Licenční smlouva č. 21/600/0550

„Pořízení nástroje na scanování zranitelností ISCS"

Smluvní strany:

Česká republika – Generální ředitelství cel

se sídlem:	Budějovická 7, 140 96, Praha 4
IČ:	71214011,
DIČ:	CZ71214011
bankovní spojení:	ČNB Praha 1.
číslo účtu:	1020011/0710
jednající:	
Spojení:	

(dále jen „**nabyvatel**")

a

ANECT a.s.

se sídlem:	Vídeňská 204/125, Přízřenice, 619 00 Brno
IČ:	25313029, DIČ: CZ25313029

společnost zapsaná v obchodním rejstříku vedeném Krajským soudem v Brně, oddíl B, vložka 2113

bankovní spojení:	Komerční banka a.s., pobočka Brno,
číslo účtu:	27-6667590237/0100
zastoupená:	Janem Zinkem, předsedou představenstva

(dále jen „**poskytovatel**")

uzavírají v souladu s ustanovením § 2358 a násl. zákona č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů (dále jen „**OZ**") s přihlédnutím k zákonu č. 121/2000 Sb., o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů (autorský zákon), ve znění pozdějších předpisů (dále jen „**autorský zákon**") a zákona č. 90/2012 Sb., o obchodních společnostech a družstvech (zákon o obchodních korporacích) ve znění pozdějších předpisů (dále jen „**ZOK**"), a zákonem č. 134/2016 Sb., o veřejných zakázkách, ve znění pozdějších předpisů (dále jen „smlouva"), tuto

licenční smlouvu

(dále jen „**Smlouva**")

Smluvní strany, vědomy si svých závazků v této Smlouvě obsažených a s úmyslem býti touto Smlouvou vázány, dohodly se na následujícím znění Smlouvy:

Čl. 1 Úvodní ustanovení

1.1 Poskytovatel prohlašuje, že je právnickou osobou řádně založenou a existující podle českého právního řádu, splňuje veškeré podmínky a požadavky v této Smlouvě stanovené a je oprávněn tuto Smlouvu uzavřít a řádně plnit závazky v ní obsažené.

1.2 Poskytovatel prohlašuje, že je oprávněným prodejcem produktů společnosti Qualys, Inc., 919 E Hillsdale Blvd, 4th Floor, Foster City, CA 94404 USA (dále jen „Qualys").

1.3 Poskytovatel prohlašuje, že je oprávněn poskytovat práva užití k produktům společnosti Qualys.

1.4 Výše uvedený profesní kvalifikační předpoklad se v plném rozsahu vztahuje i na případné subdodavatele, pokud dodavatel zamýšlí jimi plnit příslušnou část zakázky.

1.5 Poskytovatel dále prohlašuje, že má dostatečné množství certifikovaných specialistů, aby mohl nabyvateli řádně poskytovat konzultace spojené s používáním dodaných produktů. Poskytovatel prohlašuje, že je ve smyslu ust. § 5 OZ odbornou osobou v dané oblasti.

1.6 Poskytovatel se dále zavazuje, že po celou dobu účinnosti Smlouvy bude disponovat dostatečným množstvím certifikovaných specialistů v místě plnění, a to nejméně v rozsahu 1 analytik/konzultant, tak aby mohl nabyvateli řádně poskytovat konzultace spojené s používáním dodaných produktů.

Čl. 2 Předmět smlouvy

2.1 Předmět této smlouvy je definován v Příloze č. 1 Smlouvy – Technická specifikace předmětu veřejné zakázky, a to co do množství, druhu a délky poskytnutí softwaru (dále jen „**Software**") a dalšího souvisejícího plnění.

2.2 Poskytovatel se touto Smlouvou zavazuje zajistit nabyvateli v souladu s autorským zákonem a OZ právo užití software (dále jen „**Licence**") způsobem, v rozsahu a za podmínek stanovených v této Smlouvě.

2.3 Poskytovatel se zavazuje dodat nabyvateli licenční klíče a přístupové kódy, které budou zaslány na email nabyvatele ▅▅▅▅▅▅▅▅▅▅▅.

2.4 Zdrojové kódy k Software nejsou předmětem dodávky.

2.5 Nabyvatel se zavazuje za řádně poskytnuté plnění uhradit poskytovateli odměnu za Licenci ve výši a za podmínek stanovených v této Smlouvě.

2.6 Licence poskytovaná poskytovatelem je účinná od okamžiku potvrzení přijetí licenčních klíčů prostřednictvím emailu nabyvatele ▅▅▅▅▅▅▅▅▅▅ na e-mail poskytovatele ▅▅▅▅▅▅▅▅▅▅.

Čl. 3 Místo a doba plnění

3.1 Místem dodání Software se rozumí sídlo nabyvatele uvedené v této smlouvě. Dodáním Software se rozumí předání klíčů a přístupů dle bodu 2.3 této smlouvy. Převzetí klíčů potvrdí nabyvatel poskytovateli prostřednictvím emailu.

3.2 Poskytovatel se zavazuje dodat nabyvateli Software do 30 kalendářních dnů účinnosti této Smlouvy.

Čl. 4 Odměna a platební podmínky

4.1 Odměna za předmět plnění (za poskytnutí Software a zajištění Licence) byla stanovena na základě výsledků veřejné zakázky č. 55344/2021 - Pořízení nástroje pro scanování zranitelností ISCS, kdy nabídka poskytovatele je přílohou č.2 a celkově činí:

<div align="center">

1.785.327,00 Kč bez DPH

2 160 245,60 Kč včetně 21 % DPH

</div>

(dále jen „**Odměna**")

4.2 Odměna za Licenci zahrnuje též cenu přenosového média, pokud je Software na něm dodáván, a veškeré náklady související s dodáním do místa plnění.

4.3 Poskytovatel je oprávněn vystavit fakturu na úhradu Odměny po dodání Software, přičemž dodáním se rozumí postup uvedený v bodu 3.1 Smlouvy.

4.4 Splatnost řádně vystaveného daňového dokladu – faktury obsahující náležitosti dle příslušných právních předpisů činí 30 dnů ode dne doručení nabyvateli do sídla uvedeného v této smlouvě nebo do datové schránky s následujícími parametry: ID datové schránky „Generální ředitelství cel": 7puaa4c.

4.5 Faktura(y) musí obsahovat náležitosti daňového dokladu podle § 435 OZ, podle § 7 zákona č. 90/2012 Sb., o obchodních společnostech a družstvech (zákon o obchodních korporacích), podle zákona č. 563/1991 Sb. o účetnictví, ve znění pozdějších předpisů a podle § 29 zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů a odkaz na tuto smlouvu.

4.6 Faktura musí obsahovat také evidenční čísla této Smlouvy. Pokud faktura nebude obsahovat stanovené náležitosti dle této Smlouvy, nebo v ní nebudou správně uvedené údaje, je objednatel oprávněn vrátit ji ve lhůtě 10 (slovy: deseti) pracovních dnů od jejího obdržení poskytovateli s uvedením chybějících náležitostí nebo nesprávných údajů. V takovém případě bude faktura poskytovatelem opravena a nová lhůta splatnosti v délce 30 dnů začne plynout doručením opravené faktury zpět objednateli. V případě, že objednatel fakturu vrátí, přestože faktura je správná a předepsané náležitosti obsahuje, zůstává v platnosti původní lhůta splatnosti faktury a pokud objednatel fakturu nezaplatí v původním termínu splatnosti, je v prodlení.

4.7 Peněžní závazek nabyvatele se považuje za včas splněný dnem připsání příslušné částky ve prospěch účtu poskytovatele. Platba faktur(y) bude provedena bezhotovostním převodem na bankovní účet poskytovatele, jenž je uveden v této Smlouvě.

4.8 Platby budou probíhat výhradně v Kč a rovněž veškeré cenové údaje budou v této měně.

4.9 Smluvní strany si dojednaly, že nabyvatel je oprávněn provést zajišťovací úhradu daně z přidané hodnoty ve smyslu ust. § 109a zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů, na účet příslušného správce daně, jestliže se poskytovatel stane ke dni uskutečnění zdanitelného plnění nespolehlivým plátcem daně ve smyslu ust. § 106a zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů.

Čl. 5 Ochrana obchodního tajemství a důvěrných informací

5.1 Obě smluvní strany berou na vědomí, že tato Smlouva a veškerá práva, povinnosti a závazky z ní vyplývající, jsou považovány za důvěrné a smluvní strany se zavazují zachovávat o nich mlčenlivost. To neplatí, je-li poskytnutí informace třetí osobě nezbytné pro plnění závazků z této Smlouvy.

5.2 Smluvní strany tímto souhlasně prohlašují, že nepovažují za porušení ochrany obchodního tajemství ve smyslu ustanovení § 504 OZ a ustanovení § 1730 odst.2 OZ situace, pokud smluvní strana poskytne v rozsahu nezbytně nutném důvěrné informace dle této Smlouvy svým právním, účetním nebo daňovým poradcům, za předpokladu, že jsou tyto osoby vázány zákonnou nebo smluvní povinností mlčenlivosti alespoň v rozsahu stanoveném v této Smlouvě.

5.3 V případě přístupu k osobním údajům, které jsou v rámci Celní správy ČR zpracovávány, se tímto poskytovatel zavazuje k tomu, že při své činnosti bude postupovat v souladu s Nařízením Evropského parlamentu a Rady (EU) 2016/679 a zákona č. 110/2019 Sb., o zpracování osobních údajů a o změně některých zákonů, zejména:

a) přijme taková opatření, která zajistí náležité zabezpečení zpřístupněných osobních údajů, včetně jejich ochrany pomocí vhodných technických nebo organizačních opatření před neoprávněným či protiprávním zpracováním a náhodnou ztrátou, zničením nebo poškozením,

b) bude se zpřístupněnými osobními údaji nakládat pouze v rozsahu nezbytně nutném k plnění předmětu díla,

c) bude zachovávat mlčenlivost ohledně zpřístupněných osobních údajů.

d) V případě zapojení třetí strany do plnění předmětu díla je poskytovatel povinen tuto stranu smluvně zavázat k plnění výše uvedených povinností v oblasti ochrany osobních údajů.

Čl. 6 Servisní a reklamační podmínky, řešení vad a záruky

6.1 Záruka na Software je poskytována ze strany poskytovatele autorských práv Software a vyplývá z užívacích práv k provozování dodaného Software dle licenčních podmínek poskytovatele Qualys, které jsou nedílnou součástí a přílohou č. 3 této smlouvy.

6.2 Poskytovatel poskytuje na dodávaný SW záruku na bezvadnou funkci v délce trvání 12 měsíců. V případě, že bude na faktuře nebo na protokolu o předání a převzetí vyznačena delší záruční doba, má tato přednost před ustanovením této Smlouvy. Záruční doba začíná běžet ode dne převzetí předmětu plnění nabyvatelem.

6.3 Nabyvatel odpovídá za užívání licencovaného Software v souladu s licenčními podmínkami (užívacími právy) poskytovatele Qualys vztahujícím se k danému Softwaru.

6.4 Software je produkt poskytovatele. Případné reklamace nebo nároky z odpovědnosti za vady Software nebo ze související odpovědnosti za škodu bude uplatňovat nabyvatel přímo vůči poskytovateli na základě přílohy č. 3 této smlouvy.

Čl. 7 Sankční ujednání

7.1 Pro případ prodlení nabyvatele se zaplacením faktury je nabyvatel povinen zaplatit poskytovateli úrok z prodlení dle nařízení vlády č. 351/2013 Sb., kterým se určuje výše úroků z prodlení a nákladů spojených s uplatněním pohledávky, určuje odměna likvidátora, likvidačního správce a člena orgánu právnické osoby jmenovaného soudem a upravují některé otázky Obchodního věstníku a veřejných rejstříků právnických a fyzických osob a evidence svěřenských fondů a evidence údajů o skutečných majitelích, ve znění pozdějších předpisů.

7.2 V případě prodlení poskytovatele s předáním Software vzniká nabyvateli nárok na smluvní pokutu ve výši 0,05 % z Odměny za každý započatý den prodlení.

