Tenable Public Sector LLC

Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. **Scope**. This Rider and the attached Tenable Public Sector LLC ("Manufacturer") product specific license terms establish the terms and conditions enabling Carahsoft ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under Carahsoft's GSA MAS IT70 contract number 47QSWA18D008F (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability**. Whereas GSA and Carahsoft agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (*e.g.*, the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et. seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination**. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies**. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods,

epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms 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.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that Carahsoft as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** Carahsoft agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution**. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works**. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict**. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A - TENABLE MASTER AGREEMENT

This Attachment A - Tenable Master Agreement consists of the following:

(i)   The main body of the Master Agreement which encompasses all of the general terms and conditions under which Tenable transacts business;

(ii)   Schedule A (*Software*), which applies to the purchase of Tenable on-premises Software solutions (i.e., Tenable.io On-Prem, Security Center, Nessus Agents, Nessus Professional, etc.); *Please note that Hosted Solutions do come with an on premises component

(iii)   Schedule B (*Hosted Services*), which applies to Tenable's SaaS solutions (i.e., Tenable.io); and

(iv)   Schedule C (*Professional Services*), which applies to all training, installation and consulting services.

This Master Agreement (this "Agreement") is made by and between Tenable (as defined below), and the Ordering Activity under GSA Schedule Contracts ("Customer" or "Ordering Activity"). Hereinafter, each of Tenable and Customer may be referred to collectively as the "Parties" or individually as a "Party".

1.   Definitions.

        (a)   "Affiliate" means any entity that controls, is controlled by, or is under common control with a Party. "Control" shall mean: (1) ownership (either directly or indirectly) of greater than fifty percent (50%) of the voting equity or other controlling equity of another entity; or (2) power of one entity to direct the management or policies of another entity, by contract or otherwise.

        (b)   "Documentation" means the then-current official user manuals and/or documentation for the Products available at docs.tenable.com.

        (c)   "Hosted Services" are a type of service offered through the Tenable.io (SaaS) platform and include Scans and access to and use of the hosted environment (the "Hosted Environment").

        (d)   "Product(s)" means any of the products that Tenable offers, including Software, Hosted Services, Support Services and Professional Services.

        (e)   "Professional Services" means services purchased, including consulting services which are relevant to the implementation and configurations of Tenable Products as well as on-site or virtual training courses. Generally, Professional Services are defined either in a separate SOW or a Services Brief. Professional Services do not include the Hosted Services or Support Services.

        (f)   "Scan(s)" are a function performed by the Software and/or the Hosted Services on Scan Targets, which are conducted in order to provide data to Customer regarding its network security. "PCI Scans" are a specific type of Scan designed to assess compliance with the Payment Card Industry Data Security Standard. "Scan Data" is the resulting information created by the Scan. "Scan Target(s)" are the targets or subjects of a Scan.

        (g)   "Services Brief" means the document which outlines Tenable's basic, pre-packaged, non-customized, installation, or training Professional Services offered under a Tenable SKU and which do not require a separate SOW. For the avoidance of doubt, Customer may purchase commercial off the shelf SKU-based Professional Services without executing a separate Statement of Work. A "SOW" or "Statement of Work" shall further describe Professional Services, the terms of which may be customized and which shall require execution by the Parties.

        (h)   "Software" means each software product made available by Tenable under this Agreement for download. Software includes patches, updates, improvements, additions, enhancements and other modifications or revised versions of the same that may be provided to Customer by Tenable from time to time.

        (i)   "Tenable" means Tenable Public Sector LLC, if Customer is an agency or instrumentality of the United States Government, a commercial entity operating predominately as a federal systems integrator for eventual sale or resale or for the benefit of the United States Government, or an agency or instrumentality of a State or local government within the United States (Tenable Public Sector LLC is a Delaware limited liability company having offices at 7021 Columbia Gateway Drive, Suite 500, Columbia, MD 21046)

2.   Delivery.

        (a)   Delivery and Installation. Delivery of Tenable Products ("Delivery") shall be deemed to occur on the date of availability for electronic download or electronic access. Tenable has no duty to provide installation services for Tenable Products unless installation services are purchased separately.

3.   Term.

        (a)   Agreement Term. This Agreement shall commence upon the Effective Date and continue until terminated in accordance with the terms set forth herein.

