FIREMON

Software License and Support Agreement

THE GSA MULTIPLE AWARD SCHEDULE CONTRACTOR ACTING ON BEHALF OF FIREMON, LLC (HEREINAFTER "FIREMON) PROVIDES THE SOFTWARE AND SUPPORT SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS SOFTWARE LICENSE AND SUPPORT AGREEMENT (THE "AGREEMENT") AND ON THE CONDITION THAT THE ELIGIBLE ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER, STATEMENT OF WORK, OR SIMILAR DOCUMENT ("ORDERING ACTIVITY" OR "YOU") ACCEPTS AND COMPLIES WITH THEM. BYBOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, YOU AGREE TO BE BOUND BY THIS AGREEMENT YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT ORDERING ACTIVITY IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF ORDERING ACTIVITY IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF ORDERING ACTIVITY AND BIND ORDERING ACTIVITY TO ITS TERMS. IF ORDERING ACTIVITY DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, FIREMON WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO ORDERING ACTIVITY AND YOU MUST NOT INSTALL OR USE THE SOFTWARE OR SUPPORT SERVICES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ORDERING ACTIVITY'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT ORDERING ACTIVITY DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF FIREMON'S SOFTWARE.

1. **GRANT OF RIGHTS.** The Software and any related documentation ("Documentation") furnished under this Agreement are licensed, not sold, to Ordering Activity. Subject to Ordering Activity's payment of the applicable license fees, FireMon hereby grants Ordering Activity a limited, non-exclusive and non-transferable right and license to install and use the Software, subject to the terms and restrictions of this Agreement. Ordering Activity shall use the Software solely for Ordering Activity's own internal business purposes and shall not use the Software for the benefit of any other person or entity other than Ordering Activity.

   1.1 **Limitations**. Ordering Activity shall: (i) not make any modifications to or copies of the Software; (ii) ensure that any user of the Software licensed hereunder complies with the terms and conditions of this Agreement; (iii) refrain from taking any steps, including, without limitation, copying, decompiling, reverse engineering, reverse assembly or reverse compilation, to derive or to seek to derive a source code equivalent of the Software provided by FireMon in object code format; (iv) reproduce, and not remove or obscure, all identifying marks, copyright, trademark and other proprietary notices, if any, on all permitted copies of the Software; (v) not redistribute, rent, lease, license, sublicense, assign, lend, or otherwise transfer the Software or Ordering Activity's rights under this Agreement to any party; and (vi) prevent and protect the contents of the Software from unauthorized disclosure or use.

   1.2 **Audit Rights.** Upon reasonable advance written notice to Ordering Activity and then no more than once in any calendar year, FireMon reserves the right to audit Ordering Activity's deployment and use of the Software to ensure conformance with this Agreement during normal business hours, subject to Government security requirements, and in a manner not to unreasonably interfere with Ordering Activity's business operations.

   1.3 **Transferability**. Ordering Activity may only install and use the Software at the designated site and/or in conjunction with the same number and type of computers, servers and/or devices as identified in Ordering Activity's valid purchase order for the Software. For the avoidance of doubt, Ordering Activity may transfer the licenses to a substitute computers, servers and/or devices within Ordering Activity's organization provided Ordering Activity complies with all other terms and conditions,

including but not limited to the any maximum quantities of licenses identified in the applicable purchase order for the Software.

2. **SUPPORT SERVICES**. Subject to Ordering Activity's payment of the applicable support fees as set forth in Ordering Activity's purchase order, FireMon will provide support services for the Software in accordance with FireMon's then current FireMon Support Service Description (the "Support Services"). FireMon reserves the right to amend such Support Service Description from time to time. FireMon is not obligated to support, update or upgrade any Evaluation Software described herein.

3. **OWNERSHIP**. Except for the rights expressly granted hereunder to Ordering Activity, FireMon retains all right, title and interest in and to: all Intellectual Property Rights (defined below) and the Software as well as any modifications, upgrades, updates, or enhancements made thereto whether permitted or not under this Agreement. For purposes of this Agreement, "Intellectual Property Rights" includes, without limitation, all intangible legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, technique, invention, discovery or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; (ii) any work of authorship, regardless of copyrightability, but including copyrights and any moral rights recognized by law; (iii) any trademark, trade name or service mark; and (iv) any other intellectual property, proprietary or similar rights, including all goodwill pertaining thereto and in each case, on a worldwide basis.   Any rights not expressly granted to Ordering Activity by this Agreement are hereby expressly reserved by FireMon. Ordering Activity further agrees that the licensing of the Software does not constitute a royalty for any tax purposes.