7.3 Smluvní strany prohlašují, že celková předvídatelná výše škody, vzniklá výhradně v souvislosti s poskytnutou licencí, která může z porušení povinností odpovědné smluvní strany při plnění této Smlouvy ve věci poskytnuté Licence vzniknout poškozené smluvní straně a kterou může nebo mohla odpovědná smluvní strana v době vzniku této Smlouvy při vynaložení obvyklé péče předvídat, v žádném případě nepřesáhne částku 2 000 000,- Kč.

7.4 V případě nedodržení bodu 10.7 zaplatí poskytovatel nabyvateli sankci ve výši 50.000,- Kč.

7.5 Žádná ze smluvních stran neodpovídá za škodu způsobenou porušením svých povinností vyplývajících z této Smlouvy, bylo-li způsobeno okolnostmi vylučujícími odpovědnost ve smyslu ust. § 2913 odst. 2 OZ.

7.6 Sankce i náhrada způsobené škody jsou splatné do 30 kalendářních dnů ode dne doručení písemné výzvy k zaplacení společně s příslušným daňovým dokladem - fakturou smluvní straně, která je povinná příslušnou sankci nebo náhradu škody zaplatit.

7.7 Není-li dále stanoveno jinak, zaplacení jakékoliv sjednané smluvní pokuty nezbavuje povinnou smluvní stranu povinnosti splnit své závazky a rovněž jí nezbavuje povinnosti uhradit náhradu škody vzniklé v souvislosti s porušením jejího závazku v plné výši.

7.8 Smluvní strany si výslovně ujednaly, že k jiným než zde uvedeným a dále např. ústně sjednaným smluvním sankcím, jakož i k smluvním sankcím sjednaným dodatečně nebude přihlíženo.

7.9 Smluvní strany si vyloučily aplikaci ust. § 1806 OZ tzn. že úroky z úroků nelze požadovat.

Čl. 8 Rozhodné právo a řešení sporů

8.1   Práva a povinnosti smluvních stran vyplývající z této Smlouvy se řídí autorským zákonem a OZ.

8.2   Smluvní strany se zavazují vyvinout maximální úsilí k odstranění vzájemných sporů vzniklých na základě Smlouvy nebo v souvislosti s ní, včetně sporů o její výklad či platnost a usilovat se o smírné vyřešení těchto sporů nejprve prostřednictvím jednání kontaktních osob nebo pověřených zástupců.

8.3   Smluvní strany podle § 89a zákona č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů určují jako místně příslušný soud Obvodní soud pro Prahu 1; v případě, že podle procesních předpisů je k rozhodování věci v prvním stupni příslušný krajský soud, určují smluvní strany jako místně příslušný soud Městský soud v Praze.

Čl. 9 Trvání Smlouvy

9.1   Tato smlouva se uzavírá na období 36 měsíců, přičemž nabývá platnosti podpisem zástupců obou smluvních stran a účinnosti dnem, kdy bude zveřejněna v registru smluv.

9.2   Smluvní strany si výslovně ujednaly, že poskytovatel není oprávněn tuto smlouvu vypovědět po dobu platnosti Licence zakoupené nabyvatelem.

9.3   Nabyvatel i poskytovatel jsou oprávněni od této Smlouvy odstoupit v případě jejího podstatného porušení druhou smluvní stranou. Odstoupení se provádí písemným oznámením a je účinné jeho doručením na adresu uvedenou v této smlouvě.

9.4   Za podstatné porušení se považuje:

a)   ze strany poskytovatele prodlení při plnění termínu předání Software stanoveného v bodu 3.2 této smlouvy delším než 30 (slovy: třicet) dnů,

b)   ze strany objednatele zejména prodlení při hrazení smluvní ceny poskytovateli delším než 30 (slovy: třicet) dnů a/nebo porušení kterékoliv licenční podmínky vztahující se k nakládání se Software.

Čl. 10 Závěrečná ustanovení

10.1   Tato Smlouva představuje úplnou dohodu smluvních stran o předmětu této Smlouvy a nahrazuje veškerá předešlá ujednání smluvních stran ústní i písemná.

10.2   Tuto Smlouvu je možné měnit pouze písemnou dohodou smluvních stran ve formě vzestupně číslovaných dodatků této Smlouvy, podepsaných za každou smluvní stranu osobou nebo osobami oprávněnými zastupovat jménem smluvních stran. Smluvní strany si dále ujednaly, že k jiným formám nebude přihlíženo a nebudou jimi vázány.

10.3   Pokud by se kterékoliv ustanovení této Smlouvy ukázalo být neplatným nebo nevynutitelným nebo se jím stalo po uzavření této Smlouvy, pak tato skutečnost nepůsobí neplatnost ani nevynutitelnost ostatních ustanovení této Smlouvy, nevyplývá-li z donucujících ustanovení právních předpisů jinak. Smluvní strany se zavazují takové neplatné či nevynutitelné ustanovení nahradit platným a vynutitelným ustanovením, které je svým obsahem nejbližší účelu neplatného či nevynutitelného ustanovení.

10.4 Poskytovatel výslovně souhlasí s tím, že nabyvatel tuto smlouvu uveřejní na svém profilu v plném znění v souladu se zákonem č. 134/2016 Sb., o zadávání veřejných zakázek, ve znění pozdějších předpisů.

10.5 Smluvní strany si ujednaly, že závazky vyplývající z této smlouvy se promlčují ve lhůtě 10 let ode dne, kdy smluvní strana mohla poprvé toto právo uplatnit.

10.6 V souladu se zákonem č. 340/2015 Sb., o registru smluv, se strany dohodly, že nabyvatel zašle tuto smlouvu správci registru smluv k uveřejnění ve lhůtě, stanovené tímto zákonem. Osobní údaje stran před odesláním budou anonymizovány v souladu se zákonem č. 110/2019 Sb., o zpracování osobních údajů, ve znění pozdějších předpisů, ve znění pozdějších předpisů.

10.7 V souladu s vyhláškou č. 82/2018 Sb. (vyhláška o kybernetické bezpečnosti) se poskytovatel zavazuje k bezpečné likvidaci dat bez možnosti obnovení v okamžiku ukončení smluvního vztahu.

10.8 Smluvní strany si výslovně ujednaly, že tuto smlouvu nelze postoupit na řad. Žádná ze smluvních stran není oprávněna vtělit jakékoliv právo plynoucí jí ze smlouvy nebo z jejího porušení do podoby cenného papíru.

10.9 V případě rozporu mezi touto smlouvou a jejími přílohami, případně dalšími licenčními podmínkami má vždy přednost ustanovení této smlouvy.

10.10 Nedílnou součást Smlouvy tvoří tyto přílohy:

Příloha č. 1:	Technická specifikace
Příloha č. 2:	Nabídka poskytovatele
Příloha č. 3:	Licenční podmínky

10.11 Každá ze smluvních stran si ponechá jednu elektronicky podepsanou verzi této Smlouvy.

Smluvní strany prohlašují, že si tuto Smlouvu přečetly, že s jejím obsahem souhlasí a na důkaz toho k ní připojují svoje podpisy.

Poskytovatel   **Nabyvatel**

V Praze dne   **V Praze dne**

Jan Zinek
Digitálně podepsal Jan Zinek
Datum: 2021.11.18 18:42:21 +01'00'

....

ANECT a.s.

Jan Zinek
předseda představenstva

Příloha č. 1

Technická specifikace

Poskytovatel musí splnit následující požadavky:

1. **Požadavky na kvalifikaci poskytovatele:**

Tento systém je součástí řešení „Kybernetické bezpečnosti organizace v souladu s požadavky ZKB", kdy se jedná především o splnění požadavků definovaných zákonem č. 181/2014 Sb. o kybernetické bezpečnosti a jeho prováděcích vyhlášek. Z tohoto důvodu je nutné navrhnout a implementovat řešení, které bude vyhovovat aktuálním potřebám nabyvatele a umožní splnění těchto požadavků.

Z tohoto důvodu musí poskytovatel řešení splňovat příslušné kvalifikační předpoklady ke zvládnutí tohoto úkolu a musí být schopný implementovat nabízené řešení do stávajícího systému ISCS jako podpůrné aktivum prvku KII a VIS CS. Poskytovatel musí mít praktické zkušenosti s detekcí, vyhodnocováním a řešením bezpečnostních událostí i incidentů, a proto musí být registrován v databázi TF-CSIT týmů, provozovanou **Trusted Introducers**, alespoň na úrovni „**ACCREDITED**". Nabyvatel má ze zákona povinnost udržovat intenzivní komunikaci se zahraničními subjekty, zejména s členskými státy EU a zajišťovat bezpečnost prvku KII a VIS CS. Nabyvatel požaduje po poskytovateli aby:

1) prokázal technickou kvalifikaci doložením popisu opatření poskytovatele k zajištění kvality dodávky předložením certifikátu vydaného certifikační autoritou (akreditovaným subjektem), z něhož bude vyplývat splnění podmínek dle normy **ISO 27001**

2) disponoval dostatečným množstvím certifikovaných specialistů, kteří budou schopni nabyvateli řádně poskytovat konzultace spojené s používáním dodaných produktů. Alespoň jeden specialista týmu poskytovatele musí mít certifikaci **Specialista řízení bezpečnosti informací** s následujícími požadavky:

Praxe a vzdělání:

- Minimálně ukončené středoškolské vzdělání a 5 let prokazatelné praxe v oblasti návrhu, implementace a řízení ISMS dle ISO/IEC 27001 řady nebo podle zákona 181/2014 Sb. ve znění pozdějších předpisů.

Certifikace:

- Certifikace Certified Information Security Manager (CISM), řízení kybernetické bezpečnosti nebo obdobné (v případě, že poskytovatel bude chtít doložit obdobný certifikát vydaný jinou autoritou, nabyvatel požaduje po poskytovateli doložení rozdílové analýzy rozsahu oblastí, které jsou pokryty certifikační zkouškou, jíž je certifikát podložen, oproti rozsahu pokrytém certifikační zkouškou uvedeného certifikátu.)

2. **Požadavky na zkušenosti poskytovatele – reference:**

Účastník předloží seznam dvou zakázek, ze kterého bude zřejmé, že účastník v posledních pěti letech před zahájením zadávacího řízení realizoval obdobné služby v oblasti zabezpečení IS v součtu minimálně v hodnotě 500.000,- Kč bez DPH.

Pro účely zjištění zkušeností s nabízeným systémem, musí být alespoň jedna z uvedených referencí provedena u klienta spravujícího prvek Kritické Informační infrastruktury (KII) podle zákona 181/2014 Sb. ve znění pozdějších předpisů.

3. Požadavky na nasazení produktu a součinnost při realizaci projektu

Veškerá zařízení i software musí být dodána včetně tříleté podpory (maintenance), která musí zahrnovat aktualizace software, zákaznickou podporu telefonem a emailem v českém nebo slovenském jazyce v režimu 8x5, případnou hardwarovou záruku s reakcí následující pracovní den v sídle zadavatele (on-site NBD).

Projekt testování technických zranitelností a webových aplikací musí obsahovat kompletní dodávku a instalaci veškerého potřebného SW a HW vybavení pro naplnění uvedených cílů, včetně základní konfigurace a zaškolení do obsluhy a údržby dodaného HW a SW. Implementace musí obsahovat úspěšné provedení ověřovacích testů vybraných externích a interních systémů a web aplikací zadavatele.

Projekt musí být řešen v celé své šíři uvedených požadavků pouze jediným produktem, s integrovaným uživatelským interface a centralizovaným managementem všech jeho funkcionalit z jedné centrální konzole. Není přípustné propojení více nástrojů s různým management rozhraním nebo různým uživatelským interface.
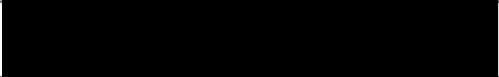
Nabyvatel požaduje 14denní bezplatný zkušební provoz, kdy se ověří všechny výše uvedené náležitosti a podmínky na 90% rozsahu implementace. Při jejich splnění bude projekt bezpečnosti akceptován.

Maximální doba potřebná k nasazení produktu a jeho předání k 14dennímu bezplatnému zkušebnímu provozu je 1 měsíc od podpisu smlouvy.

