiving written notice.

8.3 Except as expressly authorized pursuant to Sections 5.3 and/or 7.4, all Fees are non-refundable.

8.4 Upon expiration or termination of the license granted under any Purchase Order, Licensee shall immediately cease use of the applicable Software no later than the applicable expiration or termination date. Unless as expressly authorized in writing by FireMon, any use of such Software after the applicable cessation date will be on an unauthorized and unlicensed basis.

8.5 The provisions of Sections 1, 3-6, 8-12, and 15 shall survive the termination or expiration of this Agreement and shall remain in full force and effect.

9. EXPORT CONTROL. Licensee agrees that the Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations, including without limitation the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List (collectively the "Export Laws"). In addition, Licensee represents and warrants that Licensee is not a citizen, or otherwise located within an embargoed nation (including without limitation Iran, Syria, Sudan, Cuba, and North Korea) and that Licensee is not otherwise prohibited under the Export Laws from receiving the Software. All rights granted to Licensee under this Agreement shall be immediately forfeited if Licensee fails to comply with the terms of this Section 9.

10. PROPRIETARY NOTICES. No right is granted herein to use any identifying mark (such as, but not limited to, trade names, trademarks, trade devices, service marks or symbols, and abbreviations, contractions or simulations thereof) owned by, or used to identify any product or service of FireMon. Licensee agrees not to use FireMon's name or refer to FireMon directly or indirectly in any way whatsoever without the written approval of FireMon.

11. CONFIDENTIALITY.

11.1 Use and Non-Disclosure Obligations.

11.1.1 Confidential Information. The party disclosing Confidential Information is the "Disclosing Party" and the party receiving Confidential Information is the "Receiving Party". "Confidential Information" includes (i) the existence and terms of this Agreement, (ii) the Software, and (iii) any information disclosed by or on behalf of the Disclosing Party to the Receiving Party, whether orally, in writing, or in any other medium, however documented (or not documented), including, without limitation, the Disclosing Party's actual and proposed business(es); financial information; services; products; pricing; intellectual property; techniques; processes; operations; know-how; marketing materials; analyses; strategies; forecasts; concepts; ideas; or any information derived, summarized or extracted from any of the foregoing.

11.1.2 Exceptions to Confidential Information. Confidential Information does not include, except where required by applicable law, any information: (i) that the Disclosing Party in writing authorizes the Receiving Party to disclose without restriction; (ii) that is or becomes available to the public other than as a consequence of a breach of this Agreement by the Receiving Party; (iii) that the Receiving Party can prove was known to, prior to its disclosure hereunder, or is independently developed by, without reference to the Confidential Information, the Receiving Party; (iv) that is received by the Receiving Party from a source who, at the time of such receipt, the Receiving Party affirmatively can demonstrate was not bound by a confidentiality obligation to the Disclosing Party or (v) Aggregated Anonymous Data.

11.1.3 Obligations. Each party shall keep Confidential Information strictly confidential and shall use at least the same degree of care as it uses to protect the confidentiality of its own proprietary and confidential information of like importance, and in any event, industry standard protection. Each party may, however, disclose the Confidential Information of the other to those of such party's personnel engaged in a use permitted by this Agreement and with a need to know, provided that such personnel: (i) are directed to treat such Confidential Information confidentially and not to use or disclose such Confidential Information other than as permitted hereunder and/or (ii) are subject to a legal duty with respect to restricted use and confidentiality obligations substantially similar to the restricted use and confidentiality obligations imposed herein. Neither party shall use the Confidential Information of the other party except solely as necessary in and during the performance of this Agreement, or as expressly licensed hereunder. Each party shall be responsible for any improper use or

disclosure of any Confidential Information of the other by such party or its respective officers, directors, managers, partners, principals, personnel, (including individuals who hereafter become former partners, principals, employee, agents or independent contractors) (collectively “Representatives”).

11.2 Compelled Disclosures. Either party may disclose Confidential Information to the extent required by law or by order of a court or governmental agency; provided, however, that the recipient of such Confidential Information shall give the owner of such Confidential Information prompt notice if permitted by law, and shall use its reasonable efforts to cooperate with the owner of such Confidential Information, at owner’s cost, if the owner wishes to obtain a protective order or otherwise protect the confidentiality of such Confidential Information.

11.3 Injunctive Relief. Each party acknowledges and agrees that any breach of any provision of this Section 11 by such party, or its personnel, may cause immediate and irreparable injury to the non-breaching party, and in the event of such breach, the non-breaching party shall be entitled to seek injunctive relief (without any requirement to post bond or other security) in addition to any and all other remedies available at law or in equity.

11.4 Return or Destroy. Upon expiration or termination of this Agreement, each Party will within ten (10) business days, either, at their option (i) return all Confidential Information received by the either Party; or (ii) securely, in accordance with recognized industry standards, destroy or delete all Confidential Information and copies or duplicates, and all summaries or extracts thereof, in any medium. Upon request, each Party will deliver to the other Party a written confirmation of a responsible officer that it has fulfilled its obligations under this Section. Nothing in this Agreement will be construed to preclude the Receiving Party from retaining archival copies of any data or Confidential Information to meet its audit, legal or file retention policies so long as the confidentiality of the information is maintained pursuant to the use and non-disclosure terms hereof and such retention is in compliance with applicable law.