4. **WARRANTIES; DISCLAIMER**. FireMon hereby warrants and represents that: (A) FireMon owns or otherwise has the right to license the Software; and (B) for a period of sixty (60) days following the delivery date to Ordering Activity (the "Warranty Period"): (i) the operation of the Software shall be free from defects in material and workmanship under normal use and materially perform in accordance with the Documentation; and (ii) the Software as delivered by FireMon shall not contain any type of software routine or other element which is intentionally designed to permit unauthorized (a) access to or intrusion upon, (b) disabling of, or (c) erasure of any hardware, software, data or peripheral equipment. The foregoing warranties shall not apply to the extent the Software has been modified without the prior written approval of FireMon or non-conformities in the Software are caused by third party products or services. FireMon's sole obligation under Section 4(B) shall be to use commercially reasonable efforts to remedy material defects in the Software identified by Ordering Activity in writing during the Warranty Period. In the event FireMon fails to remedy such material defects, Ordering Activity's sole and exclusive remedy (and FireMon's sole and exclusive liability) shall be to receive a refund of any fees paid for the portion of the Software, if any, which does not materially conform to the Documentation.

   THE FOREGOING WARRANTIES ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY FIREMON. WITH THE EXCEPTION OF THE FOREGOING WARRANTIES, THE SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS IS." FIREMON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUIET ENJOYMENT, AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. FIREMON DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE SOFTWARE OR SUPPORT SERVICES WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS IN THE SOFTWARE, IF ANY, WILL BE CORRECTED.

5. **LIMITATION OF LIABILITY**. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO FIREMON UNDER THE APPLICABLE PURCHASE ORDER GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. IN NO EVENT WILL EITHER PARTY BE LIABLE TO OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE, DATA, OR PROFITS, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SOFTWARE) ARISING OUT OF OR IN CONNECTION**

WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, , STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT FIREMON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY REMEDY IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

WITHOUT LIMITING THE FOREGOING, FIREMON WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY BUSINESS INTERRUPTION OR LOSS OF DATA ARISING FROM THE AUTOMATIC TERMINATION OF THE LICENSE RIGHTS GRANTED HEREIN AND ANY ASSOCIATED CESSATION OF THE FUNCTIONS OF THE SOFTWARE.

FIREMON IS ACTING ON BEHALF OF FIREMON, ITS RESELLERS AND SUPPLIERS FOR THE PURPOSE OF DISCLAIMING, EXCLUDING AND LIMITING OBLIGATIONS, WARRANTIES AND LIABILITY, BUT IN NO OTHER RESPECTS AND FOR NO OTHER PURPOSES.

THE FOREGOING LIMITATIONS WILL NOT APPLY TO DAMAGES ARISING OUT OR IN CONNECTION WITH (i) EITHER PARTY'S WILFULL MISCONDUCT OR GROSS NEGLIGENCE; (ii) A PARTY'S BREACH OF ITS CONFIDENTIALITIY OBLIGATIONS; (iii) PERSONALY INJURY OR DEATH RESULTHING FROM THE VENDOR'S NEGILIGENCE; (iv) FOR FRAUD; OR (v) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

6. **INDEMNIFICATION**. During the term of this Agreement, FireMon will, at its own expense, indemnify Ordering Activity against any and all claims, actions, and expenses (including reasonable attorneys' fees) the extent that such action is based on a claim by a third party that Ordering Activity's use of the Software as expressly authorized under this Agreement, infringes the United States patent rights of such third party, provided Ordering Activity promptly notifies FireMon in writing of any such claim. The indemnity set forth in the immediately preceding sentence shall not apply to any action based on any claim relating to: (i) any customization or modification made by Ordering Activity to the Software; and/or (ii) infringement caused by a combination of the Software with third party hardware or software not provided by FireMon; and/or (iii) infringement to the extent it would have been avoided had Ordering Activity installed updates or upgrades provided by FireMon. In the event of any loss, damage, liability or cost for which FireMon is obligated to indemnify Ordering Activity hereunder, FireMon shall have sole control of the defense and all related settlement negotiations, and Ordering Activity shall reasonably cooperate with FireMon in the defense and/or settlement thereof FireMon's expense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. In no event shall Ordering Activity settle any such claim, lawsuit or proceeding without FireMon's prior written approval. In the event any infringement claim, action or allegation is brought or threatened, FireMon may, at its sole option and expense (i) procure for Ordering Activity the right to continue use of the applicable Software or infringing part thereof; (ii) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof; or, (iii) if neither of the preceding is commercially practicable, terminate the Agreement and the licenses granted herein. FireMon's obligations under this Section will only apply to perpetually licensed Software during such time as such Software is under an active Support Services agreement.

7. **TERMINATION**. This Agreement is effective until terminated. Termination of this agreement shall be consistent with FAR 52.233-1, which requires the Contractor to submit a claim to the Contracting Officer if it believe the Government to be in breach, and to continue the performance during the pendency of the claim. Termination for any reason other than due to Ordering Activity's breach shall not restrict Ordering Activity's right under Section 1 to continue using any Software purchased pursuant to a perpetual license grant. In the event of a termination pursuant to this Section 7, Ordering Activity will only be entitled to a refund of the unused portion of any prepaid Fees for Services.