        (b)   License Term. The "License Term" is the term of the license or subscription for Products as set forth in the applicable purchase order.

4. Products.

(a) <u>Product-Specific Terms</u>. Pursuant to this Agreement, Customer may receive the right to use various Products. Terms related to Customer's use of Software are described in **Schedule A** (*Software*). Terms related to Customer's use of Hosted Services are described in **Schedule B** (*Hosted Services*). Terms related to the provision of Professional Services are described in **Schedule C** (*Professional Services*). For each Product, Customer will have the right to use the corresponding Documentation.

(b) <u>Licensing Model</u>. Product licenses shall be in accordance with the terms of the applicable licensing model as set forth in the Documentation and the purchase order, which may include limitations on Scan Targets, License Term, the number of users, seats, licenses and/or types of modules licensed. Product licenses shall commence upon Delivery and shall be either perpetual or subscription in nature. If Customer exceeds the license restrictions, Tenable shall promptly invoice Customer for an upgraded license to allow for all actual or additional usage.

(c) <u>Restrictions on Use</u>. Customer shall not directly or indirectly: (i) decompile, disassemble, reverse engineer, or otherwise attempt to derive, obtain or modify the source code of the Products; (ii) reproduce, modify, translate or create derivative works of all or any part of the Products; (iii) remove, alter or obscure any proprietary notice, labels, or marks on the Products; (iv) without Tenable's prior written consent use the Products in a service bureau, application service provider or similar capacity; or (v) use the Products to gather information from Nessus Home scanners. Customer may not use the Products to manage or gather information from Scan Targets not owned or hosted by Customer.

(d) <u>Intellectual Property in Products</u>. This Agreement does not transfer to Customer any title to or any ownership right or interest in the Products. Any rights in the Products not expressly granted in this Agreement are reserved by Tenable. If Customer provides Tenable with any comments, suggestions, or other feedback regarding the Product, Customer hereby assigns to Tenable all right, title and interest in and to such feedback. Tenable acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

(e) <u>Customer System Requirements</u>. In order to use the Products, Customer must meet or exceed the specifications found in the Tenable General Requirements document.

(f) <u>Product Features</u>. Tenable reserves the right to withdraw features from future versions of the Products provided that: (i) the core functionality of the affected Product remains the same; or (ii) Customer is offered access to a product or service providing materially similar functionality as the functionality removed from the affected Product. The preceding remedies under this Section 4(f) are the sole remedies available if Tenable withdraws features from the Products.

(g) <u>Telemetry</u>. Customer agrees to provide certain necessary Scan information, which may include the number of Scan Targets managed with the Product for billing purposes, behavioral attributes such as whether or not certain features in the Product are utilized, or other relevant information ("<u>Technical Data</u>"). Tenable may use Technical Data for reasonable business purposes, including product support, license validation and research and development. Tenable agrees to only disclose Technical Data which has been properly anonymized.

5. Support.

(a) <u>Support Services</u>. Tenable shall provide Customer with support services (the "<u>Support Services</u>") in accordance with Tenable's then current Technical Support Plan and consistent with Tenable's Product Lifecycle Policy, each of which is available at http://static.tenable.com/prod_docs/tenable_slas.html (or a successor location). The Support Services include bug fixes, updates (including new vulnerability plug-ins), or enhancements that Tenable makes generally available to users of the Products. The Support Services also include the provision of new minor (Example: 1.1.x to 1.2.x, etc.) and major version releases of the Products (Example: 1.x to 2.x, etc.).

(b) <u>Support Fees</u>. Standard Support Services for Products licensed for a finite License Term will be provided at no additional charge beyond the license fee for the duration of the License Term. Support Services for Products licensed on a perpetual basis must be purchased separately. In all cases, premium support may be purchased at an additional charge. If during the course of a perpetual license Customer terminates or fails to renew the Support Services, Customer may, at any time during the term of this Agreement, request that Tenable reinstate the Support Services provided that Customer pays for the lapsed Support Services in an amount equal to the total fees Customer would have paid for the Support Services between the time Customer's Support Services lapsed and the then-current date.