11.5 Telemetry Data. Licensee hereby acknowledges, agrees, and expressly consents 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 Software as well as for marketing research and sales targeting by FireMon (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 Software 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 11.6.

11.6 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.

12. GOVERNING LAW; VENUE. 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, excluding its conflict of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods. The sole and exclusive venue and jurisdiction for any and all claims or disputes arising under this Agreement or in connection with the Software shall be in Johnson County, Kansas. Licensee hereby irrevocably submits and consents to personal jurisdiction in the foregoing location.

13. PUBLICITY. In consideration of the license(s) granted hereunder, FireMon may publicly identify Licensee as a FireMon customer, issue a press release announcing the execution of this Agreement, and reference the licensed products and purchased services. Any additional publicity by either party shall require prior written approval.

14. EVALUATION SOFTWARE LICENSES. From time to time, FireMon may provide Licensee with Software licensed for internal evaluation purposes and not for production use ("Evaluation Software"). Licensee may install and use the Evaluation Software on a non-exclusive and non-transferable basis, for a limited term, solely for the purpose of determining whether to purchase a commercial license for the Software and not for any revenue generation, commercial activity or other productive business or developmental purpose. Any license keys provided for a free trial will automatically expire and may cause the Evaluation Software to become non-operational at the end of the free trial period. FireMon reserves the right to exercise its audit rights under this Agreement to ensure compliance with this Section 14. Provisions in this Agreement regarding Grant of Rights (other than Section 1.1 and 1.3), Warranty (other than the Warranty Disclaimers), the exclusions set forth in Section 6.3 and/or FireMon's Indemnification obligation will not apply to Evaluation Software. For the avoidance of doubt, FireMon does not provide support Services for any Evaluation Software. EVALUATION SOFTWARE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, ACCURACY, AND EFFORT IS WITH THE LICENSEE.

15. MISCELLANEOUS.

15.1 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. FireMon may update or revise these terms from time to time in its sole discretion without notice to Licensee and recommends that Licensee review the latest version of this agreement posted at www.firemon.com/SLSA on a regular basis to stay abreast of the most current terms. Your continued use of the Software and/or Support Services after any update or revision constitutes your acceptance of such updates or revisions. By installing and using the Software, Licensee hereby agrees that any terms and conditions in any Purchase Order submitted by Licensee or other correspondence between the parties relating to the Software and/or Services which attempt to differ or vary from the terms herein are null and void and shall have no force or effect whatsoever notwithstanding processing of such Purchase Order by FireMon.

15.2 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.

15.3 FireMon may assign this Agreement in connection with the sale, merger or disposition of its assets and/or business operations.

15.4 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.

15.5 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.

15.6 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.

15.7 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.

15.8 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.

15.9 The parties may execute this agreement electronically and in counterparts. Each counterpart is deemed to be an original which, taken together, comprise a single document.

16. 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, addressed as follows:

To: FireMon, LLC, 8801 Renner Blvd., Suite 200, Lenexa, KS 66219

Email: Legal@firemon.com

To Licensee: At address provided on Purchase Order

17. DEFINITIONS.

17.1 “Software” means the FireMon proprietary software and Documentation furnished to Licensee from FireMon in connection with (i) a purchase from FireMon or an authorized reseller of FireMon (“Authorized Reseller”), or (ii) an evaluation license in accordance with Section 14.

17.2 “Documentation” means the FireMon manuals and guides defining the functionality of the Software or Services, as applicable.

17.3 “Purchase Order” means the valid purchase order, sales order, invoice, or other ordering document or process accepted by FireMon from Licensee or the Authorized Reseller contracting with Licensee for the applicable Software and/or Services.

17.4 “Fees” means all amounts specified in each Purchase Order for Software, and/or Services, as applicable.

17.5 “License Term” means the duration for which the License, subject to compliance with terms of this Agreement may use the Software; such time limited subscription duration will be stated in the Purchase Order for each Software title.

17.6 “Intellectual Property Rights” includes, without limitation, all intangible legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, technique, invention,

discovery or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; (ii) any work of authorship, regardless of copyrightability, but including copyrights and any moral rights recognized by law; (iii) any trademark, trade name or service mark; and (iv) any other intellectual property, proprietary or similar rights, including all goodwill pertaining thereto and in each case, on a worldwide basis

17.7 “Services” means the standard non-customizable services (e.g., installation, implementation, training and/or support) provided by FireMon in accordance with a Service Description for such service.

17.8 “Service Description” means the Documentation which provides the specifications and requirements for a Service available from FireMon. FireMon reserves the right to amend Service Description(s) from time to time by providing Licensee with at least 30-days written notice.

17.9 “Telemetry Data” means data generated by Software on current usage state (e.g. accounts, instances, IPs under management, etc.) as well as other system and performance data (e.g. CPU utilization, cores, memory, etc.).

17.10 “Aggregated Anonymous Data” means Telemetry Data that is aggregated and anonymized so such data does not (i) identify Licensee as the source of such data or (ii) include any information which could be used to identify Licensee.

17.11 “Warranty Period” means the period of time commencing on the date which the Software is initially made available to Licensee for download and expiring on the 30th calendar day from such date.