KRYCÍ LIST NABÍDKY

veřejná zakázka malého rozsahu s názvem

„Pořízení nástroje na scanování zranitelností ISCS"

dodavatel	
obchodní firma/ název/jméno a příjmení:	ANECT a.s.
sídlo/místo podnikání uchazeče:	Vídeňská 204/125, Přízřenice, 619 00 Brno
jméno a podpis osoby/osob oprávněné/oprávněných jednat jménem či za dodavatele	Jan Zinek předseda představenstva ANECT a.s.
IČO:	25313029
DIČO:	CZ25313029
datová schránka:	hddtmkq
bankovní spojení:	Komerční banka, a.s., pobočka Brno č.ú.: 27-6667590237/0100
kontaktní osoba:	███████████████
telefonní spojení:	███████████████
e-mailová adresa:	███████████████

nabídková cena

obsah nabídkové ceny	nabídková cena Kč bez DPH	nabídková cena Kč s DPH
cena předmětu veřejné zakázky dle čl. IV výzvy	1 785 327,00	2 160 245,60

V Praze dne dle elektronického podpisu

....
Jan Zinek
předseda představenstva
ANECT a.s.

MASTER CLOUD SERVICES AGREEMENT

This **MASTER CLOUD SERVICES AGREEMENT** is effective as of the date last executed below and is entered into by and between Qualys (as defined below), on behalf of Qualys GmbH, and Customer as identified below.

Customer Full Legal Name:	
Customer Address:	

1.   DEFINITIONS

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control,**" for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Agreement**" means this Master Cloud Services Agreement and any exhibits hereto.

"**Assets**" means the IP addresses, domain names, web applications and other assets to which Customer directs the Cloud Services.

"**Beta Services**" means Qualys services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

"**Cloud Services**" means the products and services, including any data, that are ordered by Customer under an Order Form and made available online by Qualys, including any offline components.   Cloud Services shall not include any Beta Services

"**Customer**" means the customer named above and its Affiliates that have signed Order Forms.

"**Customer Data**" means electronic data and information regarding Customer's Assets that Qualys obtains solely as a result of its provision, and the Customer's use, of the Cloud Services. Reports shall be deemed to be Customer Data.

"**Documentation**" means the usage guides and policies made available by Qualys to Customer, as updated from time to time, via login to the applicable Service.

"**Hardware**" means the servers that are included with certain subscriptions to Cloud Services.

"**Malicious Code**" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"**Order Form**" means an ordering document or online order specifying the Cloud Services to be provided by Qualys that is provided by Customer to Qualys based on a Qualys quote and that is accepted by Qualys provisioned by Qualys.

"**Personal data**" are any information which are related to an identified or identifiable natural person.

"**Qualys**" means the entity from which services are purchased. If services are purchased from the following entities, then the agreement is directly by and between Customer and the listed entity, without regard to Qualys, Inc. or its Affiliates unless otherwise stated herein. As of the Effective Date, Qualys entities include: Qualys, Inc., Qualys GmbH, Qualys Ltd., Qualys Technologies SA, Qualys Security TechServices Pvt. Ltd., Qualys Canada Ltd., Qualys Netherlands B.V., Qualys Australia Pty Ltd., Qualys Singapore Pte Ltd. Qualys reserves the right to add Affiliates without amendment to this Agreement.

"**Reports**" means the reports made available to Customer that summarize the findings regarding the Assets.

"**Reseller**" means an entity that has entered into a direct agreement with Qualys that permits such entity to resell the Cloud Services to Customers.

"**Software**" means the software loaded onto Hardware provided herein and/or software that is loaded onto Customer's servers to allow virtual scanning or connection to the Cloud Services

"**Subscription Term**" means term of each subscription as specified in the applicable Order Form.

"**Third Party Data**" means data provided to Qualys by third parties that Qualys uses to provide the Cloud Services, such as vulnerability information.

"**User**" means an individual who is authorized by Customer to use a Cloud Services and to whom Customer has supplied a user identification and password. Users may include, for example, employees, Affiliates, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

2. **QUALYS RESPONSIBILITIES**

2.1 **Provision of Cloud Services.** Qualys will (a) make the Cloud Services available to Customer for the applicable Subscription Term, in accordance with this Agreement and the applicable Order Forms, (b) provide Customer with Qualys standard support for the Cloud Services as attached as Exhibit A, (c) make the Cloud Services available pursuant to the Qualys Service Agreement attached as Exhibit B, and (d) provide the Cloud Services in accordance with laws and government regulations applicable to Qualys' provision of the Cloud Services generally, including, without limitation and if applicable, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "General Data Protection Regulation" or "GDPR").

2.2 **Protection of Customer Data.** Qualys will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data pursuant to the Security Datasheet set forth in Exhibit C.

2.3 **Qualys Personnel.** Qualys will be responsible for the performance of Qualys's personnel (including its employees and contractors) and the Qualys personnel's compliance with Qualys' obligations under this Agreement.

3. **ORDERING, USE OF CLOUD SERVICES, HARDWARE, AND SOFTWARE**

3.1 **Ordering.** Customer may place Orders for the Cloud Services by confirming an Order Form to Qualys or to a Reseller. Customer's Affiliates may also confirm Order Forms either directly to Qualys or to a Reseller. Upon confirmation of an Order Form by a Customer Affiliate such Customer's Affiliate's rights and obligations relating to the Cloud Services shall be governed by the terms of this Agreement as if such Affiliate were "Customer". The subscriptions ordered by Customer may be used by Customer's Affiliates solely for the Customer Affiliates' internal use provided that Customer shall ensure that such Customer Affiliates comply with all applicable terms in this Agreement including, without limitation, Section 3.3. Customer hereby agrees that Customer shall be liable for any breach of this Agreement by a Customer Affiliate as if the breach were committed by Customer itself. Only Customer and not Customer Affiliates shall have a claim against Qualys for any breach of this Agreement.

3.2 **Rights.** Subject to Customer's compliance with the terms and conditions of this Agreement, Qualys grants Customer a limited, non-exclusive, non-transferable right during the applicable Subscription Term to: (i) access the user interface of the Cloud Services with an industry standard web browser (like MS IE, Firefox, Chrome, Safari, etc.) and to use the Cloud Services, solely for Customer's own internal business purposes; (ii) access, use, and internally distribute the Documentation; and (iii) grants Users the right to access the Cloud Services solely for Customer's (or the Affiliate's, if applicable) own internal business purposes.

3.3 **Restrictions.** Customer shall not (i) modify, adapt, alter, translate or create derivative works of the Cloud Services or Documentation; (ii) reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code used in connection with the Cloud Services and/or any aspect of Qualys' technology; (iii) access and/or engage in any use of the Cloud Services in a manner that abuses or materially disrupts the Assets, networks, security systems, of any third party; (iv) rent, lease, loan, or use the Cloud Services to a third party via timesharing or as a service bureau; (v) market, offer to sell, sell, and/or otherwise resell the Cloud Services to any third party; (vi) use the Cloud Services other than in accordance with the Documentation; (vii) use the Cloud Services to scan an Asset for which Customer does not have the right or consent to scan; or (viii) remove, alter or obscure any proprietary notices on the Cloud Services or the Documentation.

3.4 **Information Provided to Qualys.** Customer hereby acknowledges and agrees that as it relates to any Personal Information shared by or for Customer with Qualys either directly or through the use of the Cloud Services, Customer is the controller of Personal Data and Qualys is the processor of Personal Data under this Agreement. Customer bears the sole responsibility and liability to ensure that the processing of personal data occurs solely on a sufficient legal basis. Qualys and Customer will enter into a Data Processing Agreement ("DPA") as provided in Exhibit D which will govern the processing of any Personal Data under this Agreement.

3.5 **Usage Limits.** Use of the Cloud Services are subject to limits on the number of Assets as specified in an Order Form. If Customer exceeds a usage limit, then Qualys will work with Customer to seek to reduce Customer's usage to conform to the applicable limit. If, notwithstanding Qualys' efforts, Customer is unable or

unwilling to abide by a usage limit, then shall be liable for the fees for such excess usage in accordance with the "Invoicing and Payment" section below.

3.6   **Hardware.** If the Cloud Services on an Order Form include Hardware, then Qualys will provide the Hardware to Customer on a subscription basis and only for the limited use as permitted herein and in accordance with the Documentation and the applicable Order. Customer acknowledges that not all Cloud Services subscriptions include Hardware. Qualys will select the carrier and bear the cost of shipment, insurance and duties for delivery of such Hardware to the location Customer designates. In order to provide the Cloud Services and to support the Hardware, Qualys may access the Hardware remotely at any time, or, with Customer's agreement on Customer's premises during the Subscription Term and solely as necessary to provide the Cloud Services and related support. Qualys shall not be liable for any failure to maintain or update Hardware that is caused by Customer's delay or refusal to allow Qualys access to the Hardware. At the end of any Subscription Term that is not renewed, Customer will select the carrier and bear the cost of shipment, insurance and duties for return of such Hardware to the location Qualys designates. Hardware must be returned to Qualys within 30 days after the end of the Subscription Term. In the event that Customer does not return the Hardware within 30 days after the end of the Subscription Term, then Qualys shall invoice Customer, and Customer shall pay such invoice in accordance with Section 4, for a non-return fee of Two thousand dollars ($2,000) per piece of Hardware.

3.7   **Rights and Possession of Hardware.** If the Cloud Services listed on an Order Form include Hardware, Qualys retains title, ownership and all rights and interests to such Hardware. Customer shall be liable for any misuse, abuse, neglect, or failure to use or protect such Hardware in accordance with the Documentation by Customer. Customer has no right to relocate Hardware without Qualys's consent and only in accordance with Qualys' instructions.

3.8   **Software.** Any Software provided hereunder is provided as part of the Cloud Services on a subscription basis and only for the limited use as permitted herein and in accordance with the related Cloud Services. At the end of any Subscription Term that is not renewed, Software must be uninstalled within 30 days of the end of the Subscription Term

3.9   **Open Source.** Qualys provides some of its services with the help of open source software code. Qualys will provide a list of the then-current list of Open Source used by Qualys to provide the Cloud Services within thirty (30) days after Customer's written request.

3.10   **Future Functionality.** Customer agrees that its purchases are not contingent on any oral or written public comments made by Qualys regarding future functionality or features not present in the Cloud Services as of the Effective Date.

4.   FEES AND PAYMENT

4.1   **Fees.** Customer will pay all fees as specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Cloud Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term. If Customer is purchasing the Cloud Services through a Reseller, then the fees shall be as set forth between Customer and Reseller; and, the applicable fees shall be paid directly to the Reseller.

4.2   **Invoicing and Payment.** Fees will be invoiced in advance in accordance with the relevant Order Form and this Agreement. Unless otherwise stated in the Order Form, fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Qualys and notifying Qualys of any changes to such information. If Customer is purchasing the Cloud Services through a Reseller, then the payment terms shall be as set forth between Customer and Reseller; and, the applicable fees shall be paid directly to the Reseller.

4.3   **Overdue Charges.** If any invoiced amount is not received by Qualys by the due date, then without limiting Qualys' rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, provided that Qualys has given Customer at least 10 days' prior notice that its account is overdue. Such notice may be in the form of an email.

4.4   **Suspension of Service.** If any charge owing by Customer is 30 days or more overdue, Qualys may, without limiting its other rights and remedies, suspend Cloud Services until such amounts are paid in full provided that Qualys has given Customer at least 10 days' prior notice that its account is overdue. Such notice may be in the form of an email.

4.5 **Payment Disputes.** Qualys will not exercise its rights under the "Overdue Charges" or "Suspension of Service" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

4.6 **Taxes.** Qualys' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, HST, GST, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Qualys has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Qualys will invoice Customer and Customer will pay that amount unless Customer provides Qualys with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Qualys is solely responsible for taxes assessable against it based on its income, property and employees.

5. PROPRIETARY RIGHTS

5.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Qualys, its licensors reserve all of their right, title and interest in and to the Cloud Services including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

5.2 **Consent by Customer to Host Customer Data and Applications.** Customer grants Qualys a Customer's consent to Qualys hosting, copying, transmitting and displaying Customer Data as necessary for Qualys to provide the Cloud Services, including without limitation, the provision of the standard support and the use of worldwide Qualys' Affiliates to provide the Cloud Services. Subject to consent herein, Qualys acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data.

