

## ASSESSMENT LICENSE AGREEMENT

FIREMON, LLC (HEREINAFTER "FIREMON") PROVIDES THE ASSESSMENT SERVICE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS ASSESSMENT LICENSE AGREEMENT (THE "AGREEMENT") AND ON THE CONDITION THAT USER ACCEPTS AND COMPLIES WITH THEM. BY CLICKING THE "ACCEPT" BUTTON, ACCESSING OR OTHERWISE USING THE ASSESSMENT SERVICE, YOU AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY THIS AGREEMENT. USER HEREBY (A) ACCEPTS THIS AGREEMENT AND AGREES THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENTS AND WARRANTS THAT USER HAS THE RIGHT, POWER, AND AUTHORITY ON BEHALF OF CUSTOMER TO ENTER INTO THIS AGREEMENT AND BIND CUSTOMER TO ITS TERMS. IF USER LACKS AUTHORITY DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, FIREMON WILL NOT AND DOES NOT AUTHORIZE USER OR CUSTOMER TO ACCESS TO THE ASSESMENT SERVICES AND LICENSEE MUST NOT ACCESS THE ASSEMENT SERVICE.

This Agreement is a legal agreement between Customer, the entity on whose behalf you are authorized to enter into this Agreement and **FireMon, LLC** ("**FireMon**"). This Assessment License Agreement consists of the terms and conditions set forth below, and any other exhibits or attachments referenced hereto, all of which are incorporated herein by this reference (collectively, this "**Agreement**"). Any master terms by and between Customer and FireMon and/or Customer's standard terms and conditions of sale, purchase order or other documents are for Customer's convenience only and any terms set forth therein that are inconsistent with, vary from, or add to the terms and conditions set forth in this Agreement shall not be binding on FireMon and are hereby rejected (unless agreed to in writing by FireMon after the date of this Agreement).

### 1. DEFINITIONS.

"**Assessment Service**" means a cloud-based technology service hosted by or on behalf of FireMon for the benefit of Customer and includes the proprietary software comprising the service, and associated Documentation developed by FireMon.

"**Documentation**" means the written technical documentation and specifications applicable to the Assessment Service, excluding marketing collateral, such as datasheets and solution briefs.

"**Assessment Period**" means the period of time during which Customer may use the Assessment Service beginning on the date the User accepts the terms of this Agreement.

"**Customer Data**" means the data collected and transferred to FireMon in connection with the Assessment Service.

"**Intellectual Property Rights**" means all intellectual property rights, including, without limitation, patent, copyright, trademark, and trade secret.

"**User**" means a human who is an employee of Customer (1) who has the authority to enter into this Agreement on behalf of Customer, (2) who can establish a connection to and use the Assessment Service for Customer's internal business operations and (3) to whom a user identification and password have been supplied by FireMon.

### 2. GRANT OF LICENSE; RESERVATION OF RIGHTS.

2.1. **License and Right of Access.** FireMon hereby grants Customer a nonexclusive, limited license, during the Assessment Period for the Users to use the Assessment Service for Customer's internal business operations.

2.2. **Ownership and Reservation of Rights.** Except for the limited license set forth herein, FireMon, and/or its licensors, shall own and retain all right, title and interest in and to the Intellectual Property Rights in the Assessment Service, Documentation, and any derivative works thereof, including any modifications to or derivatives made by Customer in violation of this Agreement, all of which contain valuable trade secrets of FireMon. Except as to the limited license expressly set forth in Section 2.1 of this Agreement, Customer does not acquire any other rights, express or implied, in the Assessment Service. The limited use license described herein is not a sale of the Software or any copy of it, nor is it a waiver of the rights of FireMon under the U.S. copyright laws or any other federal, state, or other applicable laws. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO FIREMON.