8. **EXPORT CONTROL**. Ordering Activity agrees that the Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations, including without limitation the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List

(collectively the "Export Laws"). In addition, Ordering Activity represents and warrants that Ordering Activity is not a citizen, or otherwise located within an embargoed nation (including without limitation Iran, Syria, Sudan, Cuba, and North Korea) and that Ordering Activity is not otherwise prohibited under the Export Laws from receiving the Software. All rights to Use the Software are granted on condition that such rights are forfeited if Ordering Activity fails to comply with the terms of this agreement.

9. **PROPRIETARY NOTICES.** No right is granted herein to use any identifying mark (such as, but not limited to, trade names, trademarks, trade devices, service marks or symbols, and abbreviations, contractions or simulations thereof) owned by, or used to identify any product or service of FireMon. Ordering Activity agrees not to use FireMon's name or refer to FireMon directly or indirectly in any way whatsoever without the written approval of FireMon.

10. **CONFIDENTIALITY.** The Software and Support Services are confidential to FireMon. Ordering Activity shall not disclose the Software, in whole or in part (including methods or concepts utilized therein) to anyone, except to Ordering Activity's employees to whom such disclosure is necessary for purposes of this Agreement. Ordering Activity shall notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such employee. If information relating to the Software subject to this Agreement at any time becomes available without restriction to the general public by acts not attributable to Ordering Activity or Ordering Activity's employees, Ordering Activity's obligations under this Section 10 shall not apply to such information after such time. All obligations of Ordering Activity under this Agreement which relate to confidentiality or which limit use of the Software shall survive and continue after any termination of this Agreement. FireMon recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

11. **GOVERNING LAW; VENUE**. This Agreement shall be deemed executed in, and shall be governed by and construed in accordance with, the Federal laws of the United States of America, excluding its conflict of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods.

12. **PUBLICITY**. In consideration of the license(s) granted hereunder, FireMon may, to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71, publicly identify Ordering Activity as a FireMon customer, issue a press release announcing the execution of this Agreement, and reference the licensed products and purchased services. Any publicity by either party shall require prior written approval as well as be in accordance with GSAR 552.203-71.

13. **EVALUATION SOFTWARE LICENSES.** FireMon may provide Ordering Activity with Software licensed for internal evaluation purposes and not for productive business use ("Evaluation Software"). Ordering Activity may install and use the Evaluation Software solely for the purpose of determining whether to purchase a commercial license to the Software and not for any revenue generation, commercial activity or other productive business or developmental purpose. Any license keys provided for a free trial will automatically expire and may cause the Evaluation Software to become non-operational at the end of the free trial period. FireMon reserves the right to exercise its audit rights under this Agreement to ensure compliance with this Section 13. Provisions in this Agreement regarding Grant of Rights, Support Services, Warranty and FireMon's Indemnification obligation will not apply to Evaluation Software

14. **MISCELLANEOUS**. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding between the parties pertaining to the subject matter hereof and merges all prior written or oral discussions between them. Except as otherwise provided herein, no amendment or modification of this Agreement shall be effective unless in writing and signed by both parties. No use of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement or alter in any manner the terms of this Agreement. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. In the event such provision cannot be reformed to make it enforceable, the

remaining terms and provisions of this Agreement shall remain in full force and effect, and such unenforceable provision shall be deemed not to be part of this Agreement. The provisions of Section 1, 3 through 5 and Sections 8-12, and Section 14 shall survive the termination or expiration of this Agreement and shall remain in full force and effect. FireMon may assign this Agreement in connection with the sale, merger or disposition of its assets and/or business operations with the other party's prior written consent in accordance with 48 CFR 42.12. Except as specifically provided in a written waiver signed by a duly authorized representative of the party seeking enforcement, the failure to enforce or the waiver of any term of this Agreement shall not constitute the waiver of such term at any time or in any circumstances and shall not give rise to any restriction on or condition to the prompt, full and strict enforcement of the terms of this Agreement. Excusable delays shall be governed by FAR 52.212-4(f).

15. **NOTICES.** Any written notice required or permitted to be given hereunder shall be given by (a) first class, postage prepaid; (b) registered or certified mail, return receipt requested; (c) confirmed facsimile; or (d) nationally recognized courier service to the other party at the addresses listed on the cover page or to such other address or person as a party may designate in writing. All such notices shall be effective upon receipt.

> To FireMon:
> > FireMon, LLC
> > 8400 W 110th Street, Suite 500
> > Overland Park KS 66210
> > ATTN: Chief Executive Officer

> To Ordering Activity: AT ADDRESS ON ORDER FORM