5.3 **License by Customer to Use Feedback.** Customer grants to Qualys and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Qualys' or its Affiliates' services.

6. CONFIDENTIALITY

6.1 **Definition of Confidential Information.** "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Qualys includes the Cloud Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

6.2 **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.

6.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

6.4   **Injunctive Relief.** A breach of Section 6 of this Agreement may result in irreparable and continuing damage to the disclosing party for which there may be no adequate remedy at law. The disclosing party is therefore entitled to seek injunctive relief without posting bond for any breach or threatened breach of those sections, as well as such other and further relief as may be appropriate.

7.   REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

7.1   **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

7.2   **Qualys Warranties.** Qualys warrants that during each applicable Subscription Term (a) the Cloud Services will perform materially in accordance with the applicable Documentation, (b) Qualys will not materially decrease the overall functionality of the Cloud Services, (c) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (d) Qualys will not materially decrease the overall security of the Cloud Services as set forth in Exhibit C during the applicable Subscription Term; and (e) Qualys will not materially decrease the level of support as set forth in Exhibit A nor materially decrease the service level agreement as set forth in Exhibit B.

7.3   **Hardware and Software Warranty.** Qualys warrants that the Hardware and Software provided hereunder, when operated by Customer in accordance with this Agreement and the Documentation, will operate in substantial conformity with the applicable Documentation. Customer's sole and exclusive remedy for breach of this warranty is to notify Qualys of the non-conformity in writing, whereupon Qualys, as its sole obligation and liability, will at its election, either: (i) correct the affected Hardware or Software to render it conforming to the applicable Documentation within a reasonable period of time or replace such Hardware, or Software or in the event that (i) is not commercially reasonable, (ii) allow Customer to terminate the applicable Order and refund Customer a pro-rata portion of the fees paid for such item. This section sets forth Customer's sole and exclusive remedy and Qualys' entire liability to Customer for any Software (excluding Cloud Services) or Hardware non-conformity.

7.4   **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8.   MUTUAL INDEMNIFICATION

8.1   **Indemnification by Qualys.** Qualys will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Cloud Services or Software infringes or misappropriates such third party's intellectual property rights (a "**Claim Against Customer**"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Qualys in writing of, a Claim Against Customer, provided Customer (a) promptly gives Qualys written notice of the Claim Against Customer, (b) gives Qualys sole control of the defense and settlement of the Claim Against Customer (except that Qualys may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Qualys all reasonable assistance, at Qualys' expense.   If Qualys receives information about an infringement or misappropriation claim related to the Cloud Services or Software and in addition to the defense and indemnification obligations set forth herein, Qualys may in its discretion and at no cost to Customer (i) modify the Cloud Services or Software so that it is no longer claimed to infringe or misappropriate, without breaching Qualys' warranties under "Qualys Warranties" above, (ii) obtain a license for Customer's continued use of the Cloud Services or Software in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Cloud Services or Software immediately upon written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from Customer's breach of this Agreement, the Documentation or applicable Order Forms. This Section 8.1 section states Customer's sole and exclusive remedy for intellectual property claims relating to the Cloud Services or Software.

8.2   **Indemnification by Customer.** Customer will defend Qualys against any claim, demand, suit or proceeding made or brought against Qualys by a third party alleging or arising from Customer's use of the Cloud Services in breach of Section 3.3(vii), or not in accordance with applicable law, **(a "Claim Against Qualys")**, and will indemnify Qualys from any damages, attorney fees and costs finally awarded against Qualys as a result of, or for any amounts paid by Qualys under a settlement approved by Customer in writing of, a Claim Against Qualys, provided Qualys (a) promptly gives Customer written notice of the Claim Against Qualys, (b) gives Customer sole control of the defense and settlement of the Claim Against Qualys (except that

Customer may not settle any Claim Against Qualys unless it unconditionally releases Qualys of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense.

9. LIMITATION OF LIABILITY

9.1 **Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER FOR THE CLOUD SERVICES IN THE TWELVE MONTHS PRECEDING THE APPLICABLE INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

9.2 **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9.3 **Exclusions.** The limitation set forth above shall not apply to (i) either Party's indemnification obligation, (ii) damages for a breach of Confidential Obligations that results in an actual unauthorized use or unauthorized disclosure of Confidential Information, (iii) damages related to either party's unauthorized use, disclosure, or distribution of the other party's intellectual property, or (iv) willful misconduct or fraud.

10. TERM AND TERMINATION

10.1 **Term of Agreement.** This Agreement commences on the Effective Date and continues until sixty (60) days after all subscriptions hereunder have expired or have been terminated.

10.2 **Term of Subscriptions.** Each Order will automatically renew for an additional one (1) year terms unless Customer or Qualys provides written notice that it does not intend to renew the Order not later than sixty (60) days prior to the end of the then-current Subscription Term. For each auto-renew Subscription Term, the per-unit pricing during such Subscription Term will not increase more than five percent (5%) above the applicable pricing other than Special Pricing (as defined below) in the immediately preceding Subscription Term. "Special Pricing" shall mean any of promotional or one-time pricing. Any change in the renewal to the type of Services or reduction in volume will result in re-pricing at renewal price-protection. For purposes of clarity, a Subscription Term shall auto-renew at the expiration of the applicable period specified as the Subscription Term.

10.3 **Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

10.4 **Customer Data Portability and Deletion.** Upon request by Customer made within 60 days after the effective date of termination or expiration of this Agreement, Qualys will make Customer Data available to Customer for export or download as provided in the Documentation. After such 60-day period, Qualys will have no obligation to maintain or provide any Customer Data, and as provided in the Documentation will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.

10.5 **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, Customer will: (i) cease all use of the Cloud Services; (ii) promptly and fully destroy, delete, or uninstall any software provided herein or certify such destruction; and (iii) promptly return all hardware provided herein in accordance with Section 3.5. For purposes of clarity and notwithstanding the foregoing, Customer may retain and use Reports after termination, subject to the terms and conditions of this Agreement.

10.6 **Surviving Provisions.** The sections titled "Fees and Payment," "Proprietary Rights," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Customer Data Portability and Deletion," "Effect of Termination", "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

11. GENERAL PROVISIONS

11.1 **Export Compliance.** The Cloud Services and other Qualys technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Qualys and Customer each represents that it is not named on any U.S. government denied-party list. In the event that Customer or any of Customer's Users is added to any such list during the term of this Agreement, then Customer shall provide Qualys with legal written notice in accordance with Section 11.6 below within ten (10) days of being named on such list. Customer will not permit any foreign national who is, or allow any User to access or use the Cloud Services, from a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea), by persons or entities prohibited from receiving U.S. exports, or in violation of any U.S. export law or regulation.

11.2 **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

11.3 **Entire Agreement.** This Agreement is the entire agreement between Qualys and Customer regarding Customer's use of Cloud Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties hereby agree that any term other than the Cloud Services ordered and applicable pricing that differ from or are additional to those set forth in this Agreement are hereby rejected by Qualys even if Qualys signs the Customer's Order Form.

11.4 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

11.5 **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

11.6 **Notices.** Except as otherwise specified in this Agreement and in this Section, all notices related to this Agreement ("Legal Notices") will be in writing and will be effective upon (a) personal delivery, or (b) the second business day after mailing via two-day mail. Legal Notices to Customer will be addressed to Customer and be clearly identifiable as Legal Notices. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer and may be sent via email. System-related notices may be sent via email or made available in release notes.

11.7 **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

11.8 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

11.9 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.10 **Governing Law.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.

11.11 **Venue.** The provincial and federal courts located in San Francisco, California will have exclusive jurisdiction over any dispute relating to this Agreement, and each party consents to the exclusive jurisdiction of those courts.

11.12 **Counterparts.** This Agreement may be executed electronically and in counterparts.

///

11.13 **Force Majeure.** For purposes of this Agreement, "Force Majeure Event" shall mean an event beyond the reasonable control of the affected party and which the effects of which could not have been avoided by a party's compliance with its obligations under this Agreement. No Party shall be liable for any failure to perform its obligations where such failure is because of a Force Majeure Event.

Customer:	QUALYS GMBH
SIGNATURE _____	SIGNATURE: _____
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

EXHIBIT A

Cloud Services Standard Support

Qualys Standard Support shall include the following:
- **Cloud Services Updates**

Updates may be made to Cloud Services for many reasons including, but not limited to the following: security fixes, critical patches, general maintenance, functionality, and documentation. Qualys is under no obligation to develop any future functionality or enhancements. If an update for the Cloud Services is made available to Customer pursuant to these Cloud Services Support Policies, it shall automatically replace the previous version of the applicable Cloud Services. Where practical, Qualys will schedule such Cloud Services Updates during non-business hours and will provide Customer with notice.

- **Support**

Any Customer User may log a support request via web-based ticketing system or telephone on a 24x7 basis. Qualys shall process support requests using a ticketing procedure so that each query shall receive a ticket number and may be tracked until it is satisfactorily resolved.

Qualys will use commercially reasonable efforts to ship a replacement Hardware unit to Customer within 48 hours of Qualys' remote validation of a Hardware Error. Hardware Errors that impair Customer's access to the Cloud Services will not be considered a lack of availability under Critical.

Classifying a Support Incident:
Qualys Support shall identify the severity of the support request, based on the evidence provided by Customer and the definitions set forth in the below table. All new support cases are created, by default, as Severity 3. If Customer believes that the support request should be classified as something other than Severity 3, it is recommended that Customer phone the request in to Support and request the higher Severity level to reduce delays in initial response.

Upgrade/Downgrade of Severity Level
If, during the support request process, the issue either warrants assignment of a higher severity level than currently assigned or no longer warrants the severity level currently assigned based on its current impact on the production operation of the Cloud Services offering, then the severity level will be upgraded or downgraded by Qualys accordingly to the severity level that most appropriately reflects its current impact.

Cloud Services Support Target Response Times:
The times set forth below are response times to a ticket logged via web or by phone. These times should not be deemed to be resolution times. Qualys does not guarantee resolution times. A resolution may consist of a fix, workaround, service availability or other solution Qualys deems reasonable. Qualys will use reasonable efforts to meet the target response times stated in the table below.

Severity Definitions and Targeted Response Times

Severity	Definition	Targeted Response Times
Severity 1 Critical	Production issue that severely impacts Customer use of the Cloud Services. The situation halts Customer business operations and no procedural workaround exists. Service is down or unavailable. Data corrupted or lost and must restore from backup. A critical documented feature / function is not available. Severity 1 issues may require Customer to have dedicated resources available to work on the issue on an ongoing basis with Qualys. If Customer does not provide such dedicated resource, then Qualys shall not be liable for related delays.	2 hours or less. Qualys will provide continuous efforts to resolve a Severity 1 error until a workaround or resolution can be provided or until the incident can be downgraded to a lower severity level.
Severity 2 High	Major functionality is impacted or significant performance degradation is experienced. The situation is causing a high impact to portions of Customer business operations and no reasonable workaround exists. Cloud Services are operational but highly degraded performance to the point of major impact on usage. Important features of the Cloud Services are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.	12 hours or less. If a workaround is not available, reasonable efforts will be made to release an emergency patch to resolve or mitigate the issue or to allow the severity level to be reduced.
Severity 3 Medium	There is a partial, non-critical loss of use of the Cloud Services with a medium-to-low impact on Customer business, but Customer business continues to function. Short-term workaround is available, but not scalable.	2 business days.
Severity 4 Low	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, best practice, installation or configuration, bug affecting a small number of users. Acceptable workaround available.	

Changes to Support
Subject to the warranty in Section 7.2, Qualys reserves the right to modify this Cloud Services Support Policy at any time upon thirty (30) days notice to Customer provided that Qualys shall not materially reduce the service levels stated in this Cloud Services Support Policy. Such notice may be provided by email or by posting the revised terms on Qualys' website. Any change will be binding and effective thirty (30) days after publication of the change on Qualys' website(s), or upon notification to Customer by email. If the change materially alters the service levels provided herein, Customer may notify Qualys in writing and request to terminate the Agreement and receive a refund of fees paid, prorated from the date of termination to the end of the then-current Subscription Term. By continuing to

the Cloud Services after thirty (30) days after the notice is provided or the changes are posted, then Customer agrees to abide by and be bound the modifications.