### 3. LICENSE AND USE RESTRICTIONS.

3.1. **General.** This license and grant of rights is for Customer's internal use only. Except as expressly provided in this Agreement, Customer may not, and may not permit any third party to, use the Assessment Service for rental, timesharing, subscription service, hosting or outsourcing or to sublicense, lend, rent, lease or make the Assessment Service available to any third party. Customer acknowledges that the software for the Assessment Service in source code form remains a confidential trade secret of FireMon and/or its licensors, and Customer may not reverse engineer or modify the software or otherwise attempt to derive the source code of the Assessment Service (except as

authorized by law), incorporate the Assessment Service in whole or in part in any other software or product, or modify the Assessment Service, develop derivative works of the Assessment Service or allow others to do so, or to attempt to do any of the foregoing, without the express prior written consent of FireMon. If Customer makes any modifications to the Assessment Service, including any derivative works, FireMon shall own such modifications. Except as expressly provided herein, Customer may not, and may not permit any third party to, remove any copyright, trademark, proprietary rights, disclaimer or warning notices placed on, included in or embedded in any part of the Assessment Service. Customer will not, and will not permit any third party to, disclose the results of any benchmark, functionality or performance tests run on the Assessment Services to any third party competitor of FireMon.

### 3.2. Assessment Service.

3.2.1. Customer shall (a) be responsible for Customer's and its Users' compliance with this Agreement; (b) use commercially reasonable efforts to prevent unauthorized access to or use of the Assessment Service and notify FireMon promptly of any such unauthorized access or use; (c) use the Assessment Service only in accordance with the Agreement, Documentation, applicable law and government regulations; (d) ensure that Users shall not use the Assessment Service for any purpose other than as expressly authorized in this Agreement; (e) be solely responsible for monitoring and controlling access to the Assessment Service, maintaining the confidentiality of User passwords, and preventing unauthorized access to or use of the Assessment Service; (f) notify FireMon promptly of any unauthorized access or use of the Assessment Service; (g) on completion of any Authorized Third Party's services requiring the use of the Assessment Service, ensure that the Authorized Third Party ceases access or use of the Assessment Service immediately.

3.2.2. Customer shall not, and shall ensure that Users do not (a) interfere with other customers' access to, or use of, the Assessment Service, or with its security; b) facilitate the attack or disruption of the Assessment Service, including a denial of service attack, unauthorized access, penetration testing, crawling, or distribution of malware (including viruses, trojan horses, worms, time bombs, spyware, adware, and cancelbots); (c) cause an unusual spike or increase in Customer's and Users' use of the Assessment Service that negatively impacts the Assessment Service' operation; or (d) submit any information that is not contemplated in the applicable Documentation.

4. **WARRANTY DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ASSESSMENT SERVICE IS FOR ASSESSMENT ONLY AND PROVIDED "AS IS". FIREMON, ITS AFFILIATES, DISTRIBUTORS AND RESELLERS MAKE NO WARRANTIES IN CONNECTION WITH THE ASSESSMENT SERVICE, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. FIREMON, SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. **THE ASSESSMENT SERVICES AND ANY RESULTS OF THIS SERVICE CAN NOT BE USED IN CONNECECTION WITH ANY OF CUSTOMER'S AUDIT REQUIREMENTS.**

5. **LIMITATION OF LIABILITY.**

5.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, FIREMON SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST DATA OR LOSS OF USE, OR PROCUREMENT OF REPLACEMENT GOODS, HOWEVER INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.2 IN NO EVENT SHALL FIREMON'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED FIVE HUNDRED U.S. DOLLARS (\$500). This limitation of liability is cumulative and not per incident (i.e., the existence of two or more claims will not enlarge this limit).

