

# SPECIAL TERMS AND CONDITIONS ON LICENSING THE STANDARD SOFTWARE PRTG NETWORK MONITOR for USA

THIS LICENSE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered by and between Paessler AG, a corporation duly organized and existing under the laws of Germany, with its principal office at Thurn-und-Taxis-Strasse 14, 90411 Nuremberg, Germany (hereinafter referred to as "Licensor"), and the Licensee defined hereafter (hereafter also referred to as "Party" or, in the aggregate, as "Parties").

The following Terms and Conditions only apply for US American costumers.

## RECITALS

WHEREAS, Licensor is now and has been engaged in developing, maintaining, supporting and licensing its PRTG NETWORK MONITOR software products (hereafter the "Software") and desires to grant a license for the use of the Software on the terms stated in this Agreement ("License"); and

WHEREAS, Licensee desires to use the Software and to obtain a License for its use;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and whose value and sufficiency as consideration exchanged between the Parties is acknowledged, it is agreed between the Parties as follows:

## 1. DEFINITIONS

The following terms shall have the following meanings in this Agreement:

1.1. Licensee: The person or entity who is commercial end-user and agree to this Agreement in order to acquire a license grant from the Licensor permitting the Licensee, including its personnel, to work with the Software.

1.2. System: Physical computers and accessories, virtual systems, devices such as security cameras and routers. This definition is not exhaustive and the term System will include, as needed for deploying the Software, the computing infrastructure for which the Software contains suitable features.

1.3. Core Server: A central monitoring unit for the

installation of the Software, providing storage and processing facilities for the monitoring of data, transmission of notifications, license administration and webserver functionality.

1.4. Failover Node: A Core Server able to assume monitoring functions in a cluster where the Master Node cannot be reached.

1.5. Master or Master Node: A Core Server that permanently assumes the Master role in a Cluster.

1.6. Cluster: Combination of one Master Node and one or more Failover Nodes created to enhance the responsiveness of the System.

1.7. Remote Probes: Software that is installed in a network segment and that collects monitoring data and transmits them to the Core Server.

1.8. PRTG Added Services: PRTG Added Services is a hosted service to send push notifications to mobile devices via Goggle, Apple, or Microsoft communications infrastructures and monitor publicly available hosts or URLs on behalf of the customer.

1.9. PRTG Apps: Apps for different mobile platforms (e.g. PRTG for iOS or PRTG for Android).

## 2. LICENSE GRANT, SCOPE, LIMITS, AND FEE

2.1. ACCEPTANCE: The Licensee, by accepting a download of the Software from the facilities established by the Licensor and by reviewing this Agreement before the installation of the Software, accepts the terms of this Agreement, and affirmatively acknowledges its acceptance by installing the Software on its System; provided that the Licensee may reject the terms of this Agreement by not installing the Software. By accepting the terms of this Agreement and installing the Software, the Licensee acknowledges that it is properly authorized to accept these terms as a natural person or an authorized representative of a business or other legal entity, to be legally able to enter into this Agreement and to bind itself or such business or legal entity to this Agreement. The date on which the acceptance occurs shall be the Effective Date of this Agreement. Accepting a download of the Software means, for the purposes of this Agreement,

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### 2.3. SCOPE: GENERAL

The Software is protected domestically and internationally by copyright, other rights and treaties. All rights and privileges not expressly granted the Licensee by this Agreement and applicable law remain with the Licensor. The Licensor provides only the object code of the Software and the license to the object code.

The Licensee may:

2.3.1. install the Software on one or several computers for which the Software is designed;

2.3.2. load the Software into the random-access memory of such computers, and to display and run the Software;

2.3.3. create a reasonable number of backup copies of the Software and of an image of the data storage media on which the Software is installed; the Licensee shall be responsible for safeguarding the installation files required for any new installation as well as the associated license keys; the Licensee shall label any backup copy on movable data storage media as such and mark the media with an appropriate copyright notice that identifies the Licensor as the copyright holder; and

2.3.4. perform an acceptance test to inform the Licensee of the quality of the Software for the Licensee's intended purposes, requirements and expectations.