EXHIBIT B
Qualys Cloud Platform Service Level Agreement – Shared Platform

1. Availability. The Cloud Services will be available to Customer twenty-four (24) hours a day, seven (7) days a week, with a 99.5% uptime, calculated on a monthly basis ("Cloud Services Uptime").

2. Measurement Method. The Cloud Services Uptime shall be measured by Qualys' SOC connection to the Internet. On a monthly basis, the Cloud Services Uptime will be calculated as the actual number of hours that the Cloud Services were available to the Customer divided by the total hours of the month less any planned downtime, force majeure events, and loss of connection as a result of Customer's actions or equipment.

3. Exclusions. The Cloud Services Uptime shall not apply to downtime caused by the following:

   - Force Majeure events

   - Actions or inactions of Customer

   - Customer's equipment or third-party computer hardware, software or network infrastructure not within the sole control of Qualys

   - Scheduled maintenance

1. Reporting. Qualys will provide a Cloud Services Uptime report in accordance with this Service Level Agreement to Customer upon request. If Customer does not agree with the Cloud Services Uptime report, written notice of the dispute must be provided to Qualys within fifteen days of receipt of the Cloud Services Uptime report.

2. Remedies.

   2.1 Cloud Services Credits. Promptly after a notice from Customer regarding Qualys failure to meet the Cloud Services Uptime, Qualys, as its sole obligation and liability, will (a) perform a root-cause analysis to identify the cause of such failure; (b) attempt to correct such failure; and (c) if the root-cause analysis demonstrates that such failure was due to the fault of Qualys, provide Customer with a service credit ("Cloud Services Credit") consisting of a one-week extension of any Cloud Services subscription impacted by the Cloud Services Uptime failure.

   2.2 Termination. In the event that Qualys does not meet the Cloud Services Uptime for three (3) consecutive months, Customer may terminate the applicable Cloud Services and receive a pro-rata refund of any prepaid fees for such terminated Service. Such refund shall be prorated from the date of termination to the end of the Cloud Services term. Should Customer elect this termination and refund remedy, Customer will not be eligible for any Service Credits for the relevant Cloud Service.

3. Subject to the warranty in Section 7.2, Qualys reserves the right to modify this Service Level Agreement at any time upon thirty (30) days notice. Such notice shall be provided by release notes and by posting the revised terms on Qualys' website. Any change will be binding and effective thirty (30) days after the release note ("Changes Effective Date"). If the change materially alters Customer's rights herein Customer may, within fifteen days after the Changes Effective Date, terminate the Agreement and request a refund of fees paid, prorated from the date of termination to the end of the Cloud Services term. By continuing to the Cloud Services for more than fifteen (15) days after the Changes Effective Date, Customer agrees to abide by and be bound the modifications.

EXHIBIT C
Security Datasheet

Qualys shall comply with the moderate level of NIST 800-53 in the provision of the Cloud Services including the below security obligations. Qualys retains the right to make specific changes to the below security obligations provided that such changes shall not materially degrade the security provided to Customer. Any capitalized terms that are not defined herein shall have the meaning given to such term in the Master Cloud Services Agreement ("Agreement").

A. Qualys shall:

System Security

1. Actively monitor industry resources for timely notification of applicable security alerts that pertain to Qualys technical resources.

2. At least monthly, scan Qualys technical resources with industry-standard security vulnerability scanning software designed to detect security vulnerabilities, and remediate all critical, high, and medium risk security vulnerabilities identified.

3. Maintain and adhere to a documented process designed to remediate security vulnerabilities that may impact Qualys technical resources.

4. Assign security administration responsibilities for configuring the security parameters to authorized users only.

5. Harden Qualys technical resources by utilizing a minimum security baseline configuration based upon industry-standard practices to reduce available ways of attack.

6. Limit authorized system administrators access to operating systems intended for use by multiple users to individuals requiring such high-level access in the performance of their jobs.

7. Enforce the rule of least privilege by requiring application, database, network and system administrators to restrict access by users.

Physical Security

8. Restrict access to physical facilities that contain Qualys technical resources to authorized individuals only.

9. Monitor and record, for audit purposes, access to the physical facilities containing Qualys technical resources.

Network Security

10. Use industry-standard encryption for the transfer of Customer Data outside of Qualys-controlled networks.

11. Have Denial of Service protections in place. Protect Customer Data by implementation of segmented network.

12. Require multi-factor authentication for remote-access use of Qualys technical resources.

Information Security

13. Use appropriate logical access controls designed to protect Customer Data and applications from unauthorized access.

14. Maintain and adhere to procedures for the appropriate backup, and recovery of Customer Data.

15. Maintain and adhere to documented processes and controls designed to detect and terminate unauthorized attempts to access of Customer Data; and monitor, and remediate unauthorized access to system and application configuration files.

Identification and Authentication

16. Assign unique User IDs to Qualys authorized individual users.

17. Maintain and adhere to a documented User ID lifecycle management process that includes manual and/or automated processes for approved account creation, account removal within one (1) business day, and account modification for all Qualys technical resources and across all environments. Such process shall include review of access privileges and account validity to be performed at least each calendar year.

18. Limit failed login attempts by no more than three (3) consecutive failed login attempts by locking the user account.

19. a. Whenever customer authentication credentials are stored, Qualys shall use industry-standard encryption to protect the credentials.

b. Qualys passwords must be complex and meet the following password construction requirements:

- Be a minimum of eight (8) characters in length.

- Meet standard complexity requirements.

c. Require password and PIN expiration at regular intervals not to exceed ninety (90) calendar days.

20. When providing users with a new or reset password, or other authentication credentials, use a secure method to provide this information, and require reset at first login whenever a temporary credential is used.

Software and Data Integrity

21. Have industry-standard antivirus software installed and running to scan for and promptly remove or quarantine viruses and other malware.

22. Separate non-production Qualys technical resources from production Qualys technical resources and Customer Data

23. Maintain and adhere to a documented change control process including back-out procedures for all production environments.

24. For applications which utilize a database that allows modifications to Customer Data, logs for forensic analysis purposes shall be created and retained.

Monitoring and Auditing Controls

25. Restrict access to security logs to authorized individuals, and protect security logs from unauthorized modification.

26. Review, on no less than a weekly basis, anomalies from security and security-related audit logs and document and resolve logged security problems in a timely manner.

Security Breach

27 Maintain and adhere to a documented procedure to be followed in the event of a reasonably suspected unauthorized access to or disclosure of Customer's Customer Data ("Security Breach") (collectively "Security Breach Protocol"). In such Security Breach Protocol, Qualys shall:

a. Promptly investigate and make a determination if such a Security Breach has occurred;

b. In the event that a Security Breach has occurred involving Customer's Customer Data, then Qualys shall notify Customer within 24 hours after becoming aware of the Security Breach by contacting the primary subscriber listed on the subscription account; and

c. provide Customer with regular status updates about the actions taken to resolve such incident.

B. Audit Rights. No more than once every twelve (12) months, Customer may submit a security assessment questionnaire to Qualys and may request summaries of third party's assessment reports about Qualys. Qualys shall respond to such security assessment questionnaire and shall provide Customer with the requested report summaries within thirty (30) days after receipt of the request. After reviewing Qualys' responses and reports, Customer may submit follow-up questions or request an online meeting with a Qualys representative. Qualys and Customer shall meet and discuss any remaining issues or Customer concerns.

DATA PROCESSING AGREEMENT

BETWEEN:

(1)   **Qualys GmbH** whose place of business is at Terminalstrasse Mitte 18, 85356 Munich, Germany (**"Qualys"**); and

(2)   _____. whose place of business is at _____ (**"Customer"**)

(together **"the parties"**)

BACKGROUND:

(A)   Qualys and Customer Master Cloud Services Agreement (the "**Cloud Services Agreement**") which defines Qualys's obligations with respect to the provision of Cloud Services (defined below) to Customer.

(B)   Since, as part of delivering the Cloud Services, Qualys will be processing personal data, the parties are required to enter into an appropriate data processing agreement which reflects the roles of the parties and their obligations under applicable data protection law.

(C)   Accordingly, the parties hereby enter into this Qualys Data Processing Agreement (**"Addendum"**) in order to comply with the applicable obligations under data protection law.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

OPERATIVE PROVISIONS

1.   **Definitions**

1.1   All defined terms in this Addendum shall have the meanings set out in the Cloud Services Agreement unless specified to the contrary.

1.2   In this Addendum the words and phrases set out below shall have the meanings ascribed to them as set out below unless the context requires otherwise:

Applicable Law	shall mean all regional, national and international laws, rules, regulations and standards including those imposed by any governmental or regulatory authority that apply from time to time to the person or activity in the circumstances in question;
Personal Data	means any personal data processed by Qualys in order to provide the Cloud Services as further described in section 1.3, the Personal Data shall be a subset of the Customer Data;
Data Privacy Laws	shall mean, as the case may be, the EU Data Protection Directive 95/46/EC and, its successor, the General Data Protection Regulation 2006/679, the implementation acts of the Directive by the Member States of the European Union and/or any other Applicable Law or regulation relating to the protection of personal data, personally identifiable information or protected health information;
General Data Protection Regulation	shall mean the EU General Data Protection Regulation 2016/679;
Cloud Services	means the provision of Cloud Services as described and set out in: the Cloud Services Agreement; and
Subprocessor	means a third party subprocessor engaged by Qualys to assist with the provision of the Cloud Services which involves the processing of Personal Data.

1.3 The terms 'process', 'processing', 'controller', 'processor', 'data subject' and 'personal data' shall have the meanings set forth in the EU Data Protection Directive 95/46/EC or, when the Directive is superseded, the General Data Protection Regulation.

2. Relationship with the Cloud Services Agreement

2.1 For the avoidance of doubt, where there is any conflict or inconsistency between the provisions in the Cloud Services Agreement and this Addendum the provisions of this Addendum take precedence. Otherwise, all other provisions of the Cloud Services Agreement apply.

3. Status of Parties

3.1 Customer is the controller of Personal Data; and, Qualys is the processor of Personal Data under this Addendum.

3.2 The parties acknowledge that Qualys is entering into this Addendum on behalf of itself and its Affiliates located in and outside the European Union and where this Addendum refers to Qualys this may also include or refer to, where applicable, the local Affiliate of Qualys.

3.3 Qualys shall not assume any responsibility for determining the purposes for which Personal Data shall be processed.

3.4 Both parties shall comply with their applicable obligations under Data Privacy Laws.

3.5 The subject-matter of the data processing to be carried out by Qualys under this Addendum is:to provide the Cloud Services.

4. Processor Obligations

4.1 Qualys shall process Personal Data on behalf of Customer and only in accordance with the documented instructions received from Customer, unless Qualys is required to otherwise process Personal Data under EU or Member State law governing Qualys. In the event that Qualys is subject to such an obligation, Qualys shall without undue delay notify Customer of this legal requirement before carrying out such processing, unless Qualys is prohibited from doing so under EU or Member State law due to important grounds of public interest.

4.2 Qualys will not perform its obligations under the Cloud Services Agreement and this Addendum in such a way as to cause Customer to breach any obligation under applicable Data Privacy Laws.

4.3 Qualys shall notify Customer without delay if Qualys is aware that an instruction issued by Customer could put either of the parties in breach of their respective obligations under Data Privacy Laws or any other Applicable Laws that Qualys is aware of.

4.4 Qualys shall refer to Customer any requests from data subjects to rectify, amend, erase or port their personal data or to restrict or cease processing of such Personal Data.

4.5 Qualys shall only independently direct the transfer of Personal Data from the EU to a country outside the EU in accordance with the documented instructions received from Customer unless Qualys is required to transfer Personal Data under EU or Member State law governing Qualys.

4.6 In the event that Qualys is subject to an obligation under EU or Member State law under Section 5.8, Qualys shall notify Customer of this legal requirement before transferring the Personal Data unless Qualys is prohibited from doing so under EU or Member State law due to important grounds of public interest.