6. Confidentiality.

(a) <u>Definition</u>. "<u>Confidential Information</u>" means information learned or disclosed by a Party under this Agreement that should reasonably be assumed to be confidential or proprietary, including the Products. Confidential Information will remain the

property of the disclosing Party, and the receiving Party will not be deemed by virtue of this Agreement or any access to the Confidential Information to have acquired any right, title or interest in or to the Confidential Information.

(b) <u>Obligations</u>. Each Party agrees to only use the Confidential Information in connection with this Agreement or a purchase hereunder. The receiving Party agrees to hold the disclosing Party's Confidential Information confidential and to use at least the same level of protection against unauthorized disclosure or use as the receiving Party normally uses to protect its own information of a similar character, but in no event, less than a reasonable degree of care. Each Party may share Confidential Information with its Affiliates or authorized contractors in the performance of its duties under this Agreement; provided, however, each Party shall be responsible to ensure that such Affiliate or authorized contractors are bound by obligations of confidentiality at least as stringent as those set forth in this Agreement.

(c) <u>Exclusions</u>. Confidential Information shall not include information that: (i) is already known to the receiving Party free of any confidentiality obligation; (ii) is or becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received by the receiving Party from a third party without any restriction or confidentiality; or (iv) is independently developed by the receiving Party without reference to the Confidential Information. Furthermore, if Customer intentionally or unintentionally requests or performs scans on third party Scan Targets, Customer agrees that Tenable may provide all relevant information to the owner of the Scan Targets of such unlawful or impermissible scanning as well as to relevant legal authorities, and such disclosure shall not be considered a breach of confidentiality.

(d) <u>Information Not to be Disclosed</u>. The Parties agree not to disclose to each other any sensitive, non-public, personally identifiable information (such as social security numbers, personal credit card information or health care data, etc.) which may be the subject of any data privacy regulations as well as any Personal Data of an EU Data Subject as such terms are defined under the European Union General Data Protection Regulation (together, hereinafter, "<u>PII</u>"). Tenable does not require the transmission or processing of any such PII in order to perform its duties under this Agreement or sell any Products hereunder. If Customer inadvertently or unintentionally discloses any PII to Tenable, Customer shall identify to Tenable that it has disclosed PII and Tenable shall promptly return and/or destroy such PII.

(e) <u>Legal Disclosures; Remedies</u>. The receiving Party may disclose Confidential Information if required to do so by law provided the receiving Party shall promptly notify the disclosing Party so that the disclosing Party may seek any appropriate protective order and/or take any other action to prevent or limit such disclosure. If required hereunder, the receiving Party shall furnish only that portion of the Confidential Information disclosure of which is legally required. The receiving Party will notify the disclosing Party promptly of any unauthorized use or disclosure of the disclosing Party's Confidential Information. Tenable recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

7.   Representations and Warranties; Disclaimer.

(a) <u>Warranty of Authority</u>. The Parties hereby represent and warrant that they have the full power and authority to enter into this Agreement.

(b) <u>Products</u>. Product warranties and associated warranty periods are set forth in the relevant Schedules attached hereto.

(c) <u>Antivirus Warranty</u>. Tenable represents it has taken commercially reasonable efforts to ensure that the Products, at the time of Delivery, are free from any known and undisclosed virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Products to become inoperable or incapable of being used in the manner for which it was designed or in accordance with the Documentation.

(d) <u>Warranty Disclaimer</u>. The express warranties for products and services are set forth in the applicable Schedules attached hereto. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT AND TO THE GREATEST EXTENT PERMITTED BY LAW, TENABLE OFFERS ITS PRODUCTS "AS-IS" AND MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, INTEGRATION, PERFORMANCE AND ACCURACY, AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE MADE TO CUSTOMER FOR CUSTOMER'S BENEFIT ONLY. CUSTOMER'S USE OF THE PRODUCTS IS AT CUSTOMER'S OWN RISK. CUSTOMER UNDERSTANDS THAT ASSESSING NETWORK SECURITY IS A COMPLEX PROCEDURE, AND TENABLE DOES NOT GUARANTEE THAT THE RESULTS OF THE PRODUCTS WILL BE ERROR-FREE OR PROVIDE A COMPLETE AND ACCURATE PICTURE OF CUSTOMER'S SECURITY FLAWS, AND CUSTOMER AGREES NOT TO RELY SOLELY ON SUCH PRODUCTS IN DEVELOPING ITS SECURITY STRATEGY. CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS MAY RESULT IN LOSS OF SERVICE OR HAVE OTHER IMPACTS TO NETWORKS, ASSETS OR

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COMPUTERS (INCLUDING MODIFICATION OF SCAN TARGETS), AND CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DAMAGES RELATING TO SUCH LOSS OR IMPACT.