Notwithstanding this grant, the Licensee may not, in particular, but without limiting Licensor's rights, otherwise duplicate, modify, distribute, decompile and reverse engineer the Software nor separate and repurpose components of the Software; remove copyright notices and license terms from the Software; translate the Software; sell, rent or lease the Software to third parties; or use the Software for illegal purposes.

In the event that the Licensee needs to enhance the interoperability of the Software with Licensee's Systems by way of modification or adaptation of the Software, the Licensee shall obtain Licensor's prior express written permission for such enhancements which Licensor may reasonably grant on reasonable commercial terms.

The Licensee shall obtain the Licensor's prior express written permission for any wired or wireless public performance of the Software which Licensor may reasonably grant on reasonable commercial terms. In the event that the Licensee should desire to transfer the License to a third party under mandatory applicable law, if any, the Licensee shall:

- first notify the Licensor in writing with all relevant information (date of transfer, Software and License type to be transferred, parties to transfer); and

- request the Licensor's prior approval;

whereupon the Parties shall make reasonable arrangements for such transfer, which may include the payment of a transfer and re-use fee (except in a sale of the Licensee or its change of control to a buyer in which case no fee shall apply except for any support or administrative services provided by the Licensor), provided however that Licensor may refuse the approval, in its sole discretion, when the applicable law does not require it to consent or provide a similar accommodation. In the event that the Licensee should exceed the permitted scope of the License, such as by installations of the Software beyond the authorized numbers, it shall promptly notify the Licensor in order to obtain an appropriate accommodation which may involve an increase of the license fee.

### 2.4. SCOPE BY LICENSE TYPE

Without limiting any other term in this Agreement, the scope of the License depends also on the type of license selected by the Licensee:

2.4.1. The "Commercial Edition," with additional terms in section 2.5.

2.4.2. The "Freeware," "Trial Edition" and "Special Edition" licenses with additional terms in section 2.6.

Licenses previously granted outside of the terms of this Agreement shall remain unaffected by the terms of this Agreement ("Grandfathered Licenses"); such Grandfathered Licenses include the "Site License," "Corporate Country License" and "Corporate 'n' Core Global License."

### 2.5. SCOPE OF COMMERCIAL EDITION LICENSE

2.5.1. The terms of the "Commercial Edition" license type differ for individual Core Server licenses and multiple Core Server licenses, the latter known as "XL ,n'/Unlimited License."

2.5.2. Individual Core Server licenses are limited to a single workstation and permit the installation of the Software on only a single System. Cluster functionality may be authorized under the additional terms of section 3.1 below.

2.5.3. For Software provided for multiple Core Servers as

an "XL ,n' Unlimited License," the Licensor will make a reasonable effort to agree to an agreement with the Licensee on the number of computers intended by the Licensee for the installation of the Software, so that the Licensee may deploy the Software globally at one or more locations or facilities. Cluster functionality may be authorized under the additional terms of section 3.2 below.

2.5.4. Under any Commercial Edition License, the Licensee may install Remote Probes on as many computers as the Licensee desires.

## 2.6. SCOPE OF FREWARE, TRIAL EDITION AND SPECIAL EDITION LICENSES

The terms of the License types "Freeware," "Trial Edition," and "Special Edition" are subject to these additional provisions:

2.6.1. The Licensor shall provide the Software to the Licensee free of charge and without payment of a license fee, but subject to the terms of this License Agreement except for terms governing fee payments by Licensee, like support and maintenance, correction, transfer administration or repair by Licensor.

2.6.2. Under a Freeware license, the grant shall limit the use of the Software by the Licensee to one hundred (100) sensors unless the parties have expressly agreed otherwise in writing.

2.6.3. Under a Trial Edition license, the Licensee may use the Software for no longer than a thirty (30) calendar day period from the Effective Date of this Agreement, provided that the Licensee may thereafter use the Software with no more than one hundred (100) sensors unless the Parties have expressly agreed otherwise in writing.

2.6.4. Under the Special Edition license, the Parties may individualize an agreement for the scope of use of the Software; the agreement must be in writing and may be an addendum to this Agreement.

