

RAPID7 END USER LICENSE AGREEMENT (FEDERAL END USER – GSA Schedule)

This End User License Agreement (the "Agreement"), effective as of the date of the Order Form (the "Effective Date"), is made by and between Rapid7 LLC (for customers located in the United States) or Rapid7 International Limited (for customers located outside the United States) (as applicable, "Rapid7") and the Ordering Activity identified in a Federal agency order purchasing a Product License under a Federal GSA Schedule prime contract ("Customer"). The parties agree to be bound by the following terms and conditions in connection with the subscription to and use of Rapid7 Software as defined herein.

1. **DEFINITIONS**

- 1.1. *Content Updates* means content used by certain Rapid7 Software which is updated from time to time, including but not limited to updated vulnerability signatures for vulnerability assessment products and exploits for penetration testing products.
- 1.2. *Documentation* means the documentation for the Software or Services generally supplied by Rapid7 to assist its customers in their use of the Software, including user and system administrator guides, manuals, and the functionality specifications.
- 1.3. *Maintenance and Support Term* means the period in which Customer is entitled to receive Content Updates, as applicable, and support services from Rapid7, including all updates, enhancements, bug fixes and new releases thereto that Rapid7 makes generally available to its customers. The length of the Maintenance and Support Term shall be listed on the applicable Order Form and shall commence on the date of delivery of the Software.
- 1.4. *Order Form* means Rapid7's order form or other ordering document signed or referenced by Customer or its authorized reseller which identifies the specific Software and/or Services ordered, the Volume Limitations, and the price agreed upon by the Customer and the prime contractor.
- 1.5. *Ordering Activity* is defined at 48 CFR §8.401.
- 1.6. *Services* means Rapid7's professional services (as described in Section 10.2) herein.
- 1.7. *Software* means those Rapid7 products listed on the applicable Order Form.
- 1.8. *Software Term* means the period in which Customer is authorized to utilize the Software. Each Software Term shall be listed on the applicable Order Form and shall commence on the date of delivery of the Software.
- 1.9. *Volume Limitations* means the capacity indicated on the Order Form, including, as applicable, number of assets, applications, data, plugins, and named individual users of the Software.

2. **SOFTWARE LICENSES**

- 2.1. *License to Products.* Rapid7 hereby grants to Customer, during the applicable Software Term only, a non-exclusive, non-transferable license to use the Software (in object code only) listed on the Order Form within the Volume Limitations, for Customer's internal business purposes only, and solely in accordance with the applicable Documentation. The Software shall not be used on or for any third party unless otherwise stated below. The following license provisions shall also apply if Customer is purchasing the Software listed below:
 - (a) *For Metasploit Community Edition.* The Software Term for the Metasploit Community Edition is twelve months. Sections 9.1 (Indemnification) shall not be applicable.
 - (b) *For Nexpose Managed Security Service Provider (MSSP) Edition and Nexpose Consultant.* The Nexpose MSSP and Nexpose Consultant licenses allow Customer to scan assets of third parties, provided that such third party has authorized Customer to perform such scan.
- 2.2. *Evaluation Licenses.* If Customer's license is for a trial or evaluation only, then the Software Term shall be thirty days, or the trial or evaluation term specified on the Order Form. Customer may not utilize the same software for more than one trial or evaluation term in any twelve month period, unless otherwise agreed to by Rapid7. Rapid7 may revoke Customer's evaluation or trial license at any time and for any reason. Sections 4 (Limited Warranty) and 9.1 (Indemnification) shall not be applicable to any evaluation or trial license.
- 2.3. *Use by Affiliates.* Subject to the Volume Limitations, Customer may make the Software available to its Affiliates under these terms, provided that Customer is liable for any breach of this Agreement by any of its Affiliates. "Affiliate(s)" means any entity now existing that is directly or indirectly controlled by Customer. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.
- 2.4. *Delivery and Copies.* Delivery shall be deemed to have been made upon Rapid7 providing instructions to download or activate the Software, as applicable. Notwithstanding anything to the contrary herein, Acceptance of the Software occurs upon delivery. Customer may make a reasonable number of copies of the Software for the sole purpose of backing-up and archiving the Software. Each copy of the Software is subject to this Agreement and must contain the same titles, trademarks, and copyright notices as the original. To the extent that Rapid7 provides any hardware to Customer, all shipments are FOB Rapid7's designated shipping facility.
- 2.5. *Restrictions.* Except as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to: (i) reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, create derivative works of the Software, or merge the Software into another program; (ii) resell, rent, lease, or sublicense the Software or access to it, including use of the Software for timesharing or service bureau purposes; (iii) circumvent or disable any security or technological

features or measures in the Software; nor (iv) use the Software in order to build a competitive product or service, for competitive analysis, or to copy any ideas, features, functions, or graphics of the Software. Customer must follow Rapid7's guidance for disclosing vulnerability information or analysis regarding the performance of the Software, as outlined at www.rapid7.com/disclosure.