4.7 Qualys shall promptly notify Customer and shall answer appropriately and without delay to all inquiries from Customer regarding:

(a) Qualys's processing of Personal Data;

(b) any request it receives from a data subject regarding that data subject's personal data where it is Personal Data; Qualys shall not answer this request unless it has the specific prior written consent of Customer as well as documented instructions on how to respond; and

(c)   any request, complaint or communication relating to Customer's obligations under Data Privacy Laws (including from supervisory authorities); the Qualys shall not answer this request unless it has the specific prior written consent of Customer as well as documented instructions on how to respond.

5.   Scope Modifications

5.1   In the event that changes in Data Privacy Laws require modifications to the Cloud Services, the parties shall use commercially reasonable endeavours to comply with such requirements.

5.2   In the event that a party's (the **"first party"**) compliance with Data Privacy Laws requires the imposition of certain contractual obligations under this Addendum, the first party shall notify the other party and both parties shall in good faith seek to amend this Addendum in order to address the requirements under Data Privacy Laws.

6.   SECURITY MEASURES

6.1   Qualys will implement appropriate technical and organizational security and confidentiality measures ("TOMs"), and regularly update them, to ensure a level of security appropriate to the Personal Data. The TOMs shall be designed to protect Personal Data particularly against a breach of security leading to any accidental, unauthorised or unlawful destruction, loss, acquisition, alteration or disclosure, use or access to Personal Data (**"Breach"**).

6.2   Such measures implemented in Section 6.1 shall require Qualys to take into regard the state of the art and costs of implementation as well as taking into account the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of individuals that is presented by the processing, particularly from a Breach.

6.3   At a minimum, Qualys shall implement such measures that are set out in Schedule 1.

6.4   Both parties acknowledge that Qualys is relying on Customer's lawful use and compliance with best practices suggested by Qualys in order to assess what is 'appropriate' to protect Personal Data. Customer hereby agrees to comply with best practices regarding the use of the Cloud Services to prevent Personal Data from being provided or accessed that is not necessary for the provision of the Cloud Services by Qualys.

7.   CONFIDENTIALITY

7.1   Qualys will ensure that:

(a)   All persons who have access to Personal Data shall undertake to maintain confidentiality and keep up-to-date with any special data protection, data security and confidentiality requirements arising from the Cloud Services Agreement or this Addendum. Qualys shall furthermore require its employees and contractors to adhere to the confidentiality obligations set out in the Cloud Services Agreement and shall document such employees' and contractors' obligation in writing; and

(b)   All persons involved in the processing of Personal Data have undergone adequate training in the care, protection and handling of personal data.

7.2   Qualys will ensure that the obligation of confidentiality on the respective persons shall continue beyond and survive termination or expiration of the Cloud Services Agreement or this Addendum. Qualys shall ensure that the obligation of confidentiality shall continue after the employment or contractual relationships with the respective person ends.

7.3   Qualys shall keep Personal Data logically separate, with adequate logical separate security controls, from other data and information held by Qualys.

7.4   The Qualys shall without undue delay notify Customer in writing of any request received from a third party public authority including a law enforcement agency or government agency for disclosure of the Personal Data unless otherwise legally prohibited by EU or Member State law (such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation). Such notification shall set out (i) the scope of the request, (ii) the reason for the request, and (iii) the form of the disclosure requested, in so far as Qualys is able to describe such aspects. Where Qualys is legally prohibited from notifying Customer, Qualys shall use reasonable efforts to request the third party public authority to direct the request directly to Customer.

7.5   Unless prohibited by law, Qualys shall not respond to a request received under Section 8.4 unless and until it receives documented instructions from Customer.

8.   BREACH NOTIFICATION OBLIGATIONS

8.1   In the event of a Breach arising during the performance of the Cloud Services by the Qualys, the Qualys shall, at its own cost:

   (a)   notify Customer about the Breach without undue delay and at least within seventy-two (72) hours of Qualys becoming aware of the Breach;

   (b)   promptly initiate a full investigation into the circumstances surrounding the Breach;

   (c)   after investigating the causes of such Breach, take such actions as may be necessary to minimize the effects of the Breach;

   (d)   take all actions as may be required by Data Privacy Laws;

9.   Third Party Subprocessors

9.1   Where Qualys wishes to appoint a Subprocessor under this Addendum, Qualys will select Subprocessors with due diligence and will verify prior to engaging the Subprocessor that such Subprocessor is capable of complying with the obligations of the Qualys towards Customer, to the extent applicable to the Cloud Services assigned to that Subprocessor. Further Qualys will verify, prior to engaging the Subprocessor, that the Subprocessor has taken the appropriate technical and organisational measures to protect Personal Data. Qualys shall enter into a contract with the Subprocessor whereby the Qualys shall require the Subprocessor to comply with obligations no less onerous than the Qualys's obligations under this Addendum.

9.2   Qualys shall not disclose or permit the disclosure of Personal Data to any Subprocessor that can view the Personal Data ("Consent Subprocessor"), unless Qualys has the prior specific written consent of Customer which Customer can withhold at its discretion.

9.3   Qualys shall provide no less than thirty (30) days' written notice to Customer where Qualys wishes to engage a Consent Subprocessor and shall provide, upon Customer's request, the identity and location of the Consent Subprocessor and a description of the processing to be subcontracted or outsourced to such Consent Subprocessor.

9.4   Such subcontracting under Section 9 shall not release the Qualys from its responsibility for its obligations under the Cloud Services Agreement. The Qualys shall be responsible for the work and activities of all Subprocessors.

10.   RIGHTS OF THOSE AFFECTED

10.1   The rights of the persons affected by Qualys and Subprocessor data processing of Personal Data may be enforceable against Customer, Qualys and Subprocessors.

10.2   Each party shall use reasonable efforts to support the other party in their efforts to safeguard these rights.

11.   INTERNATIONAL DATA TRANSFERS

11.1   Where there are transfers of Personal Data from a Member State of the EU to a third country outside the EU, the parties acknowledge that steps must be taken to ensure that such data transfers comply with Data Privacy Laws.

11.2   Customer and Qualys have entered into the model contract for the transfer of personal data to processors in third countries as set out under European Commission 2010/86/EU of 5 February 2010 ("**Model Clauses**"), set out in Schedule 3 in order to ensure an adequate level of protection with respect to the privacy rights of individuals.

11.3   Qualys hereby undertakes that any Subprocessor engaged to process Personal Data where there is a transfer of Personal Data from the EU to a non-EU country shall only be engaged where the Personal Data is protected as follows:

(a)   because the Subprocessor is established in a jurisdiction that has been declared adequate by the EU Commission and the processing of Personal Data shall take place within that jurisdiction;

(b)   where the Qualys has an approved binding corporate rules programme for processors, by the Subprocessor meeting the requirements as a Processor under Qualys's binding corporate rules programme;

(c)   where the Subprocessor is contractually obliged to comply with an approved code of conduct or certification mechanism for international data transfers; or

(d)   by entering into the Model Clauses between Qualys (as agent for Customer and only in respect of processing Personal Data under the Cloud Services Agreement) and the Subprocessor.

11.4   Where requested by Customer, Qualys shall provide all necessary information in order for Customer to confirm that the transfer of Personal Data to a Subprocessor complies with Section 11.

12.   RETURN AND DESTRUCTION

12.1   Without prejudice to any obligations under this Section 12, following termination or expiration of the Cloud Services Agreement for whatever reason, Qualys shall cease processing Personal Data and shall procure that any Subprocessors shall cease processing Personal Data.

12.2   Upon termination or expiration of the Cloud Services Agreement for whatever reason as set forth in the Cloud Services Agreement, Qualys shall:

(a)   Provide Customer with the opportunity to retrieve Personal Data; and/ or

(b)   Provide Customer on request with Personal Data including all copies and back-ups.

12.3   As set forth in the Cloud Services Agreement, following termination or expiration of the Cloud Services Agreement for whatever reason and having received written confirmation from Customer, Qualys shall securely, irrevocably and/ irretrievably delete or over-write Personal Data in accordance with Qualys's standards which must be recognised industry standards to achieve secure deletion, and Qualys shall certify to Customer, in writing, that Qualys has complied with its obligations to delete Personal Data especially from all production, testing, development and backup systems and media. Such obligations include any Personal Data held by Subprocessors.

12.4   For the avoidance of doubt, Qualys may retain Personal Data where strictly required to store such data under EU or Member State Applicable Law and consequently must archive documentation that is evidence of the processing of Personal Data beyond termination or expiration of the Cloud Services Agreement.

13.   AUDITS

13.1   Unless otherwise prohibited by law, Qualys will promptly notify Customer in writing if a supervisory authority has audited or intends to audit the data processing practices of Qualys with respect to Qualys's processing of Personal Data. On request from Customer, Qualys shall either provide a written summary of the audit results to Customer or shall permit Customer to review the results of the audit at Qualys's premises (excluding any other customer content or confidential information).

13.2   Qualys shall on receiving a written request from the relevant supervisory authority or Customer, submit its data processing facilities for audit of the data processing activities carried out under this Addendum, where such audit shall be carried out by the relevant supervisory authority or an independent third-party auditor selected by Customer and bound by a duty of confidentiality ("**Auditor**") and, where applicable, approved by the relevant supervisory authority.

13.3   Any effort as well as internal and external costs of audits requested by Customer shall be borne by Customer.

13.4   Qualys undertakes to provide Customer or Auditor with the necessary information and to keep the necessary records required for an audit of the processing of Personal Data or to otherwise prove Qualys's compliance with this Addendum and will, subject to law, provide said documents and/ or data media to Customer upon written request.

13.5 Qualys shall provide reasonable support for the work of Customer or Auditor under this Section 13 and shall contribute to the complete and efficient completion of the audit.

14. TERMINATION

14.1 The rights of termination for cause as set out in the Cloud Services Agreement remain unaffected.

14.2 All notices for termination must be in writing.

15. AMENDMENT

15.1 This Addendum may not be amended or modified except in writing signed by authorised representatives of both parties.

16. COUNTERPARTS

16.1 This Addendum may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Addendum, but all the counterparts shall together constitute the same Addendum.

17. GOVERNING LAW

17.1 This Addendum shall be governed by and construed in accordance with the laws of Germany, without regards to conflicts of laws provisions.

Customer:	QUALYS GMBH
SIGNATURE: _____	SIGNATURE: _____
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

Schedule 1 – Technical and Organisational Data Security Measures

See Exhibit C to the Agreement

Schedule 2 – Model Contract Clauses set out in European Commission Decision 2010/86/EU

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: **[Customer]**

Address:

Tel.:..; fax:...................................; e-mail:.......................................,

Other information needed to identify the organisation ....

(the data **exporter**)

And

Name of the data importing organisation: *Qualys GmbH*

Address:

e-mailGDPR@Qualys.com

Other information needed to identify the organisation ....

(the data **importer**)

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

(a)   *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b)   *'the data exporter'* means the controller who transfers the personal data;

(c)   *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d)   *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e)   *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f)   *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1.   The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2.   The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3.   The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4.   The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a)   that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b)   that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c)   that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d)   that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e)   that it will ensure compliance with the security measures;

(f)   that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g)   to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h)   to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i)   that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j)   that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a)   to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b)   that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c)   that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d)   that it will promptly notify the data exporter about:

(i)   any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
(ii)   any accidental or unauthorised access, and
(iii)   any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e)   to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f)   at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g)   to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h)   that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i)   that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j)   to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.
   The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

   (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
   (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses[1]. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

---

[1] This requirement may be satisfied by the subprocessor co-signing the contract entered into between the data exporter and the data importer under this Decision.

2.   The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full): ....

Position: ....

Address: ....

Other information necessary in order for the contract to be binding (if any):

Signature...

                                                                                          (stamp of organisation)

On behalf of the data importer:

Name (written out in full): ....

Position: ....

Address: ....

Other information necessary in order for the contract to be binding (if any):

Signature...

                                                                                          (stamp of organisation)

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter
The data exporter is (please specify briefly your activities relevant to the transfer):

Data importer
The data importer is (please specify briefly activities relevant to the transfer):

Solely to provide the Services, associated support, and Qualys business-administration related to the Cloud Services.