2.6.5. Under the licenses stated in this section 2.6, the following provisions apply in addition to the other applicable terms of this Agreement:

2.6.5.1. The Licensee may install and use the Software on an unlimited number of computers.

2.6.5.2. Notwithstanding any prohibition or restriction in this Agreement of transfers of the Software and License, the Licensee may share the Software licensed under this section 2.6 with third parties, such as on a website or secure FTP server for downloading, provided that:

- (a) the Licensee has not modified the Software; and
- (b) the Licensee offers the Software free of any charge, expense or other compensation unless otherwise agreed with Licensor in writing; and

(c) the Licensee ensures that any third party gaining possession of the Software accepts the Licensor's License Agreement before installing the Software.

2.6.6. The Licensor does not assume any obligation to offer to, or enter into, a contract for maintenance or support of the Software, and the Licensee may install the Software only by releasing the Licensor from any obligation to correct, repair, support or maintain the Software or be liable for damages, including but not limited to compensatory, consequential, exemplary or punitive damages, resulting from the use of the Software obtained for free, except for the minimum of mandatory duties and obligations in the applicable law favoring the Licensee.

## 2.7. FEE

The Licensee shall pay the Licensor the applicable Fee, immediately and in full without discount or rebate, for the use of the Software. Sales taxes, value added taxes, customs and other duties as well as currency conversion and digital transaction charges are the Licensee's responsibility, as is the cost of shipping deliverables, if shipping should be involved. The Licensor publishes the applicable Fee for the several license types and the terms of payment on these websites:

- [https://www.paessler.com/prtg/price\\_list](https://www.paessler.com/prtg/price_list)

- <https://shop.paessler.com/shop/prtg/new/>

Except during the 30-calendar day period following the transmission of the license key (identified in section 2.8 below) by the Licensor to the Licensee, the Fee paid by a Licensee who is an end-user (as opposed to a reseller) is non-refundable; however, the Licensee may use the free Software licenses also identified in this Agreement to ascertain that the Software is suitable for the Licensee's purposes before paying the Fee.

## 2.8. LICENSE KEY ACTIVATION

The grant of the License under the terms of this Agreement shall become effective with the issuance of a license key to activate the Software by the Licensor to the Licensee unless otherwise stated in this Agreement. The Licensor shall issue a license key and information on the procedure to activate the Software with the license key. Upon activation, an individual identification of the computer on which the Software is installed and activated will be automatically transmitted to the Licensor in order to enable it to relate every license key to an identified computer. In the event of an authorized transfer of the Software from one computer to another computer, the Licensee must delete the Software from the first computer and re-activate the Software after its installation on the other computer.

## 2.9. DELIVERY

The Licensee may obtain the Software by download. The Licensor shall not be required to ship the Software on

tangible media to the Licensee. Each Party shall bear its own cost of its contribution to the transmission for download.

#### 2.10. SOURCE CODE

The Licensor does not provide access to the source code of the Software.

#### 2.11. SUPPORT

The Licensor does not provide support or maintenance to the Licensee under the terms of this Agreement. However, the Licensor offers such services separately from this Agreement.

#### 2.12. CORRECTION OF ERRORS AND DEFECTS

The Licensor does not, and the Licensee releases the Licensor from any expectation to, assume any responsibility, obligation or liability for errors and defects in the Software, the transmission of the Software during its download, and the Licensor's instructions for the installation or operation of the Software, in conformance with the Maryland Uniform Computer Information Transactions Act (§ 22-103 et seq. of the Annotated Code of Maryland) to its fullest extent, but the Licensor will provide the required statutory minimum correction in the event that a court or arbitral forum should apply other law.

### 3. CLUSTER FUNCTIONALITY

3.1. The Licensee may install the Software of the "Commercial Edition" license type defined in section 2.5.2 for the individual Core Server license on one additional System in addition to the primary installation, to serve as a corresponding Failover Node. To install and use a three-fold or four-fold Cluster, the Licensee must obtain one additional (second) license key, and to install and use a five-fold Cluster, the Licensee must obtain one more (a third) license key. The Software may not be deployed beyond a five-fold Cluster.