2.6. **Ownership of Software.** Rapid7 retains all right, title, and interest in and to the Documentation, Software, Content Updates and in all copies, and modifications thereto including, without limitation, all rights to patent, copyright, trade secret, trademark, and other proprietary or intellectual property rights.

2.7. **Customer Systems.** Customer represents and warrants that it is authorized to deploy Software on the networks, systems, IP addresses, assets, and/or hardware on which it deploys the Software, or which it targets, scans, monitors, or tests with the Software.

3. **FEES AND PAYMENT TERMS**

Customer agrees to pay the fees, charges, and other amounts specified on the Order Form to the prime contractor in accordance with the payment terms of the prime contract. Nothing in this Agreement modifies payment terms between Customer and the prime contractor.

4. **LIMITED WARRANTY**

4.1. **Software Warranty.** Rapid7 warrants that for a period of ninety days following the initial delivery of any Software to Customer the Software will conform, in all material respects, with the applicable Documentation. Rapid7 makes no warranty regarding third party features or services. For a breach of the above warranty, Rapid7 will, at no additional cost to Customer, use commercially reasonable efforts to provide remedial services necessary to enable the Software to conform to the warranty. If Rapid7 is unable to restore such functionality, Customer shall be entitled to terminate the applicable Order Form and receive a pro rata refund of the fees paid. Customer will provide Rapid7 with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty.

4.2. **Hardware Warranty.** Rapid7 will pass on all manufacturers' warranties for any hardware product purchased from Rapid7.

4.3. **Disclaimer.** **RAPID7 DOES NOT REPRESENT THAT THE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR WILL MEET CUSTOMER'S REQUIREMENTS. EXCEPT FOR THE WARRANTY ABOVE, RAPID7 MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. RAPID7 MAKES NO WARRANTY THAT ALL SECURITY RISKS OR THREATS WILL BE DETECTED BY USE OF THE SERVICE OR THAT FALSE POSITIVES WILL NOT BE FOUND.**

5. **LIMITATION OF LIABILITY**

5.1. **Limitation on Indirect Liability.** **NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE.**

5.2. **Limitation on Amount of Liability.** **NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO RAPID7 HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.**

5.3. **Exceptions to Limitations.** The limitations of liability in Section 5.2 apply to the fullest extent permitted by applicable law, except that there is no limitation on loss, claims, or damages directly arising out of violations of: (i) a party's intellectual property rights by the other party; (ii) use of the Software in excess of the Volume Limitations; or (iii) a party's indemnification obligations. Notwithstanding the foregoing, if the Customer's liability is limited by applicable law, such as the Anti-Deficiency Act, then Rapid7's liability will be limited to the same extent. **NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED TO IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; OR FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.**

6. **USAGE VERIFICATION**

Customer understands and acknowledges that the Software may track and/or enforce its Volume Limitations. Additionally, upon Rapid7's written request, such request not to exceed once every six months, Customer shall provide Rapid7 with a signed certification verifying that the Software is being used in accordance with this Agreement. In addition to the foregoing, at Rapid7's written request, Customer will permit Rapid7 to review and verify Customer's records, deployment, and use of the Software for compliance with the terms and conditions of this Agreement, at Rapid7's expense. Any such review shall be scheduled at least ten days in advance, shall be conducted during normal business hours at Customer's facilities, and shall not unreasonably interfere with Customer's business activities.

7. **CONFIDENTIALITY**

7.1. **Confidential Information.** During the term of this Agreement, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential as confidential ("Confidential Information"). Confidential Information shall also include information which a reasonable person familiar with the disclosing party's business and the industry in which it operates would know is of a confidential or proprietary nature. A party will not disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party's Confidential

Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees and shall protect the other party's Confidential Information in the same manner as it protects its own

Confidential Information, but in no event with less than reasonable care. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

7.2. **Exclusions.** Information will not be deemed Confidential Information if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that, unless prohibited from doing so by law enforcement or court order, the receiving party gives the disclosing party reasonable prior written notice, and such disclosure is otherwise limited to the required disclosure. Notwithstanding the foregoing, Confidential Information may not be disclosed under any Federal government contract clause unless Rapid7 has agreed to such clause, in writing. Rapid7 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

8. TERM & TERMINATION

The Software Term will renew for an additional one year term, if the Customer renews prior to the current anniversary of the license start date for the Software. The Maintenance and Support Term for Software with a perpetual Software Term will renew for an additional one year term if the Customer renews prior to each anniversary of the license start date for the Software. Any renewal will be invoiced at the then-current rates in the GSA Schedule prime contract.