8. Reserved.

9. Indemnification.

(a) <u>Indemnification Obligations</u>.

(i) <u>By Tenable</u>. Tenable shall (at its sole cost and expense): (i) defend and/or settle on behalf of Customer (including Customer's officers, directors, employees, representatives and agents); and (ii) indemnify Customer for, any third party claims brought against Customer based upon a claim that Customer's use of the Products in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights in a jurisdiction which is signatory to the Berne Convention.

(b) <u>In Case of Infringement</u>. If Customer's use of the Products is, or in Tenable's opinion is likely to be, the subject of an infringement claim, Tenable may, in its sole discretion and expense: (i) modify or replace the infringing Products as necessary to avoid infringement, provided that the replacement Products are substantially similar in functionality; (ii) procure the right for Customer to continue using the infringing Products; or (iii) terminate this Agreement and, upon Customer's return or certified destruction of the infringing Product, provide Customer a pro-rata refund calculated as follows: (x) for infringing Products licensed on a subscription basis, the refund shall consist of any prepaid but unused fees for the remainder of the applicable License Term; or (y) for infringing Software licensed on a perpetual basis, the refund shall consist of a straight line depreciation of the license fee based on a three (3) year useful life. This Section 9 sets forth Tenable's sole and exclusive liability and Customer's sole and exclusive remedy with respect to any claim of intellectual property infringement.

(c) <u>Exclusions</u>. Tenable shall have no liability with respect to a third party intellectual property infringement claim arising out of: (i) modifications of the Product made to conform with Customer's specifications; (ii) modifications of the Product made by anyone other than Tenable or a Tenable authorized third party; (iii) Customer's use of the Product in combination with other products or services not provided by Tenable; (iv) Customer's failure to use any updated versions of the Product made available by Tenable; or (v) Customer's use of the Product in a manner not permitted by this Agreement or otherwise not in accordance with the Documentation.

(d) <u>Requirements</u>. Tenable shall only be responsible for the indemnification obligations set forth in this Section 9 if the Customer: (i) provides Tenable prompt written notice of such action or claim; (ii) gives Tenable the right to control and direct the investigation, defense, and/or settlement of such action or claim in accordance with and to the extent permitted under 28 U.S.C. § 516; (iii) reasonably cooperates with Tenable in the defense of such a claim (at Tenable's expense); and (iv) is not in breach of this Agreement. Nothing herein shall prevent Customer from engaging in defense of any such claim with its own legal representation, provided that this does not materially prejudice Tenable's defense. Tenable may not settle any claim on behalf of Customer without obtaining Customer's prior written consent; provided, however, Tenable shall not be required to obtain consent to settle a claim which settlement consists solely of: (x) discontinued use of infringing Products and/or (y) the payment of money for which Tenable has a duty to indemnify.

10. Legal Compliance.

(a) <u>Generally</u>. The Products are intended solely for lawful purposes and use. Each party agrees to perform their respective obligations in a manner that complies with all applicable national, federal, state and local laws, statutes, ordinances, regulations and codes ("<u>Applicable Laws</u>") including, without limitation, the Computer Fraud and Abuse Act (CFAA), 18 USC Sec. 1030.

(b) <u>Exporter of Record</u>. Applicable Laws include U.S. export laws (including the International Traffic in Arms Regulation (ITAR), 22 CFR 120-130, and the Export Administration Regulation (EAR), 15 CFR Parts 730 *et seq*.). Customer agrees that it will be the exporter of record any time it causes the Products to be accessed outside the United States or by a national of any country other than the United States. The parties further agree to comply with sanctions administered by the Department of the Treasury's Office of Foreign Assets Control and shall not engage in prohibited trade to persons or entities on the Specially Designated Nationals list.

11. Governing Law.

(a) This Agreement shall be governed in all respects by the Federal laws of the United States. The Parties agree that: (i) no aspect or provision of the Uniform Computer Information Transactions Act shall apply to this Agreement; and (ii) this Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods.