3.2. The Licensee may install the Software of the "Commercial Edition" license type in section 2.5.3 for the multiple Core Server license ("XL ,n'/Unlimited License") both as multiple individual Core Server installations and one or more Cluster installations in compliance with its agreement with the Licensor. In addition, the Licensee may install the Software as a "Failover Node" linked with one of the 'n' installations on not more than one System beyond the scope of the applicable License. The Licensee must in each case acquire one additional individual Core Server license for each two additional Cluster Nodes beyond the scope of the applicable license.

### 4. USE OF ADDED SERVICES AND THE PRTG APPS

4.1. As a service for PRTG installations, the customer can use "PRTG Added Services", for which the following terms and conditions shall apply.

4.2. Paessler AG provides these services on a gratuitous

basis. It is possible that these services can only be used if an active maintenance contract exists for the PRTG license used.

4.3. Paessler may provide the added services through third parties. These services include, for example, notifications (e.g. via push technology) and monitoring with specific "cloud" sensor types. For the best possible customer experience, Paessler may change or extend these services without prior notice. As soon as these functions are used in a PRTG interface (including our apps), or via the API, the PRTG Core Server will connect to external infrastructure that is owned by Paessler without any further query. In our Privacy Policy you will find a detailed list of added services and information about which data we store in the context of our service provision (<https://www.paessler.com/company/privacypolicy>).

4.4. Upon use of the "PRTG Added Services", the customer is obliged to comply with Amazon's Acceptable Use Policy (AUP), which may be viewed at <https://aws.amazon.com/aup/>. Without limitation in respect of the AUP terms and conditions, the cloud infrastructure may be used, in particular, only for notifications to the customer's own devices and for monitoring the customer's own websites and infrastructure.

4.5. Upon use of the "PRTG Added Services", the customer is obliged to comply with Amazon's Acceptable Use Policy (AUP), which may be viewed at <https://aws.amazon.com/aup/>. Without limitation in respect of the AUP terms and conditions, the cloud infrastructure may be used, in particular, only for notifications to the customer's own devices and for monitoring the customer's own websites and infrastructure.

4.6. In particular, the customer is prohibited from the following

4.6.1. use of the cloud infrastructure to send spam,

4.6.2. to send notifications to third parties without their prior express consent and

4.6.3. to monitor third-party or illegal websites.

4.7. Paessler AG is authorized to temporarily or permanently discontinue the "PRTG Added Services" service. Discontinuation will be previously announced, either on the internet website or via dialogs in the software, for example.

4.8. The liability of Paessler AG in the provision of the "PRTG Added Services" shall be limited to intentional acts and gross negligence.

4.9. Uninterrupted availability of the "PRTG Added Services" is not guaranteed.

### B. PRTG Apps

4.9. As a complementary service for PRTG installations, the

Licensor provides certain PRTG Apps for different platforms that the Licensee may download from the platform's appstores or from the Licensor's website.

4.10. The Licensee may use the PRTG Apps to connect to a PRTG server and view monitoring and related data or to configure the System. At the Licensor's discretion, it may include or exclude features in the PRTG Apps, such as stand-alone tools for performing network tasks. The Licensor may be required to use the PRTG Apps in order to subscribe to push notifications from the PRTG server. The Licensee reserves the right to offer each of the different PRTG Apps with different feature sets, depending on the platform and its technical requirements and features.

4.11. The Licensee represents and warrants to acknowledge that the Licensor may permanently or temporarily discontinue any or all of the PRTG Apps or to modify their features. The Licensor will make reasonable efforts to alert the Licensee to a discontinuation of any of the PRTG Apps on its website or through the Software.

4.12. The Licensee represents and warrants to acknowledge that the licenses for the PRTG Apps, except for terms otherwise stated herein, are governed by the providers of the app stores, such as Apple's AppStore license: <https://www.apple.com/legal/internet-services/itunes/dev/stdeula/>.