This Agreement or an Order Form may be terminated: (i) by either party if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty days of such filing; or (ii) by either party if the other party materially breaches this Agreement or the Order Form and fails to cure such breach to such party's reasonable satisfaction within thirty days following receipt of written notice thereof. Notwithstanding the foregoing, if the parties dispute the breach occurred, the Contract Disputes Act will govern the resolution of such dispute. Customer's license to use the Software shall also terminate upon the expiration of the applicable Software Term. Upon any termination of this Agreement or an Order Form by Rapid7, all applicable licenses are revoked and Customer shall immediately cease use of the applicable Software and certify in writing to Rapid7 within thirty days that Customer has destroyed or returned to Rapid7 such Software and all copies thereof. Termination of this Agreement or a license granted hereunder shall not relieve Customer of its obligation to pay all fees that have accrued, have been paid, or have become payable by Customer under the prime contract. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive such termination.

9. INDEMNIFICATION

9.1. **By Rapid7.** Rapid7 will indemnify, have the right to intervene to defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that the Software infringes or misappropriates any intellectual property right of such third party. Notwithstanding the foregoing, in no event shall Rapid7 have any obligations or liability under this Section arising from: (i) use of any Services in a manner not anticipated by this Agreement or in combination with materials not furnished by Rapid7; or (ii) any content, information or data provided by Customer or other third parties. If the Software is or is likely to become subject to a claim of infringement or misappropriation, then Rapid7 will, at its sole option and expense, either: (i) obtain for the Customer the right to continue using the Software; (ii) replace or modify the Software to be non-infringing and substantially equivalent to the infringing Software; or (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Rapid7, then Rapid7 may terminate Customer's rights to use the infringing Software and will refund pro-rata any prepaid fees for the infringing portion of the Software. **THE RIGHTS GRANTED TO CUSTOMER UNDER THIS SECTION 9.1 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT BY THE SOFTWARE OF ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT.** Rapid7's right to defend is subject to the requirements of 28 USC §516.

9.2. **Reserved**

10. TECHNICAL SUPPORT AND PROFESSIONAL SERVICES

10.1. **Maintenance and Support Services.** The maintenance and support program selected by Customer shall be set forth on the applicable Order Form and shall be further subject to Rapid7's maintenance and support policy, a copy of which is located at <http://www.rapid7.com/docs/customers-support-guidebook.pdf> and attached hereto.

10.2. **Product-Related Professional Services.** Unless otherwise provided on an Order Form or statement of work ("SOW"), Customer is responsible for installing and configuring all Software. Rapid7 may provide Customer certain professional services, such as installation, configuration, consulting, training, and external scanning, if and as specified on an Order Form or a separate SOW executed by the Customer and the prime contractor. Rapid7 shall have sole discretion in staffing the Services and may assign the performance of any portion of the Services to any subcontractor, provided that Rapid7 shall be responsible for the performance of any such subcontractor. Customer will have a non-exclusive, non-transferable license to use any deliverables or other work product developed by Rapid7 in the performance of the Services which are delivered to Customer, upon Customer's payment in full of all amounts due for such deliverables or work product. Rapid7 retains ownership of all information, software, and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all deliverables and work product compiled or developed by Rapid7 in the performance of the Services.

11. GENERAL PROVISIONS

11.1. **Miscellaneous.** (a) This Agreement shall be construed in accordance with and governed for all purposes by the Federal laws of the United States; (b) this Agreement, along with the identification of Software and/or Services, Software Term and Volume

Limitations purchased and quantities on the Order Form(s) constitute the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral between Rapid7 and Customer; (c) this Agreement may not be modified except by a writing signed by each of the parties; (d) in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, but rather this Agreement shall be construed as if such invalid, illegal, or other unenforceable provision had never been contained herein; (e) Customer shall not assign its rights or obligations hereunder without Rapid7's advance written consent and transfer by Rapid7 is subject to the requirements of GSAR 552.212-4(w)(xi); (f) subject to the foregoing subsection (e), this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns; (g) no waiver of any right or remedy hereunder with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion; (h) nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement, including but not limited to any of Customer's own clients, customers, or employees; (i) the headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and (j) in the event of a conflict between the terms of this Agreement and the terms of an Order Form, the terms in this Agreement shall take precedence, unless Rapid7 has expressly agreed to a specific Order Form term or condition, in writing. Nothing in this Agreement modifies any terms and conditions between you and any prime contractor under which the Software and documentation were ordered. Those prime contract terms and conditions continue to govern the relationship between the prime contractor and the Customer.