12. Other Legal Clauses.

(a) <u>Third Parties</u>. Customer may permit a third party ("<u>Customer's Agent</u>") to use the Products to perform security services for and on behalf of Customer but solely for Customer's benefit and solely for Customer's internal business purposes. Customer shall be fully responsible for Customer's Agent's use of the Products including liability for any breaches of the Agreement or use beyond the licensed quantities set forth in the Ordering Document. If Customer elects to utilize a Customer's Agent to perform Scans on its behalf, then only Customer's Agent (and not Customer) will be permitted to contact Tenable Support Services. Tenable shall have the right to withdraw its consent to the use of any Customer's Agent in its reasonable discretion.

(b) <u>Notices</u>. Any legal notices or other communication pursuant to this Agreement must be in writing, in English, and will be deemed to have been duly given when delivered if delivered personally or sent by recognized overnight express courier. All notices to Tenable must be sent to the address described in this Agreement to the attention of the Legal Department (unless otherwise specified by Tenable). All notices Tenable sends to Customer shall be at the physical address referenced in this Agreement (or otherwise provided to Tenable). Tenable may provide notices with regard to Products via the email address Customer provided during Product registration and Customer hereby consents to receive such communications from Tenable in an electronic form.

(c) <u>Assignment</u>. Neither Party may assign or otherwise transfer this Agreement without the other Party's prior written consent, which will not be unreasonably withheld.

13. Reserved.

14. General.

This Agreement, together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase order, constitutes the entire agreement between the Parties, and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) relating to the subject matter of this Agreement. No Customer document or purchase order shall modify or supersede this Agreement, unless expressly agreed to in writing by both parties. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. If any provision of this Agreement, for any reason, is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the Parties. Section headings are for convenience only and shall not be considered in the interpretation of this Agreement. Customer agrees that Tenable may use Customer's name or logo in a customer list. Customer may not use Tenable's name or logo without prior written consent and in accordance with Tenable's guidelines. No failure or delay by a Party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving Party. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the Party may have under this Agreement. The Parties are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. This Agreement is not intended nor will it be interpreted to confer any benefit, right or privilege in any person or entity not a party to this Agreement. Any party who is not a party to this Agreement has no right under any law to enforce any term of this Agreement. Any provision of this Agreement that imposes or contemplates continuing obligations on a party and any section which by its nature is intended to survive will survive the expiration or termination of this Agreement, including Sections 3, 4, 9 and 11.

15. Government Entities. *This Section 15 shall only apply to Government Customers, as defined below.*

If Customer is an agency or instrumentality of a sovereign government (a "<u>Government Customer</u>"), all Government Customer end users acquire the rights to use and/or access the Products and or Services with only those rights set forth herein (consistent with 48 C.F.R. 12.212). The terms and conditions of this Agreement govern Government Customer's use and disclosure of the Products and supersede any conflicting terms and conditions that may be applicable through the Government Customer's procurement regulations. If this Agreement fails to meet the Government Customer's needs or is inconsistent in any way with federal law, the government must return the Product, unused, to Tenable. If Customer is prohibited by law, regulation, or relevant attorney general opinion from agreeing to any clause of this Agreement (collectively, "<u>Restrictions</u>"), the Agreement shall be modified to the extent required under such Restrictions. Each of the components that constitute the Product is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212.

SCHEDULE A: SOFTWARE

This Schedule for Tenable Software (this "Schedule") is subject to and made part of the Agreement.

1. General. This Schedule governs Customer's license of Software.

2. License; Right to Use. Subject to the terms of the Agreement, Tenable grants Customer for the duration of the License Term a non-exclusive, non-transferable, non-sublicensable license to use the Software (in object code form only) solely for Customer's own internal business purposes. Customer's right to install such Software is limited to use with the computers or machines for which the Software is registered for use. Customer is permitted to make one copy of the Software for backup or archival purposes.

3. Warranty. Tenable warrants that the Software shall materially conform to the Documentation for a period of sixty (60) days after Delivery. Customer's sole and exclusive remedy for breach of this warranty shall be for Tenable to, at its sole option: (i) use commercially reasonable efforts to modify or correct the Software such that in all material respects it conforms to the functionality described in the Documentation; or (ii) if Tenable is unable to restore such functionality within a reasonable period of time, Customer shall be entitled to a refund for the non-confirming Software.