## **5. AUTOMATED SOFTWARE UPDATES, COMMUNICATION AND DATA PROTECTION**

5.1. The Licensee represents and warrants to acknowledge and accept that the Software is configured for automatic periodical communications with the Licensor's server through an internet link; such transmissions are intended to ascertain the availability of updates of the Software. The Licensee warrants and represents its sole responsibility to ensure, at its own risk, cost and expense, that the necessary internet connection is available.

5.2. The communication with Licensor's server stated above will trigger the transmission of statistical information on the installation of the Software from the Licensee to the Licensor, such as the number of sensors deployed. The Licensee warrants to review and accept the Licensor's Privacy Policy at <https://www.paessler.com/company/privacypolicy> before deploying the Software.

5.3. Unless otherwise configured by the Licensee, the Licensor does not provide an automated installation of Software updates, and the Licensee is responsible for the installation of a Software update. The Licensee may use one of the following automated processes at its discretion:

- Automatically download and install the latest version;
- Automatically download the latest version and alert the Licensee's administrator; or
- Only alert Licensee's administrator to the availability of a

new version.

5.4. The Licensee warrants and represents that this Agreement does not require the Licensor to develop and make available Software Updates, provided further that Licensor may condition, at its sole discretion, the development and offer of Software Updates on a separate maintenance agreement with the Licensee.

5.5. To download and install software updates an active maintenance plan is required.

## **6. DUTIES OF LICENSEE**

The Licensee shall be required, at its expense, to cooperate with the Licensor in the transmission of the Software for delivery, including Software updates, Software manual and Software documentation; to maintain a System with an environment suitable for the operation of the Software (including hardware, third-party software and internet connectivity); to download and install the then most recent Software update reasonably promptly after notification by the Licensor; to maintain current its contact information with the Licensor in order to enable the Licensee of a Software update and other issues, if any; to safeguard, by way of backup or otherwise, its data and other System components and the downloaded Software and its license key before installing a Software update; and to notify the Licensor of any infringement by the Software of the rights of any third party.

## **7. LIMITED WARRANTY**

7.1. Licensor warrants that the media, if any, on which the Software is furnished will be free from defects in material and workmanship under normal use for a period of thirty (30) calendar days from the date of delivery ("Warranty Period"), and that the transmission of the Software for a download from its server is free from defects. Licensee's exclusive remedy under this limited warranty is the replacement of any defective physical media on which the Software is furnished, as provided below, or a download from Licensor's server to replace the originally downloaded Software. To receive a replacement for defective media under this limited warranty, the Licensee must return the defective media to the Licensor during the Warranty Period, with proof of payment; in the case of a deficient download, it must notify the Licensor within the Warranty Period.

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THIS AGREEMENT EXCLUDES EVERY INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN NO EVENT SHALL THE LICENSOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER – INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING— TO THE FULLEST EXTENT PERMITTED BY LAW--THE DUTIES OF GOOD FAITH AND FAIR DEALING, OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER -- ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF, OR INABILITY TO USE, THE SOFTWARE, THE PROVISION OF, OR FAILURE TO PROVIDE, REQUIRED SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, PRODUCT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY BY THE LICENSOR, AND EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LICENSOR'S CUMULATIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY.

#### **9. DEFECTS OR ERRORS IN THE SOFTWARE**

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of warranties and liability in writing, and the Licensor shall determine whether an error or defect is not subject to such limitations; if not so limited, the Licensor shall remediate the error or defect within reasonable time, provide a replacement, or instruct the Licensee on reasonable options for the installation or operation of the Software to avoid the impact, if any, of an error or defect; provided further that the Licensor may elect to refund the Fee paid by Licensee, which shall be the sole and exclusive remedy in the event that the Licensor's other effort should fail or should appear futile to the Licensor. In the event of a defect in the title to the rights granted under the terms of this Agreement, the Licensor shall, within reasonable time and at its expense, provide the Licensee with a cure so that the Licensee may legally use the Software; the cure may include, without being limited to, options to replace the Software with other software that is reasonably acceptable to the Licensee; the Licensee may rescind this Agreement for a refund of the Fee paid to Licensor as its sole and exclusive remedy in the event that the Licensor cannot cure the defective title within reasonable time. In the event that the Licensee should intentionally or with gross negligence allege a non-verifiable defect or error in the Software, it shall reimburse the Licensor for the cost of the investigation in the alleged defect or error at reasonable commercial hourly rates.