11.2. Export. Each party acknowledges that the export, re-export, deemed export, and import of the Software and Documentation by Customer and Rapid7 is subject to certain laws, rules, executive orders, directives, arrangements, and regulations of the United States and of other countries. Each party agrees to comply with all applicable laws with respect to the exportation, importation, and use of the Software and Documentation.

11.3. Personal Data. To the extent that Rapid7 processes personal data about any individual in the course of providing the Software or Service, Customer agrees to Rapid7's Data Processing Agreement, located at www.rapid7.com/legal/dpa.

11.4. Injunctive Relief. Licensee acknowledges that a direct cause of action against the United States for patent or copyright infringement by, or on behalf of, the United States may arise under 28 U.S.C. § 1498.

11.5. Relationship of the Parties. Rapid7 and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

11.6. US Government Rights. This Section applies to all acquisitions of the Software by or for the US federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the federal government for the Government's end use. The Software and Services are "commercial items" as that term is defined in FAR 2.101. If Customer is an Executive Agency (as defined in FAR 2.101) of the U.S. Federal Government ("Government"), Rapid7 provides the Software and Services, including any related technical data and/or professional services in accordance with the following: If a right to access the Software and Services is procured by or on behalf of any Executive Agency (other than an Executive Agency within the Department of Defense (DoD)), the Government is granted, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to Rapid7's customers as such rights are described in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data provided by Rapid7 to an Executive Agency within the DoD. Note, however, that Subpart 227.72 does not apply to computer software or computer software documentation acquired under GSA schedule contracts. Except as expressly permitted under this Agreement, no other rights or licenses are granted to the Government. Any rights requested by the Government and not granted under this Agreement must be separately agreed in writing with Rapid7. This Section 11.6 of the Agreement is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in the Software and Services.

11.7. Force Majeure. In accordance with FAR 52.212-4(f), Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, or internet disturbance) that was beyond the party's reasonable control.

11.8. No Reliance. Customer represents that it has not relied on the availability of any future version of the Software or any future product or service in executing this Agreement or purchasing any Software hereunder.

11.9. Notices. Unless specified otherwise herein, (i) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact, and (ii) notice will be deemed given: (x) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (y) when verified by automated receipt or electronic logs if sent by email. When sent by email, notices must be sent to Rapid7 at notices@rapid7.com.

11.10. Publicity. Customer acknowledges that Rapid7 may use Customer's name for the purpose of identifying Customer as a customer of Rapid7 products and/or services to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Rapid7 will cease using the customer's name and logo upon written request. However, Rapid7 will not indicate that a Federal Government Customer endorses Rapid7 or its Software or Services.

11.11. Compliance with Law. Each party agrees to comply with all federal, state and local laws and regulations including but not limited to export law, and those governing the use of network scanners, vulnerability assessment software products, encryption devices, user monitoring, and related software in all jurisdictions in which systems are scanned, scanning is controlled, or users are monitored.

These terms are incorporated by reference into the prime contract under which Customer placed an order with the prime contractor.

RAPID7 INSIGHT PLATFORM TERMS OF SERVICE (FEDERAL END USER – GSA Schedule)

This Terms of Service (the "Agreement"), effective as of the date of the Order Form (the "Effective Date"), is made by and between Rapid7 LLC (for customers located in the United States) or Rapid7 International Limited (for customers located outside the United States) (as applicable, "Rapid7") and the Ordering Activity identified in a agency order under a GSA Schedule prime contract ("Customer"). The parties agree to be bound by the following terms and conditions in connection with the subscription to and use of Rapid7 Services as defined herein.

1. **DEFINITIONS**

1.1. *Customer Content* means all data made available by Customer to Rapid7 for use in connection with the Service. This data may be stored within the Customer's environment, within the Rapid7 environment, or a combination of both.

1.2. *Documentation* means the documentation for the Service generally supplied by Rapid7 to assist its customers in their use of the Service, including user and system administrator guides, manuals and the software functionality specifications.

1.3. *Order Form* means Rapid7's order form or other ordering document signed or referenced by Customer and Rapid7 or its authorized reseller which identifies the specific Service ordered, the Volume Limitations, and the price agreed upon by Customer and the prime contractor.

1.4. *Ordering Activity* is defined at 48 CFR §8.401.

1.5. *Service* means the subscription service identified on an Order Form and further described herein.

1.6. *Subscription Term* means the term identified on an Order Form during which Customer has a subscription to the Service. Subscription Term will include the initial term as well as any renewal terms.

