

OPSWAT Client End User License Agreement

1. This Client End User License Agreement ("EULA"), version 01 Jun 2018, is a legal and enforceable agreement between you, the Ordering Activity under GSA Schedule contracts ("You"), and OPSWAT, Inc. ("OPSWAT") for using client software ("Client") provided by OPSWAT and its suppliers, together with associated media, printed materials and "online" or electronic documentation. Further, this EULA is subject to, and is hereby incorporated into, the Carahsoft Technology Corporation's ("Carahsoft") GSA Multiple Award Schedule (MAS) 70 Contract ("MAS 70 Contract"). "You" means the Government Client (Agency) who, under GSA Schedule Contracts, is the "Ordering Activity," defined as an "entity authorized to order under GSA Schedule Contracts" as defined in GSA Order ADM4800.21 ("GSA Order"), as such order may be revised from time to time.

The Client may include the capability to route information to one or more (i) OPSWAT Server software products ("Server") You deployed, or (ii) to one or more cloud services ("Hosted Service") OPSWAT maintains. Unless you configure your Server to have the Client route information to it, Your default use of the Client may include routing information by the Client to the Hosted Service which may include upload by the Client to the Hosted Service of:

1. files (or hash values thereof) from the device on which the Client is installed or otherwise being used, and/or;
2. hash values of the remote Internet Protocol ("IP") addresses to which the device (on which the Client is installed or otherwise being used) is connected, and/or;
3. Information about the device on which the Client is installed or otherwise being run and the operating system and software applications installed on the device at time of upload.

Software License

All rights, title, and interest in, and to, the Client are the exclusive property of OPSWAT or OPSWAT suppliers (excluding third party brand names the Server identifies), and is protected by copyright, trademark, patent, and other intellectual property laws and treaties. Nothing in this EULA should be construed as conferring to You, by implication or otherwise, any additional rights to the property of OPSWAT or OPSWAT suppliers beyond the express, limited rights specified in this EULA.

The Client is licensed, not sold. You have certain rights to use the Client after Your acceptance of this EULA. This EULA and Carahsoft's MAS 70 Contract govern any releases, revisions, or enhancements to the Client that OPSWAT makes available to You.

You can stop using Client at any time by following standard removal instructions of operating systems which support installation or otherwise running of the Client





OPSWAT grants to You a nonexclusive, nontransferable, revocable and limited license to access and use the Client solely for Your internal purposes.

If You are using the Client with a Hosted Service or Server, unless You have entered into a paid license subscription transaction with OPSWAT as evidenced by an OPSWAT payment confirmation, license key or license certificate (each a "Proof of Entitlement") OPSWAT reserves the right, in its sole discretion, to:

1. Suspend or end of life the Client, with or without cause, and with or without notice only if the Client was provided free of charge. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, OPSWAT shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
2. Make unscheduled deployments of updates or enhancements to Client or Hosted Service with which the Client communicates. You acknowledge and understand that during such deployments, certain functionality of Client or Hosted Service may be unavailable and outages may occur.
3. Use information routed by the Client to Hosted Service to:
 - a. Improve the Client and/or Hosted Service
 - b. Publicly display analysis of information uploaded by the Client to the Hosted Service
 - c. Share uploaded files with cybersecurity suppliers if such suppliers' intellectual property is used by the Hosted Service to analyze uploaded files.

You may not:

1. Reverse-engineer, decompile, disassemble, modify, translate, or make any attempt to discover the Client source code or create derivative works from the Client.
2. Use the Client in any manner not authorized by this EULA or Carahsoft's MAS 70 Contract;
3. Withhold, for any reason, any portion of any fees due OPSWAT as a result of You purchasing a paid subscription to an OPSWAT Server product or Hosted Service, including but not limited to, taxes imposed upon You by any taxing authority or an obligation to calculate OPSWAT's income or other tax obligation to any taxing authority. OPSWAT shall state separately on invoices taxes excluded from the fees, and You agree either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

OPSWAT reserves all rights not expressly granted to You.

Warranties

OPSWAT warrants that it owns or has obtained all necessary rights from its suppliers to Client and its



components.

Disclaimer of Warranties

OPSWAT warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. except as expressly set forth in the foregoing, to the maximum extent permitted by applicable law, OPSWAT and its suppliers expressly disclaim any warranty for the Client. The Client and any related documentation are provided "as is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose. The entire risk arising out of use or performance of the Client remains with You. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA MULTIPLE AWARD SCHEDULE CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.