#### **10. INDEMNIFICATION**

The Licensee, at its expense, shall defend, indemnify and hold harmless the Licensor and its officers, directors, employees, shareholders, agents, and successors (each an "Indemnified Party") from and against any and all damages, costs, and expenses, including reasonable attorneys' fees, incurred in connection with any third party claim, action, demand or complaint brought against the Indemnified Party by a third party which results or arises from: (i) a breach or alleged breach by the Licensee of any representation or warranty set forth under this Agreement; (ii) a copyright infringement claim arising out of the Licensee's combination of the Software with the Licensee's System or offerings to third parties, where such claim would not have arisen but for the Licensee's combination. The Licensor or an Indemnified Party shall notify the Licensee promptly of any such claim, action, demand or complaint and will give the Licensee full and complete authority (including settlement authority), and reasonable information and assistance for the defense.

#### **11. TERMINATION**

11.1. This License Agreement remains effective until terminated.

11.2. The Licensee may terminate this License Agreement by giving at least thirty (30) days written notice to the Licensor.

11.3. This Agreement will terminate immediately and

automatically without notice from the Licensor in the event that the Licensee should exceed its rights to use the Software as set forth in section 2 of this Agreement.

11.4. The Licensor may terminate the Agreement for cause and by giving at least thirty (30) days written notice to the Licensee. Termination for Cause shall include, but not be limited to any of the following:

11.4.1. The Licensee ceases to do business, becomes insolvent, files or has filed against it a petition of any chapter of the United States Bankruptcy Code and such petition has not been dismissed within forty-five (45) calendar days of its institution.

11.4.2. The Licensee breaches any other material obligation and fails to cure such breach within ten (10) calendar days after Licensor has served written notice of such breach on Licensee.

11.5. Upon termination of the Agreement:

11.5.1. The Licensee's rights to use the Software shall cease and the license grant under section 2 of this Agreement expires.

11.5.2. The Licensee shall destroy the Software and all copies immediately.

11.5.3. In addition, Licensor may enforce any rights provided in law and in equity against Licensee for harm caused the Licensor or third parties by the Licensee, in particular for unlawfully exceeding the License grant.

11.6. All terms of this Agreement that by their nature survive termination, including, but not limited to, limited warranties, limitation of liability, indemnification, general terms, and Licensor's proprietary rights, shall survive termination.

## **12. DATA PROTECTION AND PRIVACY, CONFIDENTIALITY**

12.1 The Licensor advises the Licensee that its data protection and privacy policy is to follow to the strict laws of the European Community as the standards most favorable to the protection of privacy world-wide. Actual and prospective Licensees in Nevada, Delaware and California are advised that the Licensor will collect, retain or delete personally identifiable information, of names, addresses, IP addresses, telephone numbers, email addresses only to the extent required to (1) enable the License key provision as stated in this Agreement, and (2) provide the Licensee with notifications of updates and version information which feature the Licensee cannot disable. The Licensee acknowledges and agrees that the Licensor may access or disclose information about the Licensee or any other information or data collected, stored or processed on the Licensor's servers, if required to do so by law or in the good-faith belief supported by evidence that such action is necessary to: (a) comply with any law, regulation, legal process or lawful governmental requests; (b) protect the rights or property of the Licensor or its

customers, including the enforcement of its agreements or policies governing use of the Software; or (c) act on a good faith belief supported by evidence that such access or disclosure is necessary to protect the personal safety of the Licensor's employees, customers, or the public.

12.2. The Licensee may not disclose to, or share with, third parties any License key obtained from the Licensor nor any custom addenda or amendments to this Agreement for a particular Licensee, if any. Notwithstanding the above in this subsection, the parties may publicly reference the existence of the business relationship between the parties as security service provider and reference customer, but only in reference and compliance listings, and not in advertising specifically focused on the other party.