Data subjects
The personal data transferred concern the following categories of data subjects (please specify):

Personal Data shared by the Data exporter through use of Services
Categories of data
The personal data transferred concern the following categories of data (please specify):

Names, Emails of Users, IP Addresses
Special categories of data (if appropriate)
The personal data transferred concern the following special categories of data (please specify):

N/A
Processing operations
The personal data transferred will be subject to the following basic processing activities (please specify):

Solely to provide the Services including support and Qualys administrative tasks related to the Services.
DATA EXPORTER

Name:.................................
Authorised Signature ....

DATA IMPORTER

Name:.................................
Authorised Signature ....

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

Schedule 1 to the Addendum shall also constitute Appendix 2 to the Clauses.

THIS **QUALYS MASTER CLOUD SERVICES AGREEMENT** INCLUDES THE TERMS AND CONDITIONS SET FORTH BELOW, (THIS **"AGREEMENT"**), WHICH IS A BINDING LEGAL AGREEMENT ENTERED INTO BY AND BETWEEN **QUALYS (AS DEFINED BELOW), ON BEHALF OF QUALYS INC. OR ITS AFFILIATES,** AND THE ENTITY YOU REPRESENT IN AGREEING TO THIS AGREEMENT (**"CUSTOMER"**). THIS AGREEMENT GOVERNS CUSTOMER'S USE OF AND ACCESS TO THE QUALYS CLOUD SERVICES, HARDWARE AND SOFTWARE (COLLECTIVELY, THE "**CLOUD SERVICES**"), WHETHER SUCH SUBSCRIPTION IS PURCHASED DIRECTLY FROM QUALYS OR FROM AN AUTHORIZED QUALYS RESELLER (**"RESELLER"**). QUALYS AND CUSTOMER MAY ALSO BE REFERRED TO INDIVIDUALLY AS A **"PARTY"** OR COLLECTIVELY, AS THE **"PARTIES"** THROUGHOUT THIS AGREEMENT. BY CLICKING "ACCEPT" OR BY USING THE CLOUD SERVICES, YOU REPRESENT THAT YOU HAVE SIGNATURE AUTHORITY TO BIND CUSTOMER AND HEREBY AGREE TO BE BOUND BY, THIS AGREEMENT.

1. **DEFINITIONS**

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control**," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Cloud Services Agreement.

"**Assets**" means the IP addresses, domain names, web applications and other assets to which Customer directs the Cloud Services.

"Beta Services" means Qualys services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

"Cloud Services" means the products and services, including any data, that are ordered by Customer under an Order Form and made available online by Qualys, including any offline components. Cloud Services shall not include any Beta Services

"Customer" means the customer named above and its Affiliates that have signed Order Forms.

"Customer Data" means electronic data and information regarding Customer's Assets that Qualys obtains solely as a result of its provision, and the Customer's use, of the Cloud Services. Reports shall be deemed to be Customer Data.

"Documentation" means the usage guides and policies made available by Qualys to Customer, as updated from time to time, via login to the applicable Service.

"Hardware" means the servers that are included with certain subscriptions to Cloud Services.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"No Charge Services" means Cloud Services provides to Customer at no cost. In no event shall support or ancillary services that Qualys provides as part of, or related to, Cloud Services where the pricing is bundled within the pricing for Cloud Services be deemed to be No Charge Services. Please note that the No Charge Services have modified terms as indicated within this Agreement.

"Order Form" means an ordering document or online order specifying the Cloud Services to be provided by Qualys that is provided by Customer to Qualys based on a Qualys quote and that is accepted by Qualys provisioned by Qualys.

Personal data are any information which are related to an identified or identifiable natural person.

"Qualys" means the entity from which services are purchased. If services are purchased from the following entities, then the agreement is directly by and between Customer and the listed entity, without regard to Qualys, Inc. or its Affiliates unless otherwise stated herein. As of the Effective Date, Qualys entities include: Qualys, Inc., Qualys GmbH, Qualys Ltd., Qualys Technologies SA, Qualys Security TechServices Pvt. Ltd., Qualys Canada Ltd., Qualys Netherlands B.V., Qualys Australia Pty Ltd., Qualys Singapore Pte Ltd. Qualys reserves the right to add Affiliates.

"Reports" means the reports made available to Customer that summarize the findings regarding the Assets.

"Reseller" means an entity that has entered into a direct agreement with Qualys that permits such entity to resell the Cloud Services to Customers.

"Software" means the software loaded onto Hardware provided herein and/or software that is loaded onto Customer's servers to allow virtual scanning or connection to the Cloud Services

"Subscription Term" means term of each subscription as specified in the applicable Order Form.

"Third Party Data" means data provided to Qualys by third parties that Qualys uses to provide the Cloud Services, such as vulnerability information.

"User" means an individual who is authorized by Customer to use a Cloud Services and to whom Customer has supplied a user identification and password. Users may include, for example, employees, Affiliates, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

2. QUALYS RESPONSIBILITIES

2.1 Provision of Cloud Services. Qualys will (a) make the Cloud Services available to Customer for the applicable Subscription Term, in accordance with this Agreement and the applicable Order Forms, (b) provide Customer with Qualys standard support for the Cloud Services, (c) make the Cloud Services available pursuant to the Qualys Service Agreement, and (d) provide the Cloud Services in accordance with laws and government regulations applicable to Qualys' provision of the Cloud Services generally, including, without limitation and if applicable, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "General Data Protection Regulation" or "GDPR").

2.2 Protection of Customer Data. Qualys will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data.

2.3 Qualys Personnel. Qualys will be responsible for the performance of Qualys's personnel (including its employees and contractors) and the Qualys personnel's compliance with Qualys' obligations under this Agreement.

3. ORDERING, USE OF CLOUD SERVICES, HARDWARE, AND SOFTWARE

3.1 Ordering. Customer may place Orders for the Cloud Services by confirming an Order Form to Qualys or to a Reseller. Customer's Affiliates may also confirm Order Forms either directly to Qualys or to a Reseller. Upon confirmation of an Order Form by a Customer Affiliate such Customer's Affiliate's rights and obligations relating to the Cloud Services shall be governed by the terms of this Agreement as if such Affiliate were "Customer". The subscriptions ordered by Customer may be used by Customer's Affiliates solely for the Customer Affiliates' internal use provided that Customer shall ensure that such Customer Affiliates comply with all applicable terms in this Agreement including, without limitation, Section 3.3. Customer hereby agrees that Customer shall be liable for any breach of this Agreement by a Customer Affiliate as if the breach were committed by Customer itself. Only Customer and not Customer Affiliates shall have a claim against Qualys for any breach of this Agreement.

3.2 Rights. Subject to Customer's compliance with the terms and conditions of this Agreement, Qualys grants Customer a limited, non-exclusive, non-transferable right during the applicable Subscription Term to: (i) access the user interface of the Cloud Services with an industry standard web browser (like MS IE, Firefox, Chrome, Safari, etc.) and to use the Cloud Services, solely for Customer's own internal business purposes; (ii) access, use, and internally distribute the Documentation; and (iii) grants Users the right to access the Cloud Services solely for Customer's (or the Affiliate's, if applicable) own internal business purposes.

3.3 Restrictions. Customer shall not (i) modify, adapt, alter, translate or create derivative works of the Cloud Services or Documentation; (ii) reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code used in connection with the Cloud Services and/or any aspect of Qualys' technology; (iii) access and/or engage in any use of the Cloud Services in a manner that abuses or materially disrupts the Assets, networks, security systems, of any third party; (iv) rent, lease, loan, or use the Cloud Services to a third party via timesharing or as a service bureau; (v) market, offer to sell, sell, and/or otherwise resell the Cloud Services to any third party; (vi) use the Cloud Services other than in accordance with the Documentation; (vii) use the Cloud Services to scan an Asset for which Customer does not have the right or consent to scan; or (viii) remove, alter or obscure any proprietary notices on the Cloud Services or the Documentation.

3.4 Information Provided to Qualys. Customer hereby acknowledges and agrees that as it relates to any Personal Information shared by or for Customer with Qualys either directly or through the use of the Cloud Services, Customer is the controller of Personal Data and Qualys is the processor of Personal Data under this Agreement. Customer bears the sole responsibility and liability for obtaining the required consents from the data subjects of such Personal Information to be used as anticipated by this Agreement.

3.5 Usage Limits. Use of the Cloud Services are subject to limits on the number of Assets as specified in an Order Form. If Customer exceeds a usage limit, then Qualys will work with Customer to seek to reduce Customer's usage to conform to the applicable limit. If, notwithstanding Qualys' efforts, Customer is unable or unwilling to abide by a usage limit, then shall be liable for the fees for such excess usage in accordance with the "Invoicing and Payment" section below.

3.6 Hardware. If the Cloud Services on an Order Form include Hardware, then Qualys will provide the Hardware to Customer on a subscription basis and only for the limited use as permitted herein and in accordance with the Documentation and the applicable Order. Customer acknowledges that not all Cloud Services subscriptions include Hardware. Qualys will select the carrier and bear the cost of shipment, insurance and duties for delivery of such Hardware to the location Customer designates. In order to provide the Cloud Services and to support the Hardware, Qualys may access the Hardware remotely at any time, or, with Customer's agreement

on Customer's premises during the Subscription Term and solely as necessary to provide the Cloud Services and related support. Qualys shall not be liable for any failure to maintain or update Hardware that is caused by Customer's delay or refusal to allow Qualys access to the Hardware. At the end of any Subscription Term that is not renewed, Customer will select the carrier and bear the cost of shipment, insurance and duties for return of such Hardware to the location Qualys designates. Hardware must be returned to Qualys within 30 days after the end of the Subscription Term. In the event that Customer does not return the Hardware within 30 days after the end of the Subscription Term, then Qualys shall invoice Customer, and Customer shall pay such invoice in accordance with Section 4, for a non-return fee of Two thousand dollars ($2,000) per piece of Hardware.

3.7 Rights and Possession of Hardware. If the Cloud Services listed on an Order Form include Hardware, Qualys retains title, ownership and all rights and interests to such Hardware. Customer shall be liable for any misuse, abuse, neglect, or failure to use or protect such Hardware in accordance with the Documentation by Customer. Customer has no right to relocate Hardware without Qualys's consent and only in accordance with Qualys' instructions.

3.8 Software. Any Software provided hereunder is provided as part of the Cloud Services on a subscription basis and only for the limited use as permitted herein and in accordance with the related Cloud Services. At the end of any Subscription Term that is not renewed, Software must be uninstalled within 30 days of the end of the Subscription Term

3.9 Open Source. Qualys provides some of its services with the help of open source software code. Qualys will provide a list of the then-current list of Open Source used by Qualys to provide the Cloud Services within thirty (30) days after Customer's written request.

3.10 Future Functionality. Customer agrees that its purchases are not contingent on any oral or written public comments made by Qualys regarding future functionality or features not present in the Cloud Services as of the Effective Date.

4. ADDITIONAL TERMS FOR CONSULTANTS – only applicable if Customer has a Consultant subscription ("Consulting Edition")

4.1 Consultant Definitions. Qualys offers its Cloud Services to Customers who are Consultants focused on servicing SMB/SME Market ("Consulting Edition"). For purposes of this Agreement, "SMB/SME Market" shall mean companies whose clients do not individually exceed either (i) 5000 employees or (ii) 5120 IPs. For purposes of this Agreement, the term "Consultant" shall mean a Customer who is a Consultant and/or Managed Service Provider ("MSP") who purchases

subscriptions solely to provide Consulting Services (as defined herein) to its clients ("Consulting Clients"), and not for internal use. For purposes of this Agreement, Consulting Clients are SMB/SME Market companies. For purposes of this Agreement, "Consulting Services" means the consulting services offered by Consultant to its Consulting Clients whereby, during a definitive period of time and using the Cloud Services, Consultant shall audit and analyze the security level of a customer's computer network and, upon completing such audit and analysis renders a summary report containing recommendations for improving such customer's network security.

4.2 Additional Consultant Requirements. Consultant acknowledges and agrees that it will *not* use the Cloud Services for internal use (except as utilized in connection with submission for testing and approval by PCI Co in the PCI Scanning Vendor Compliance Test Program ("ASV Program")) or its employer's organization. Consultant will use the Cloud Service solely on behalf of its Consulting Clients and solely as a tool to conduct its Consulting Services. Consultant further acknowledges and agrees that: (i) use of the Qualys API is solely pursuant to this Agreement and is limited to the Consultant only, (ii) API data cannot be directly or indirectly pulled from Consultant by the Consultant Client, (iii) API communication is not permitted by Consultant Client, and (iv) this Agreement is solely for use as permitted herein and is not an agreement for resale of Qualys Cloud Services.