4. Open Source and Third Party Software. Any code or other intellectual property included as part of the Software that was licensed to Tenable by third parties that is not marked as copyrighted by Tenable is subject to other license terms that are specified in the Documentation available on Tenable's website at https://docs.tenable.com/licensedeclarations/ (or a successor location). Customer agrees to be bound by such other license terms.

5. Audit Rights. Subject to applicable Government security requirements, Tenable may, by itself or through a third party independent auditor, audit Customer's usage of the Software to confirm compliance with this Agreement or the applicable Ordering Document. Tenable shall: (i) provide Customer with reasonable advance notice of the audit; (ii) not request such audit more than once per year; and (iii) not unreasonably interfere with Customer's business activities when conducting the audit.

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SCHEDULE B: HOSTED SERVICES

This Schedule for Tenable Hosted Services (this "Schedule") is subject to and made part of the Agreement.

1. General. This Schedule governs Customer's purchase and use of the Hosted Services.

2. License; Right to Use. Subject to the terms of the Agreement, Tenable grants Customer for the duration of the License Term a non-exclusive, non-transferable, non-sublicensable right to access the Hosted Environment and use those modules of the Hosted Services set forth on a valid Ordering Document solely for Customer's own internal business purposes.

3. Warranty. Tenable warrants that the Hosted Services will materially comply with the functionality described in the Documentation. Customer's sole and exclusive remedy for breach of this warranty shall be for Tenable to use commercially reasonable efforts to modify the Hosted Services to provide in all material respects the functionality described in the Documentation. If Tenable is unable to restore such functionality within sixty (60) days, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of any prepaid but unused fees for the nonconforming Hosted Services. Tenable shall have no obligation with respect to a warranty claim hereunder unless Customer notifies Tenable of such claim within thirty (30) days of the date the underlying condition first arose. This warranty shall only apply if the applicable Hosted Service has been utilized in accordance with the Agreement and the Documentation.

4. Acknowledgements. Customer authorizes Tenable to perform the Scans, including accessing the Scan Targets in the context of the Scans. Customer understands and acknowledges that the Scans may originate or appear to originate from a Tenable URL which could cause Customer (or the owner of the Scan Targets) to believe they are under attack. Customer agrees not to pursue any claims against Tenable as a result of any access to Scan Targets when such access was made in connection with an authorized Scan unless such a claim is based on the gross negligence or willful misconduct of Tenable.

5. Usage Requirements. Customer must provide current and accurate information in all submissions made in connection with the Hosted Services, including registration information and the location of the Scan Targets to be Scanned. Tenable may, in its reasonable discretion, temporarily suspend access of certain users of the Hosted Services. Customer agrees to safeguard and maintain the confidentiality of all user names and passwords. Customer further agrees to use best efforts to ensure that no unauthorized parties have access to the Hosted Services through Customer's account and/or log-in credentials. Customer will promptly notify Tenable of any unauthorized access of which Customer is aware or reasonably suspects. Customer is responsible for compliance with this Agreement and all use of the Hosted Services through Customer's account.

6. PCI Scans. Tenable makes no guarantee that a successful completion of a PCI Scan will make Customer compliant with the Payment Card Industry Data Security Standard.

7. Data Retention Policy. Tenable will maintain Customer Scan data stored in the Hosted Environment for a period of not less than one year from the Scan date. Customer acknowledges that Tenable is in no way responsible for any of Customer's data retention compliance requirements. Tenable's data retention policy with respect to PCI Scans will match then-current requirements set forth by the PCI Security Standards Council.

8. Service Level Agreement. Tenable commits to make access to the Hosted Environment available in accordance with Tenable's then current service level agreement, available at http://static.tenable.com/prod_docs/Service_Level_Commitment.pdf (or a successor location).

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SCHEDULE C: PROFESSIONAL SERVICES

This Schedule for Tenable Professional Services is subject to and made part of the Agreement.