## **13. Export Control Laws**

The Licensee must comply with all applicable domestic and international export and import control laws and regulations in its use and distribution of the Software, including its documentation, and, in particular, must not export or re-export the Software without all required United States and foreign government licenses. These laws include restrictions on destinations, end users, and end use. Without limitation, the Licensee warrants that it will not transfer the Software without U.S. government permission to anyone on U.S. government exclusion lists (see the Commerce Department's compliance list at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>.) The Licensee represents and warrants that it is not on any of those lists or under the control of or an agent for anyone on those lists or the entities listed above. The Licensor warrants that on the date of delivery of the Software to the Licensee: (i) Licensor has obtained all required export licenses for the delivery of the Software to the Licensee; (ii) the Export Control Classification, if any, for the Software is correct and complies with all applicable export control regulations; and (iii) delivery of the Software to the Licensee will not contravene any applicable export control regulations in the country of origin as well as U.S.-mandated export control lists.

Without liability to the Licensee and excluding any claim for a refund of the Fee, the Licensor may revoke or suspend, without notice, the grant of License under Section 2 in the event that it should discover an installation or use of the Software in violation of this Section 12 or by a person or entity on the Office of Foreign Asset Control's Specially Designated Nationals and Blocked Persons List.

## **14. GENERAL TERMS**

14.1. Assignment: Except in connection with merger, acquisition or sale of all or substantially all of a Party's stock or assets, neither Party may delegate, assign or transfer this Agreement or the rights or duties hereunder, and any attempt to do so, without the other

Party's express prior written consent, shall be void.

**14.2. Notices:** All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, courier, or by registered mail, return receipt requested, and shall be deemed given upon personal delivery or seven (7) days after deposit in the mail, provided further that email may be used if the delivery or receipt is evidenced by a return receipt or express acknowledgment, and provided further that SMS or text messages shall be deemed insufficient to meet any notice requirement. Notices shall be sent to the Parties at the last-known addresses or such other address as either party may designate for itself in writing.

**14.3. Governing Law and Forum:** This Agreement shall be governed in all respects by the laws of the United States of America and the State of Maryland as applied to contracts entered into between residents of Maryland and performed entirely within the State of Maryland and without regard to the conflicts of laws principles thereof. Arbitration (as specified in section 14.4) is a condition precedent to litigation. Any and all disputes arising under this Agreement shall be brought exclusively in the Superior Court of the District of Columbia or the United States District Court for the District of Columbia. The Superior Court of the District of Columbia and the United States District Court for the District of Columbia shall each have exclusive jurisdiction over disputes under this Agreement, and none other. Each Party consents to the personal jurisdiction of the above courts. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

**14.4. Disputes:** Any dispute or claim arising out of or related to this Agreement shall be resolved by binding arbitration, rather than in court. The arbitration will be governed by the Commercial Arbitration Rules (the "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The arbitration shall be heard by three arbitrators appointed in accordance with the AAA Rules. The arbitration shall be in the English language and seated in the District of Columbia. Both Parties agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated, or representative action. If for any reason a claim proceeds in court rather than in arbitration, both Parties waive any right to a jury trial. Both Licensor and Licensee may each bring suit in court to enjoin infringement or other misuse of intellectual property rights. This arbitration provision shall survive termination of this Agreement.

**14.5. Attorneys' Fees:** In the event any proceeding or lawsuit is brought by the Licensee or the Licensor in connection with, or related to, this Agreement, each of the Parties' shall bear its own costs, including but not limited

to court costs, expert witness fees and attorneys' fees, including costs and fees on appeal.

**14.6. Waiver:** The failure of either Party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either Party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

**14.7. Severability:** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

**14.8. Headings:** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

**14.9. Government End Users:** Licensor represents that the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212.

**14.10. Force Majeure:** Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such Party.

**14.11. No Agency:** Nothing contained herein shall be construed as creating any agency, employment relationship, agency or other form of joint enterprise between the Parties, and the Parties represent and understand to act as Independent contractors.

**14.12. Entire Agreement:** This Agreement constitutes the entire agreement between the Parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both Parties.