1.7. *Volume Limitations* means the capacity indicated on the Order Form, including, as applicable, unique assets, applications, number of scans, gigabytes, or workflows.

2. **SOFTWARE LICENSES**

2.1. Access to Service.

(a) During the Subscription Term, Rapid7 grants Customer a non-exclusive, non-transferable, non-sublicensable right to use and access the Service: (i) solely for Customer's internal business purposes; (ii) within the Volume Limitations; and (iii) as described in this Agreement. Customer also agrees to be bound by any further restrictions set forth on the Order Form.

(b) Customer is responsible for procuring and maintaining the network connections that connect the Customer to the Service. To enable the Service to function, Customer may be required to configure log data sources or other such Service components as set forth in the Documentation. Rapid7 assumes no responsibility for the reliability or performance of any Customer connections as described in this Section.

(c) Access to the Service may require Customer to download and/or install Rapid7 software locally on Customer systems. If applicable, Customer must allow the downloaded and locally deployed software to integrate with such programs and devices necessary to provide data to the Service. In such an event, Rapid7 grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable license to such software during the Subscription Term solely for the purpose of using the Service. Customer acknowledges that Rapid7's provision of the Service is conditioned upon receipt of correct and accurate data from Customer. If the Service provides an option to transmit Customer data without encryption, Customer assumes all risk in the event that Customer chooses to do so.

(d) In the event that the Service is used in excess of the Volume Limitations, Rapid7 reserves the right to invoice Customer for the use in excess of such Volume Limitations at Rapid7's then current list rates in accordance with the then current GSA Schedule Pricelist, unless otherwise set forth on the Order Form.

2.2. Restrictions. Except as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to: (i) reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, create derivative works of the Service, or merge the Service into another program; (ii) resell, rent, lease, or sublicense the Service or access to it including use of the Service for timesharing or service bureau purposes; (iii) circumvent or disable any security or technological features or measures in the Service; nor (iv) access the Service in order to build a competitive product or service, for competitive analysis, or to copy any ideas, features, functions or graphics of the Service. Customer is responsible for all activities conducted under its logins and for its employees' compliance with this Agreement. Customer must follow Rapid7's guidance for disclosing vulnerability information or analysis regarding the performance of the Service, as outlined at www.rapid7.com/disclosure.

2.3. Use by Affiliates. Subject to the Volume Limitations, Customer may make the Service available to its Affiliates under these terms, provided that Customer is liable for any breach of this Agreement by any of its Affiliates. "Affiliate(s)" means any entity now existing that is directly or indirectly controlled by Customer. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.

2.4. Customer Systems. Customer represents and warrants that it is authorized to instruct Rapid7 to deploy Service on, with, or against, the networks, systems, IP addresses, assets, and/or hardware identified by Customer, or which are targeted, scanned, monitored, or tested by the Service as instructed by Customer.

2.5. Evaluation Licenses. If Customer's access to the Service is for a trial or evaluation only, then the Subscription Term shall be thirty days, or the term specified on the Order Form. Customer may not utilize the same Service for more than one trial or evaluation term in any twelve month period, unless otherwise agreed to by Rapid7. Rapid7 may revoke Customer's trial or

evaluation access at any time and for any reason. Sections 5 (Limited Warranty) and 9.1 (Indemnification) shall not be applicable to any evaluation or trial license.

3. FEES AND PAYMENT TERMS

Fees and payment obligations are between Customer and the prime contractor.

4. CONFIDENTIALITY

4.1. **Confidential Information.** During the term of this Agreement, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential as confidential ("Confidential Information"). Confidential Information shall also include information which a reasonable person familiar with the disclosing party's business and the industry in which it operates would know is of a confidential or proprietary nature. A party will not disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party's Confidential Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees and shall protect the other party's Confidential Information in the same manner as it protects its own Confidential Information, but in no event with less than reasonable care. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

4.2. **Exclusions.** Information will not be deemed Confidential Information if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that, unless prohibited from doing so by law enforcement or court order, the receiving party gives the disclosing party reasonable prior written notice, and such disclosure is otherwise limited to the required disclosure. Notwithstanding the foregoing, Confidential Information may not be disclosed under any Federal government contract clause unless Rapid7 has agreed to such clause, in writing. Rapid7 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

5. LIMITED WARRANTY

5.1. **Service Warranty.** Rapid7 warrants that, during the Subscription Term, the Service will conform, in all material respects, with the applicable Documentation. Rapid7 makes no warranty regarding third party features or services. For any breach of the above warranty, Rapid7 will, at no additional cost to Customer, use commercially reasonable efforts to provide remedial services necessary to enable the Service to conform to the warranty. If Rapid7 is unable to restore such functionality, Customer may terminate the applicable Order Form and receive a pro rata refund of the fees paid for the terminated portion of the then-current Subscription Term. Customer will provide Rapid7 with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies against Rapid7 for breach of the above warranty.