4.3 Consultant Agreements. Consultant will enter into a written agreement with each Consulting Client that includes the following terms that protect Qualys: (i) a statement that Qualys owns the Cloud Services and that the Consulting Client will not receive any license or right to the use the Cloud Services; (ii) a statement that the Cloud Services are provided by Qualys "AS IS" and that Qualys disclaims all express or implied warranties regarding the Cloud Services; and (iii) a statement that Qualys shall not have any liability for either direct or consequential damages to Consulting Client. ("**Minimum Terms and Conditions**"). Consultant agrees that it will not enter into an agreement with a Consulting Customer that conflicts or limits in any way the rights of Qualys or the obligations of the customer under the Minimum Terms and Conditions and that, notwithstanding the foregoing, the Minimum Terms and Conditions shall prevail in the event of a conflict between another agreement and the Minimum Terms and Conditions. Consultant shall, upon request from Qualys, provide proof of Consultant's compliance with this provision.

4.4 Additional Consultant Payment Terms. As a Qualys Customer, Consultant shall pay Qualys in accordance with section 5 of this Agreement.

Consultant acknowledges and agrees that Consultant's obligation to remit payment to Qualys is not dependent upon Consultant's collection of payments from Consultant Clients, and is due and payable regardless of Consultant's receipt of payment from Consultant Clients.

5. FEES AND PAYMENT

5.1 Fees. Customer will pay all fees as specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Cloud Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term. If Customer is purchasing the Cloud Services through a Reseller, then the fees shall be as set forth between Customer and Reseller; and, the applicable fees shall be paid directly to the Reseller.

5.2 Invoicing and Payment. Fees will be invoiced in advance in accordance with the relevant Order Form and this Agreement. Unless otherwise stated in the Order Form, fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Qualys and notifying Qualys of any changes to such information. If Customer is purchasing the Cloud Services through a Reseller, then the payment terms shall be as set forth between Customer and Reseller; and, the applicable fees shall be paid directly to the Reseller.

5.3 Overdue Charges. If any invoiced amount is not received by Qualys by the due date, then without limiting Qualys' rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, provided that Qualys has given Customer at least 10 days' prior notice that its account is overdue. Such notice may be in the form of an email. If Customer is purchasing the Cloud Services through a Reseller, then the fees shall be as set forth between Customer and Reseller; and Qualys shall not exercise this remedy.

5.4 Suspension of Service. If any charge owing by Customer is 30 days or more overdue, Qualys may, without limiting its other rights and remedies, suspend Cloud Services until such amounts are paid in full provided that Qualys has given Customer at least 10 days' prior notice that its account is overdue. Such notice may be in the form of an email. If Customer is purchasing the Cloud Services through a Reseller, then the fees shall be as set forth between Customer and Reseller; and Qualys shall not exercise this remedy.

5.5 Payment Disputes. Qualys will not exercise its rights under the "Overdue Charges" or "Suspension of Service" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

5.6 Taxes. Qualys' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, HST, GST, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Qualys has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Qualys will invoice Customer and Customer will pay that amount unless Customer provides Qualys with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Qualys is solely responsible for taxes assessable against it based on its income, property and employees.

6. PROPRIETARY RIGHTS

6.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Qualys, its licensors reserve all of their right, title and interest in and to the Cloud Services including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

6.2 Consent by Customer to Host Customer Data and Applications. Customer grants Qualys a Customer's consent to Qualys hosting, copying, transmitting and displaying Customer Data as necessary for Qualys to provide the Cloud Services, including without limitation, the provision of the standard support and the use of worldwide Qualys' Affiliates to provide the Cloud Services. Subject to consent herein, Qualys acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data.

6.3 License by Customer to Use Feedback. Customer grants to Qualys and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Qualys' or its Affiliates' services.

7. CONFIDENTIALITY

7.1 Definition of Confidential Information. "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Qualys includes the Cloud Services; and Confidential Information of each party includes the terms and conditions of this

Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2 **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.

7.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7.4 **Injunctive Relief.** A breach of Section 7 of this Agreement may result in irreparable and continuing damage to the disclosing party for which there may be no adequate remedy at law. The disclosing party is therefore entitled to seek injunctive relief without posting bond for any breach or threatened breach of

those sections, as well as such other and further relief as may be appropriate.

8. **REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

8.1 **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2 **Qualys Warranties.** Qualys warrants that during each applicable Subscription Term (a) the Cloud Services will perform materially in accordance with the applicable Documentation, (b) Qualys will not materially decrease the overall functionality of the Cloud Services, (c) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. These warranties shall not apply to No Charge Services which is provided "AS IS".

8.3 **Hardware and Software Warranty.** Qualys warrants that the Hardware and Software provided hereunder, when operated by Customer in accordance with this Agreement and the Documentation, will operate in substantial conformity with the applicable Documentation. Customer's sole and exclusive remedy for breach of this warranty is to notify Qualys of the non-conformity in writing, whereupon Qualys, as its sole obligation and liability, will at its election, either: (i) correct the affected Hardware or Software to render it conforming to the applicable Documentation within a reasonable period of time or replace such Hardware, or Software or in the event that (i) is not commercially reasonable, (ii) allow Customer to terminate the applicable Order and refund Customer a pro-rata portion of the fees paid for such item. This section sets forth Customer's sole and exclusive remedy and Qualys' entire liability to Customer for any Software (excluding Cloud Services) or Hardware non-conformity. These warranties shall not apply to No Charge Services which is provided "AS IS".

8.4 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. **MUTUAL INDEMNIFICATION**

9.1 **Indemnification by Qualys.** Qualys will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Cloud Services or Software infringes or misappropriates such third

party's intellectual property rights (a "**Claim Against Customer**"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Qualys in writing of, a Claim Against Customer, provided Customer (a) promptly gives Qualys written notice of the Claim Against Customer, (b) gives Qualys sole control of the defense and settlement of the Claim Against Customer (except that Qualys may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Qualys all reasonable assistance, at Qualys' expense. If Qualys receives information about an infringement or misappropriation claim related to the Cloud Services or Software and in addition to the defense and indemnification obligations set forth herein, Qualys may in its discretion and at no cost to Customer (i) modify the Cloud Services or Software so that it is no longer claimed to infringe or misappropriate, without breaching Qualys' warranties under "Qualys Warranties" above, (ii) obtain a license for Customer's continued use of the Cloud Services or Software in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Cloud Services or Software immediately upon written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from Customer's breach of this Agreement, the Documentation or applicable Order Forms. This Section 9.1 states Customer's sole and exclusive remedy for intellectual property claims relating to the Cloud Services or Software.

9.2 **Indemnification by Customer.** Customer will defend Qualys against any claim, demand, suit or proceeding made or brought against Qualys by a third party alleging or arising from Customer's use of the Cloud Services in breach of Section 3.3(vii), or not in accordance with applicable law, **(a "Claim Against Qualys")**, and will indemnify Qualys from any damages, attorney fees and costs finally awarded against Qualys as a result of, or for any amounts paid by Qualys under a settlement approved by Customer in writing of, a Claim Against Qualys, provided Qualys (a) promptly gives Customer written notice of the Claim Against Qualys, (b) gives Customer sole control of the defense and settlement of the Claim Against Qualys (except that Customer may not settle any Claim Against Qualys unless it unconditionally releases Qualys of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense.

10. **LIMITATION OF LIABILITY**

10.1 **Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE GREATER OF TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER FOR THE CLOUD SERVICES IN THE TWELVE MONTHS PRECEDING THE APPLICABLE INCIDENT OUT OF WHICH THE LIABILITY AROSE OR ONE HUNDRED DOLLARS ($100). THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

10.2 **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10.3 **Exclusions.** The limitations set forth above shall not apply to either party's liability for (i) indemnification obligations, (ii) a breach of Confidential Obligations that results in an actual unauthorized use or unauthorized disclosure of Confidential Information (iii) damages related to either party's unauthorized use, disclosure, or distribution of the other party's intellectual property; provided, however, that these exclusions shall not apply to Qualys' liability related to No Charge Services which shall be governed by Section 10.1 and 10.2.

11. **TERM AND TERMINATION**

11.1 **Term of Agreement.** This Agreement commences on the Effective Date and continues until sixty (60) days after all subscriptions hereunder have expired or have been terminated.

11.2 **Term of Subscriptions.** Each Order will automatically renew for an additional one (1) year terms unless Customer or Qualys provides written notice that it does not intend to renew the Order not later than sixty (60) days prior to the end of the then-current Subscription Term. For each auto-renew Subscription Term, the per-unit pricing during such Subscription Term will not increase more than five percent (5%) above the applicable pricing other than Special Pricing (as defined below) in the immediately preceding Subscription Term. "Special Pricing" shall mean any of promotional or one-time pricing. Any change in the renewal to the type of Services or reduction in volume will result in re-pricing at renewal price-protection. For purposes of clarity, a Subscription Term shall auto-renew at the expiration of the applicable period specified as the Subscription Term.

11.3 **Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains

uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4   Customer Data Portability and Deletion. Upon request by Customer made within 60 days after the effective date of termination or expiration of this Agreement, Qualys will make Customer Data available to Customer for export or download as provided in the Documentation. After such 60-day period, Qualys will have no obligation to maintain or provide any Customer Data, and as provided in the Documentation will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.

11.5   Effect of Termination or Expiration. Upon termination or expiration of this Agreement, Customer will: (i) cease all use of the Cloud Services; (ii) promptly and fully destroy, delete, or uninstall any software provided herein or certify such destruction; and (iii) promptly return all hardware provided herein in accordance with Section 3.6. For purposes of clarity and notwithstanding the foregoing, Customer may retain and use Reports after termination, subject to the terms and conditions of this Agreement.

11.6   Surviving Provisions. The sections titled "Fees and Payment," "Proprietary Rights," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Customer Data Portability and Deletion," "Effect of Termination," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

12.   GENERAL PROVISIONS

12.1   Export Compliance. The Cloud Services and other Qualys technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Qualys and Customer each represents that it is not named on any U.S. government denied-party list. In the event that Customer or any of Customer's Users is added to any such list during the term of this Agreement, then Customer shall provide Qualys with legal written notice in accordance with Section 12.6 below within ten (10) days of being named on such list. Customer will not permit any foreign national who is, or allow any User to access or use the Cloud Services, from a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea), by persons or entities prohibited from receiving U.S. exports, or in violation of any U.S. export law or regulation.

12.2   Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment

provided in the ordinary course of business do not violate the above restriction.

12.3   Entire Agreement. This Agreement is the entire agreement between Qualys and Customer regarding Customer's use of Cloud Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties hereby agree that any term proposed by Customer or included in a Customer Order Form or purchase order are hereby rejected by Qualys even if Qualys signs the Customer's Order Form.

12.4   Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

12.5   Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

12.6   Notices. Except as otherwise specified in this Agreement and in this Section, all notices related to this Agreement ("Legal Notices") will be in writing and will be effective upon (a) personal delivery, or (b) the second business day after mailing via two-day mail. Legal Notices to Customer will be addressed to Customer and be clearly identifiable as Legal Notices. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer and may be sent via email. System-related notices may be sent via email or made available in release notes.

12.7   Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

12.8   Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

12.9   Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.10 Governing Law. This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.

12.11 Venue. The provincial and federal courts located in San Francisco, California will have exclusive jurisdiction over any dispute relating to this Agreement, and each party consents to the exclusive jurisdiction of those courts.

12.12 Counterparts. This Agreement may be executed electronically and in counterparts.

12.13 Force Majeure. For purposes of this Agreement, "Force Majeure Event" shall mean an event beyond the reasonable control of the affected party and which the effects of which could not have been avoided by a party's compliance with its obligations under this Agreement. No Party shall be liable for any failure to perform its obligations where such failure is because of a Force Majeure Event.

12.14 Updated Terms. Qualys reserves the right to update these terms. Such terms shall apply to Customer upon posting of the updated terms.