Indemnification

Notwithstanding the above Disclaimer of Warranties, if You enter into a paid license subscription transaction as evidenced by Proof of Entitlement, We have the right to intervene to defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging the Client infringes or misappropriates such third party's United States patent (a "Claim"), and have the right to indemnify You from damages, attorney fees, and litigation costs finally awarded against You by a court of competent jurisdiction as a result of, or for amounts paid by You under a Claim settlement approved by Us in writing. If We receive information about an infringement or misappropriation claim related to the Client, We may in Our discretion and at no cost to You (i) modify the Client so it is no longer claimed to infringe or misappropriate, (ii) obtain a license for Your continued use of the Client in accordance with the Terms, or (iii) terminate Your subscription for Client upon 30 days' written notice and refund You prepaid fees covering the remainder of the term of the terminated subscriptions. Notwithstanding the foregoing, We shall have no indemnification obligations with respect to any action arising out of Client or any part thereof, in combination with software or other products not supplied by Us or the use Client other than in accordance with these Terms. Our indemnification obligations shall be subject you (i) notifying Us within ten (10) days of receiving notice of any threat or claim in writing of such action; (ii) giving Us the right to participate in the defense or settlement of such action; (iii) not entering into any settlement or compromise of any such action without Our prior written consent; and (iv) providing reasonable assistance requested by Us. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

Disclaimer and Limitation of Damages

NEITHER CARAHSOFT, OPSWAT NOR YOU SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. FURTHER, NEITHER CARAHSOFT, OPSWAT NOR YOU SHALL BE LIABLE FOR PUNITIVE DAMAGES EXCEPT TO THE EXTENT THIS LIMITATION IS PROHIBITED BY APPLICABLE LAW. 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. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-81 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION). EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY ARISING FROM OR IN RELATION TO THE EULA, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNTS PAID BY YOU TO OPSWAT TO LICENSE THE CLIENT, UPON WHICH THE DAMAGES WERE BASED, PURSUANT TO THE PURCHASE ORDER(S) GIVING RISE TO THE CLAIM. THIS SECTION SURVIVES TERMINATION. THE FOREGOING DISCLAIMERS AND LIMITATIONS APPLY REGARDLESS OF WHETHER YOU ACCEPT THE CLIENT EULA, OPSWAT SERVER PRODUCT EULA, OR OPSWAT HOSTED SERVICE TERMS OF SERVICE.





U.S. Government Restricted Rights

The Client, consistent with FAR 12.211 and 12.212 (and the successor to such Sections, if any), shall be deemed commercial computer software. Manufacturer is OPSWAT, Inc. 398 Kansas Street, San Francisco, CA 94103, United States of America.



This EULA shall not be construed by OPSWAT or any third party to assert any obligation upon the Government of the United States to indemnify the OPSWAT or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341).

Export Restrictions

In the event You export the Client from the country in which You first received it, You shall comply with all applicable import, export and re-export laws, including but not limited to, regulations of the Office of Export Administration of the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union.

You agree the Client shall not be used, and none of the underlying information, software, or technology be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Client, You represent and warrant that You are not located in, or are under the control of, or a national or resident of, an Embargoed Country or Designated National.

OPSWAT makes no representation the Client is appropriate or available for use in locations outside the United States.

Miscellaneous

This EULA, together with the underlying Schedule Pricelist, Purchase Order(s), Carahsoft's MAS 70 Contract and Proof of Entitlement, if any, OPSWAT delivers to You constitute the entire agreement between You and OPSWAT and (a) supersedes all prior or contemporaneous communications, both written and oral; and (b) prevails over conflicting or additional terms of any quote, order, acknowledgment, or similar communications between the parties unless those additional terms were specifically negotiated to meet the ordering activity's minimum needs.

The disclaimers of warranties and damages and limitations on liability shall survive termination.

This EULA may only be modified by a written document signed by You and OPSWAT.

Should You have questions concerning this EULA, or if desire to contact OPSWAT, write to OPSWAT Customer Service, P.O. Box 77878, San Francisco, CA 94107-7878.

If any provision of this Agreement is found unlawful, void or unenforceable, then that provision shall be severed from this EULA and will not affect the validity and enforceability of any of the remaining provisions.

Failure to enforce a right or provision of the EULA will not be deemed a waiver of such right or provision.





The EULA is governed by and construed according to the Federal laws of the United States.

Attribution and Additional Rights

The Client You licensed may include files or data from OPSWAT's suppliers which grant You additional rights specific to the files these suppliers provide OPSWAT, when used separately from the Client. Nothing herein shall bind the Ordering Activity to any Third Party terms unless the terms are provided for review and agreed to in writing by all parties. The Ordering Activity acknowledges that third party software has different terms.

OPSWAT, the OPSWAT logo, Metadefender, MetaAccess and Metascan are trademarks or registered trademarks of OPSWAT, Inc. Trademarks not owned by OPSWAT are owned by their respective owners.

(C) 2002-2018 OPSWAT Inc. All rights reserved.