5.2. **Disclaimer.** **RAPID7 DOES NOT REPRESENT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR WILL MEET CUSTOMER'S REQUIREMENTS. EXCEPT FOR THE WARRANTY STATED HEREIN, RAPID7 MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. RAPID7 MAKES NO WARRANTY THAT ALL SECURITY RISKS OR THREATS WILL BE DETECTED BY USE OF THE SERVICE OR THAT FALSE POSITIVES WILL NOT BE FOUND.**

5.3. **Orchestration Disclaimer.** Customer is responsible for implementing appropriate internal procedures and oversight to the extent it utilizes the configuration of workflows and processes, including but not limited to containment actions, quarantine actions, kill processes and similar functionalities ("Orchestration and Automation Functionality"). **EXCEPT FOR THE WARRANTY IN SECTION 5.1, THE ORCHESTRATION AND AUTOMATION FUNCTIONALITY IS MADE AVAILABLE BY RAPID7 ON AN "AS-IS" BASIS TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.** Rapid7's Orchestration and Automation Functionality is not designed, intended or licensed for use in hazardous environments or other applications where a malfunction could cause property damage or personal injury, and Rapid7 specifically disclaims any liability in connection with any such use. Customer assumes all risks in using third-party products or services in connection with the Orchestration and Automation Functionality.

6. LIMITATION OF LIABILITY

6.1. **Limitation on Indirect Liability.** **NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE.**

6.2. **Limitation on Amount of Liability.** **NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO RAPID7 HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.**

6.3. **Exceptions to Limitations.** The limitation of liability in Section 6.2 applies to the fullest extent permitted by applicable law, except that there is no limitation on loss, claims, or damages directly arising out of: (i) violations of a party's intellectual property rights by the other party; (ii) use of the Service in excess of the Volume Limitations; or (iii) a party's indemnification obligations. Notwithstanding the foregoing, if the Customer's liability is limited by applicable law, such as the Anti-Deficiency Act, then Rapid7's liability will be limited to the same extent. **NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED TO IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO PERSONAL INJURY**

OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; OR FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

7. TERM

7.1. *Term.* This Agreement will continue in effect until all Order Forms with Customer incorporating these terms have terminated. If Customer renews the Subscription prior to the expiration date of the current Subscription Term, the Subscription Term will renew for a term of one year at the then-current rates in the GSA Schedule prime contract. Rapid7 reserves the right to change the rates, applicable charges, and usage policies and to introduce new charges, listed on such Order Form upon providing Customer written notice thereof (which may be provided by e-mail) at least 60 days prior to the end of the then current Subscription Term and incorporating such changes into the applicable prime contract under which the Service is purchased.

7.2. *Suspension of Service.*

Customer agrees that Rapid7 may temporarily suspend Customer's access to the Service upon notice (which may be made by email or telephone) if Rapid7 reasonably concludes that Customer is using the Service to engage in illegal activity, and/or Customer's use of the Service is causing immediate, material and ongoing harm to others. In the event that Rapid7 suspends Customer's access to the Service, Rapid7 will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and work with Customer to resolve the issues requiring the suspension of Service. Customer agrees that Rapid7 shall not be liable to Customer nor to any third party for any suspension of the Service under this Section 7.2.

7.3. *Termination.* Notwithstanding the foregoing, either party may terminate this Agreement or any Order Form: (i) immediately in the event of a material breach of this Agreement or any such Order Form by the other party that is not cured within thirty days of written notice thereof from the other party or, if such breach is incapable of cure, immediately upon written notice; or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty days of filing. Notwithstanding the foregoing, if the parties dispute the breach occurred, the Contract Disputes Act will govern the resolution of such dispute. This Agreement terminates upon expiration or termination of all Subscription Terms under Order Forms incorporating this Agreement. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Order Form. Except as expressly provided herein, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party.

7.4. *Effect of Termination.* Upon any termination or expiration of this Agreement or any applicable Order Form, Rapid7 shall no longer provide the applicable Service to Customer and Customer shall cease using the Service. Customer agrees that following termination of Customer's account and/or use of the Service, Rapid7 may immediately deactivate Customer's account and that following a reasonable period not to exceed 90 days, shall be entitled to delete Customer's account and all Customer Content from the Service. Customer shall ensure that it does not send Customer Content to Rapid7 following termination. Rapid7 shall have no liability or obligations, except for Confidentiality obligations in Section 4, regarding any Customer Content sent to Rapid7 after the Subscription Term has ended.