1. <u>General</u>. The Parties may agree, from time to time, on the purchase and sale of Tenable Professional Services. Professional Services shall be as further described in a separate SOW or Services Brief. No SOW shall be binding upon the Parties until it has been executed by both Parties. Except as otherwise agreed to by the Parties in writing, all Services Briefs or signed SOWs will be governed by this Agreement. In the event of inconsistency between the Agreement and a signed SOW, the signed SOW shall govern.

2. <u>Type of Services</u>. Tenable offers a range of Professional Services; provided, however, unless otherwise agreed upon in writing, Tenable does not offer creation of custom intellectual property. Tenable is not obligated to provide any Professional Services except as mutually agreed in a Services Brief or SOW.

3. <u>Deliverables</u>. "Deliverable(s)" means the reports, analysis, codes, scripts slides, documents, examples and other written materials or work results provided as part of the Professional Services.

4. <u>Intellectual Property Rights</u>.

(a) <u>Grant of License in Deliverables</u>. Tenable grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the Agreement or SOW) perpetual right to use, copy and create derivative works from the Deliverables (without the right to sublicense) for Customer's internal business operations, as contemplated by the applicable SOW or Services Brief.

(b) <u>Reservation of Rights</u>. Except for the rights expressly granted herein to Customer, Tenable expressly reserve all other rights in and to the Professional Services and Deliverables. Notwithstanding anything to the contrary in this Schedule, nothing shall prevent Tenable from providing similar Professional Services to other customers and nothing in this Schedule shall be construed to provide any intellectual property rights whatsoever in the Products (or any modifications or enhancements thereto) that Tenable develops or makes generally available for sale to its customers.

(c) <u>Pre-Existing Materials</u>. Any pre-existing materials, proprietary item or intellectual property rights of either Party which is disclosed or used in performing the Professional Services shall remain fully vested in such Party. Nothing in this Schedule shall transfer any rights whatsoever in Tenable's Products. Customer hereby grants to Tenable the intellectual property rights (if any) required for Tenable to perform the Professional Services.

5. <u>Warranty</u>. Tenable warrants that all Professional Services shall be performed in a professional manner and in accordance with industry standards. Tenable further warrants for a period of ten (10) days from the service completion date that the Professional Services shall materially conform to with the applicable SOW or Services Brief. If Customer provides written notice of a non-conformity during this warranty period, Tenable shall promptly confirm the non-conformity and upon confirmation, Tenable's entire liability and Customer's exclusive remedy shall be for Tenable to use commercially reasonable efforts to re-perform the Professional Services within a reasonable amount of time. If Tenable is unable to re-perform the Professional Services, then Tenable may elect to refund amounts paid by Customer for the non-conforming Professional Services.

6. <u>Scheduling; Cancellation</u>. Professional Services must be scheduled within three (3) months of the date of the Ordering Document under which such Professional Services were purchased and completed within six (6) months of the of the Ordering Document. Tenable shall have no obligation to perform the Professional Services if Customer or Customer's designated attendees do not attend a scheduled training session or cancel a Professional Services engagement without providing proper notice. Customer must provide Tenable at least ten (10) business days' notice to reschedule any Professional Services.

7. <u>Customer Responsibilities</u>. For Professional Services occurring on Customer's site, Tenable agrees to comply with applicable and reasonable security procedures provided Customer provides Tenable with such written procedures in advance. Some of the Professional Services may require Customer to have specialized knowledge or meet particular software or hardware requirements (for example, appropriate computers or appliances, stable Internet connection or up-to-date web browsers or operating system, etc.). If technical issues arise during the Professional Services, Tenable will use commercially reasonable efforts to resolve such issues, but will have no liability based on Customer's failure to meet technical requirements.

8. <u>Changes</u>. Either party may request that a change be made to the Professional Services. Tenable reserves the right to charge a fee for any material changes to the Professional Services. No changes shall be binding unless executed by both Parties.

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9. <u>Non-Solicitation</u>. During the term that Professional Services are being provided and for a period of one (1) year after their completion, Customers will not, either directly or indirectly, solicit for employment any person employed by Tenable or any of its Affiliates that have provided Customer Professional Services under this Agreement. For the avoidance of doubt, this restriction shall not prevent Customer from hiring based on a response to Customer's advertising in good faith to the general public a position or vacancy to which an employee or worker of Tenable responds, provided that no such advertisement shall be intended to specifically target Tenable personnel.

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