Software License Agreement

FIREMON, LLC (HEREINAFTER "FIREMON) PROVIDES THE SOFTWARE AND SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS SOFTWARE LICENSE 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. LICENSEE HEREBY (A) ACCEPTS THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENTS AND WARRANTS THAT LICENSEE HAS THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF 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 purposes and shall not use the Software for the benefit of any other person or entity. Any use by Licensee in violation of this Agreement shall entitle FireMon to terminate the foregoing licenses, in addition to exercising any other available legal remedy available to FireMon.

1.1 Limitations. The Software furnished under this Agreement is licensed, not sold, to Licensee. Licensee shall (and shall ensure 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; and ; (vi) not use the Software in a managed services or outsourced environment to support third parties; and/or (vii) protect the contents of the Software as confidential and prevent any unauthorized disclosure or use by Licensee.

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. 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.

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 or statement of work.

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 and not actual usage. Payment obligations are non-cancelable, and Fees paid are non-refundable. Licensed quantities cannot be decreased from that stated on the Purchase Order during the License Term. FireMon shall issue invoices annually at least fifteen (15) days prior to each renewal anniversary. Invoices for Fees for professional services and related expenses shall be issued monthly, unless specified otherwise in the applicable Purchase Order. 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. In no event shall Taxes 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. 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, except for purposes of enforcing license restrictions, any type of software routine or other element which is intentionally designed to permit unauthorized (a) access to or intrusion upon, or (b) erasure of any software or data.

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 licenses for the Software purchased by Licensee after the initial Purchase Order and (ii) any software provided in connection with Software support Services.

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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 SUPPLIERS 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 WILFULL MISCONDUCT OR GROSS NEGLIGENCE; OR (ii) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS OR (iii) 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.

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 Software Supplier) for such Software for the remainder of the current License Term (for perpetual software licenses, as depreciated on a three-year straight-line basis from the initial installation date and for term limited licenses, for the unused remainder of the then paid term). The indemnity provided herein states FireMon's and its Software Supplier'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 misuse of the Software or any negligence or willful misconduct of Licensee or it's employees and/or agents.

8. TERMINATION.

8.1 The term of each subscription for Software and recurring Support Services shall be as specified in the applicable Purchase Order. Except as otherwise specified in a Purchase Order, subscriptions for Software and recurring Support Services will automatically renew for additional periods equal to the expiring term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 45 days before the end of the current term. Except as expressly provided in the applicable Purchase Order ,

renewal of promotional or one-time priced subscriptions will be at FireMon's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which volume or length of subscriptions for Software and or Support Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's pricing **8.2** This Agreement is effective until terminated. Licensee may terminate this Agreement at any time by destroying the Software and all copies thereof in Licensee's control. FireMon may terminate this Agreement at any time when Licensee is not actively subscribed to 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. Termination for any reason other than due to Licensee's breach shall not restrict Licensee's right under Section 1 to continue using any Software purchased pursuant to a perpetual Term.

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

8.4 Survival. The provisions of Sections 1, 3-6, 8-12, and 16 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 to Use the Software are granted on condition that such rights are forfeited if Licensee fails to comply with the terms of this agreement.

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. The Software and Services are confidential to FireMon. Licensee shall not (i) disclose FireMon confidential information, in whole or in part (including methods or concepts utilized therein), except to Licensee's employees to whom such disclosure is necessary for purposes of this Agreement (ii) use FireMon confidential information except as expressly authorized by this Agreement. Licensee shall notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such employee. If FireMon

confidential information subject to this Agreement at any time becomes available without restriction to the general public by acts not attributable to Licensee or Licensee's employees, Licensee's obligations under this Section 11 shall not apply to such portion of information after such time. Licensee acknowledge that disclosure of information in violation of this Section 11 will cause irreparable harm to FireMon and that in such case FireMon shall have the right to injunctive or other preliminary relief without necessity of posting any bond. All obligations of Licensee under this Agreement which relate to confidentiality or which limit use of the Software shall survive and continue after any termination of this Agreement.

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

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15. COMMUNITY EDITION LICENSES.

15.1 From time to time, FireMon may offer Software with a limited set of functionality and/or limited to a defined number of devices/IP addresses/other metric as established by FireMon ("Community Software"). Licensee may install and use the Community Software on a non-exclusive and non-transferable basis, for a limited term. FireMon reserves the right to exercise its audit rights under this Agreement to ensure compliance with this Section 15. 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 Community Software. For the avoidance of doubt, FireMon does not provide support or maintenance Services for any Community Software without the purchase if a Support Agreement, if and when offered by FireMon.

15.2 Licensee hereby acknowledges, agree, and expressly consent to FireMon's collection of Telemetry Data through the Community Software. 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, analyse, review, process, diagnose, or otherwise use the Telemetry Data (in whole or in part) for the purpose of supporting, maintaining, and providing the Community 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 Community 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 to (i) publicly disclose, in any manner whatsoever, Telemetry Data that have been anonymized; and (ii) review or analyze the Telemetry Data and publicly disclose any results of such review or analysis, including in the form of reports, blog posts, newsletters, marketing materials, or otherwise, provided Licensee will not be identified in such publicly disclosed materials.

15.3 COMMUNITY 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.

16. MISCELLANEOUS.

16.1 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 Licensor and recommends that Licensor the latest version of this agreement posted at firemon.com/EULA 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. 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 acceptance of such Purchase Order.

16.2 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.

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

16.4 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.

16.5 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.

17. 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
8400 W 110th Street, Suite 500
Overland Park KS 66210

Email: Legal@firemon.com

To Licensee: At address provided on Purchase Order

18. DEFINITIONS.

18.1 "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 ("Software Supplier"), (ii) an evaluation license in accordance with Section 14, or (iii) a community edition license in accordance with Section 15.

18.2 "Purchase Order" means the valid purchase order, sales order, statement of work, or other ordering document or process accepted by FireMon for the applicable Software and/or Services and/or Professional Services.

18.3 "Fees" means the all amounts specified in each Purchase Order for Software and/or Services, as applicable.

18.4 "License Term" means the duration for which the License, subject to compliance with terms of this Agreement may use the Software; such duration will be stated in the Purchase Order for each Software title and may be (i) perpetual; or (ii) a term limited period (i.e. subscription).

18.5 "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

18.6 "Services" means (i) standard non-customizable services (e.g installation, implementation, training and/or support) provided by FireMon in accordance with a Service Description for such service, and (ii) professional services delivered on a time and materials basis and defined in a mutually agreed upon statement of work.

18.7 "Service Description" means a 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.

18.8 "Telemetry Data" means data generated by Community 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.).

18.9 "Warranty Period" means time period commencing on the date Software is initially delivered to Licensee and expiring on the 30th calendar day from the delivery date.