8. OWNERSHIP; USE OF CONTENT; OBLIGATIONS

8.1. *Customer Content.* Customer retains ownership of all right, title, and interest in and to all Customer Content, and Customer is solely responsible for all Customer Content. Rapid7 does not guarantee the accuracy, integrity, or quality of such Customer Content. Except as provided in this Agreement, Customer shall be solely responsible for providing, updating, uploading, and maintaining all Customer Content. During the term of this Agreement, Customer hereby grants to Rapid7 a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 12.1(e)), royalty-free right to use, display, transmit, and distribute the Customer Content as necessary to: (i) provide the Service to Customer; (ii) in anonymized and aggregated form, generate statistics and produce reports; and (iii) collect metadata about feature usage in order to continue to improve the development and delivery of the Service.

8.2. *Rapid7 Service.* Rapid7 retains ownership of all right, title, and interest in and to all intellectual property in and about the Service.

8.3. *Customer Obligations.* Customer shall not: (i) upload or otherwise transmit, display, or distribute any Customer Content to the Service that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (ii) upload or otherwise transmit to the Service any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; or (iii) interfere with or disrupt the Service.

9. INDEMNIFICATION

9.1. *By Rapid7.* Rapid7 will indemnify, have the right to intervene to defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that Rapid7's technology used to provide the Service infringes or misappropriates any patent, copyright, trade secret, or trademark of such third party. Notwithstanding the foregoing, in no event shall Rapid7 have any obligations or liability under this Section arising from: (i) use of any Service in a manner not anticipated by this Agreement or in combination with materials not furnished by Rapid7; or (ii) any content, information, or data provided by Customer or other third parties. If the Service is or is likely to become subject to a claim of infringement or misappropriation, then Rapid7 will, at its sole option and expense, either: (i) obtain for the Customer the right to continue using the Service; (ii) replace or modify the Service to be non-infringing and substantially equivalent to the infringing Service; or (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Rapid7, then Rapid7 may terminate Customer's rights to use the infringing Service and will refund pro-rata any prepaid fees for the infringing portion of the Service. **THE RIGHTS GRANTED TO CUSTOMER UNDER THIS SECTION 9.1 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT BY THE SERVICE OF ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT.** Rapid7's right to defend is subject to the requirements of 28 USC §516.

9.2. Reserved.

10. AVAILABILITY; DOWNTIME; SUPPORT

10.1. Downtime. Subject to this Agreement and the Service Level Agreement located at <https://www.rapid7.com/legal/sla/ and attached hereto>, Rapid7 shall use commercially reasonable efforts to provide the Service twenty-four hours a day, seven days a week throughout the Subscription Term. Customer agrees that from time to time the Service may be inaccessible or inoperable for various reasons, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Rapid7 may undertake from time to time; or (iii) causes beyond the control of Rapid7 or which are not reasonably foreseeable by Rapid7, including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion, or other failures (collectively "Downtime"). Rapid7 shall use commercially reasonable efforts to provide twenty-four hour advance notice to Customer in the event of any scheduled Downtime. Rapid7 shall have no obligation during performance of such operations to mirror Customer Content or to transfer Customer Content. Rapid7 shall use commercially reasonable efforts to minimize any disruption, inaccessibility, and/or inoperability of the Service in connection with Downtime, whether scheduled or not.

10.2. Support Services. Rapid7 shall provide support during any Subscription Term, subject to Rapid7's support policy, located at <http://www.rapid7.com/docs/customers-support-guidebook.pdf>

10.3. Product-Related Professional Services. Unless otherwise agreed to by Rapid7, Customer is responsible for installing and configuring any Service. Rapid7 may provide Customer certain professional services, such as installation, configuration, consulting, training, and external scanning, if and as specified on an Order Form or a separate statement of work (SOW) executed by the parties. Such services are accepted upon performance unless otherwise agreed, in writing, by Rapid7. All changes to an SOW must be approved by both parties in writing. Rapid7 shall have sole discretion in staffing the professional services and may assign the performance of any portion of the professional services to any subcontractor; provided that Rapid7 shall be responsible for the performance of any such subcontractor. Customer will have a non-exclusive, non-transferable license to use any deliverables or other work product developed by Rapid7 in the performance of the professional services, which are delivered to Customer, upon Customer's payment in full of all amounts due for such deliverables or work product. Rapid7 retains ownership of all information, software, and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all deliverables and work product compiled or developed by Rapid7 in the performance of the professional services.