5.3 Customer acknowledges and agrees that FireMon has entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and result in consequential loss), and that the same form an essential basis of the bargain between the parties. THE LIMITATIONS OF THIS SECTION 7 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

6. **CONFIDENTIALITY.**

6.1 **General.** Customer acknowledges that the Assessment Service, including all documents, in whatever form, provided with the Assessment Service contain FireMon's confidential trade secret information ("Confidential Information"). Confidential Information will also include any information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party") in connection with Customer's use of the Assessment Service, provided that such information should be reasonably understood by the Receiving Party as being confidential or proprietary. The Receiving Party will keep the Confidential Information in confidence, in the same manner as the Receiving Party maintains its own confidential information, and in no event with less than a reasonable degree of care. The Receiving Party will use the Confidential Information only for the purpose described in this Agreement. The Receiving Party will limit the disclosure of Confidential Information solely to those employees and consultants having a need-to-know, provided that each such employee and consultant is subject to a written agreement containing confidentiality obligations no less protective than those contained in this Agreement. The Receiving Party will make no written or electronic copies of the Confidential Information, except as reasonably necessary to perform its obligations under this Agreement. The Receiving Party may disclose the Confidential Information to the extent required by a court of law or government regulatory body, but first the Receiving Party will give the Disclosing Party prompt notice to allow the Disclosing Party reasonable opportunity to obtain a protective order against such disclosure. Notwithstanding the foregoing, Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission by the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party without a confidentiality obligation; (iii) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; (iv) is independently developed by the Receiving Party without use of or reference to Confidential Information; or (v) is Aggregated Anonymous Data.

6.2 **Aggregated Anonymous Data.** FireMon shall have the right to collect and aggregate data pertaining to and resulting from User's use of the Assessment Services that does not (i) identify Customer as the source of such data or (ii) include any information which could be used to identify Customer ("Aggregated Anonymous Data"). FireMon shall own all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Aggregated Anonymous Data. For the avoidance of doubt, FireMon may use, sell, license, access, disclose, modify and create derivative works of the Aggregated Anonymous Data in perpetuity for any purpose, including, without limitation, to generate industry benchmarks and to develop and improve FireMon's products and services.

7. **COMPLIANCE WITH LAW.**

7.1 **General.** Each party will comply fully with all international and national laws and regulations that apply to the Assessment Service and to Customer's use thereof.

7.2 **Representations.** Customer represents and warrants that: (i) Customer, owns or has a right of use from a third party, and controls, directly or indirectly, all of the software, hardware and computer systems (collectively, "Systems") from which data will be collected, (ii) to the extent required under any federal, state, or local U.S. or non-US laws (e.g., Computer Fraud and Abuse Act, 18 U.S.C. § 1030 et seq., Title III, 18 U.S.C. 2510 et seq., and the Electronic Communications Privacy Act, 18 U.S.C. § 2701 et seq.), Customer has authorized FireMon to access the Systems and process and transmit data to the extent necessary to provide the Assessment Service, (iii) it has a lawful basis in having FireMon perform the Assessment Service and process the Customer Data; (iv) it is and will at all relevant times remain duly and effectively authorized to instruct FireMon to carry out the applicable agreement and provide the Assessment Service, and (v) it has made all necessary disclosures and obtained all necessary consents and government authorizations required under applicable law to permit the processing and international transfer of Customer Data to FireMon.

7.3 **Export Controls.** Customer represents that it is not a "Restricted Person," which shall be deemed to include any person or entity: (i) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (ii) on any restricted person or entity list maintained by any U.S. governmental agency. Unless authorized by U.S. regulation or license, neither party will, in connection with the activities contemplated by this Agreement, export or re-export, directly or indirectly, any Assessment Service, including without limitation, any technical data, computer software, or any product (or any part thereof), process, or service, that is the direct product of any such technical data or computer software that has been received from the other party in connection with the activities contemplated by this Agreement (hereinafter referred to collectively or individually, "Controlled Products") (a) to any country (or nationals thereof) in Country Group E of the Export Administration Regulations of the United States ("EAR") or any other country subject to sanctions administered by the Office of Foreign Assets Controls (the then-current list can be found at <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>); (b) to any non-civil (i.e. military) end users or for any non-civil end uses in any country in Country Group D:1 of the EAR, as such list may be modified from time to time (the then-current lists can be found at <http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>); or (c) in violation of the International Traffic and Arms Regulation. The parties understand that countries other than the U.S. may restrict the import or use of strong encryption products or other items and may restrict such exports. The parties agree to comply with any such import or other restrictions. Each party represents and warrants that it is not currently debarred, suspended, or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the U.S., and will immediately notify the other party in the event that any of the foregoing occurs.