11. DATA PRIVACY

11.1. Personal Data. To the extent that Rapid7 processes personal data about any individual in the course of providing the Service, Customer agrees to Rapid7's Data Processing Agreement, located at www.rapid7.com/legal/dpa and attached hereto.

11.2. Data Privacy and User Data. Customer represents and warrants that the collection of Customer Content as contemplated by this Agreement does not violate any laws, regulations, or any rights of a third party, and that Customer has obtained all necessary rights to permit Rapid7 to process data from and about Customer, including, without limitation, data from endpoints, servers, cloud applications, and logs.

12. GENERAL PROVISIONS

12.1. Miscellaneous. (a) This Agreement shall be construed in accordance with and governed for all purposes by the Federal laws of the United States; (b) this Agreement, along with the identification of the Service, Subscription Term and Volume Limitations identified on the applicable Order Form(s) constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral by and between Rapid7 and Customer; (c) this Agreement may not be modified except by a writing signed by each of the parties; (d) in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement but rather this Agreement shall be construed as if such invalid, illegal, or other unenforceable provision had never been contained herein; (e) Customer shall not assign its rights or obligations hereunder without Rapid7's advance written consent and transfer by Rapid7 is subject to the requirements of GSAR 552.212-4(w)(xi); (f) subject to the foregoing subsection (e), this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns; (g) no waiver of any right or remedy hereunder with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion; (h) nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement, including but not limited to any of Customer's own clients, customers, or employees; (i) the headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and (j) in the event of a conflict between the terms of this Agreement and the terms of an Order Form, the terms in this Agreement shall take precedence, unless Rapid7 has expressly agreed to a specific Order Form term or condition, in writing. Nothing in this Agreement modifies any terms and conditions between you and any prime contractor under which the Software and documentation were ordered. Those prime contract terms and conditions continue to govern the relationship between the prime contractor and the Customer.

12.2. Injunctive Relief. Licensee acknowledges that a direct cause of action against the United States for patent or copyright infringement by, or on behalf of, the United States may arise under 28 U.S.C. § 1498..

12.3. Relationship of the Parties. Rapid7 and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties, or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

12.4. US Government Rights. This Section applies to all acquisitions of the Service by or for the US federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the federal government for the government's end use. The Service and related software and technology are "commercial items" as that term is defined at FAR 2.101. If Customer is an Executive Agency (as defined in FAR 2.101) of the U.S. Federal Government ("Government"), Rapid7 provides the Service, including any related technical data and/or professional services in accordance with the following: If a right to access the Service is procured by or on behalf of any Executive Agency (the Government is granted, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to Rapid7's customers as such rights are described in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data provided by Rapid7 to an Executive Agency within the DoD. Note, however, that Subpart 227.72 does not apply to computer software or computer software documentation acquired under GSA schedule contracts. Except as expressly permitted under this Agreement, no other rights or licenses are granted to the Government. Any rights requested by the Government and not granted under this Agreement must be separately agreed in writing with Rapid7. This Section 11.6 of the Agreement is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in the Service.

12.5. Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, or internet disturbance) that was beyond the party's reasonable control in accordance with FAR 52.212-4(f).

12.6. No Reliance. Customer represents that it has not relied on the availability of any future version of the Service or any future product or service in executing this Agreement or purchasing any Service hereunder.

12.7. Notices. Unless specified otherwise herein, (i) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (ii) notice will be deemed given: (x) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (y) when verified by automated receipt or electronic logs if sent by email. When sent by email, notices must be sent to Rapid7 at notices@rapid7.com.

12.8. Publicity. Customer acknowledges that Rapid7 may use Customer's name for the purpose of identifying Customer as a customer of Rapid7 products and/or services to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Rapid7 will cease using the customer's name and logo upon written request. However, Rapid7 will not indicate that a Federal Government Customer endorses Rapid7 or its Software or Services.

12.9. Compliance with Law. Each party agrees to comply with all federal, state, and local laws and regulations including but not limited to export law, and those governing the use of network scanners, vulnerability assessment software products, encryption devices, user monitoring, and related software in all jurisdictions in which systems are scanned, scanning is controlled, or users are monitored.

12.10. Links and Third Party Content. The Service may contain links to web pages and content of third parties ("Third Party Content") as a service to those interested in this information. Rapid7 undertakes no responsibility to update or review any Third Party Content and can make no guarantee as to its accuracy or completeness. Customer should review the applicable terms and policies, including privacy and data gathering practices, of any Third Party Content provider to which its navigates from the Service. Customer's access and use of Third Party Content is at its own risk.

These terms are incorporated by reference into the prime contract under which Customer placed an order with the prime contractor.