7.4 **Indemnity.** Customer will indemnify, to the extent permitted by law, FireMon from and against any fines or penalties that may arise as a result of a breach of this Section 7.

8. **TERM AND TERMINATION OF LICENSE.**

8.1 **Term.** The term of this Agreement shall commence on the date the User accepts the terms of this Agreement and shall terminate at the end of the Assessment Period unless terminated earlier in accordance with this Agreement.

8.2 **Termination.** Either party may terminate this Agreement at any time for its convenience and without any liability to the other except as set forth in Section 8.4.

8.3 **Effect of Termination.** Upon any termination of this Agreement, Customer shall immediately cease using the Assessment.

8.4 **Survival.** Sections 2.4 (Ownership and Reservation of Rights), 3 (License and Use Restrictions), 4 (Warranty Disclaimer), 5 (Limitation of Liability), 6 (Confidentiality), 7 (Compliance with Law), 8 (Term and Termination of License), and 9 (General) shall survive any expiration or termination of this Agreement in accordance with their respective terms.

9. **GENERAL.**

9.1. **Independent Contractors.** The relationship of FireMon and Customer is that of independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on the other's behalf or to represent itself as the other's agent or in any way that might result in confusion as to the fact that the parties are separate and distinct entities.

9.2. **Force Majeure.** Neither party shall be liable for any loss, damage, or penalty resulting from delays or failures in performance resulting from acts of God, material shortages, or other causes beyond such party's remedy or control.

9.3. **Governing Law.** This Agreement will be governed and construed under the laws of the State of Kansas without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction. Customer irrevocably and unconditionally (i) consents to submit to the exclusive jurisdiction of the state and federal courts located in Lenexa, Kansas, USA ("Venue") for the resolution of any dispute between the parties concerning this Agreement; (ii) agrees not to commence any such proceedings except in such courts; and (iii) waives any objection to the laying of venue of any such proceedings in the state or federal courts located in the Venue.

9.4. **Notices.** All notices under this Agreement are required to be sent either via electronic delivery. All notices so given will be deemed received upon the date of receipt if by electronic delivery. If to FireMon, all notices shall be sent to [legal@FireMon.com](mailto:legal@FireMon.com).

9.5. **Severability.** If any provision of this Agreement is held invalid by the final determination of any court or other tribunal of competent jurisdiction, such provision shall be reformed only to the extent necessary to make it enforceable, and shall not affect the enforceability of (i) such provision under other circumstances or jurisdictions, or (ii) any other provision under all circumstances or jurisdictions. The invalid or unenforceable provision will be construed by such judicial body so as to be enforceable to the maximum extent compatible with applicable law.

9.6. **Headings.** The headings used in this Agreement are for ease of reference only and will not be used to interpret any aspect of this Agreement.

9.7. **Assignment.** Customer may not assign or transfer this Agreement, nor any rights or obligations under this Agreement without the prior written consent of FireMon. Any attempted assignment in violation of the foregoing shall be void and of no effect. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the parties.

9.8. **Entire Agreement.** This Agreement constitutes the entire agreement between FireMon and Customer with respect to the subject matter hereof, and supersedes all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to such subject matter. No waiver, amendment or modification of any provision of this Agreement shall be enforceable against FireMon unless it is in writing and signed by FireMon. Notwithstanding the foregoing, FireMon may amend the terms and conditions of this Agreement or any other documents and policies referenced herein at any time, including without limitation by posting such revised terms on its website ([www.FireMon.com](http://www.FireMon.com)) or the location of such other document or policy. Such amended terms and conditions shall be binding on Customer on the effective date of such change and shall supersede any prior version (including this Agreement). Except for the exclusive remedies specified herein, each party will have all rights and remedies available to it at law or in equity for the protection of its rights hereunder, including an injunction enjoining the breach or threatened breach of this Agreement. This Agreement is not governed by the United Nations Convention of Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, the application of each of which is hereby expressly excluded.