



EXTRAHOP NETWORKS

GENERAL TERMS AND CONDITIONS

THIS IS A LEGAL AGREEMENT (“AGREEMENT”) BETWEEN YOU (THE ENTITY OR INDIVIDUAL AGREEING TO THESE TERMS, “YOU” OR “CUSTOMER”) AND EXTRAHOP NETWORKS, INC. (“EXTRAHOP”) WHOSE PURPOSE IS TO CREATE A SINGLE MECHANISM UNDER WHICH YOU MAY PURCHASE AND/OR LICENSE EXTRAHOP PRODUCTS (“PRODUCTS”) AND SERVICES. YOU WILL BE REQUIRED TO INDICATE YOUR AGREEMENT TO THESE TERMS AND CONDITIONS IN ORDER TO DOWNLOAD THE EXTRAHOP SOFTWARE (“SOFTWARE”), REGISTER THE SOFTWARE WITH EXTRAHOP AND TO OBTAIN LICENSE KEYS NECESSARY TO COMPLETE THE INSTALLATION PROCESS FOR THE SOFTWARE. BY CLICKING ON THE “I AGREE” BUTTON OR OTHER BUTTON OR MECHANISM DESIGNED TO ACKNOWLEDGE AGREEMENT TO THE TERMS OF AN ELECTRONIC COPY OF THIS AGREEMENT, OR DOWNLOADING OR INSTALLING THE SOFTWARE, OR USING ANY MEDIA THAT CONTAINS THE SOFTWARE, YOU ARE AGREEING: (1) THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT; (2) TO BE LEGALLY RESPONSIBLE FOR COMPLIANCE WITH EACH AND EVERY TERM AND CONDITION OF THIS AGREEMENT; (3) THAT YOU ARE DULY AUTHORIZED TO BIND YOUR COMPANY LEGALLY TO THIS AGREEMENT; AND (4) THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PROPOSALS OR PRIOR OR CONTEMPORANEOUS AGREEMENTS, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO, ANY TERMS CONTAINED IN CUSTOMER’S PURCHASE ORDER. YOU AGREE THAT THIS AGREEMENT IS EQUIVALENT TO ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU.

For good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties agree as follows:

PART ONE – PRODUCT PURCHASE AND LICENSE TERMS.

1. Subscription Licenses; Appliance Purchases.

Customer will order Products by submitting to ExtraHop written purchase orders or Order Forms that set forth the details for the ordered Products (i.e., type and quantity ordered, and, for Appliances, delivery destination and requested shipment date) and ExtraHop services (i.e., type ordered, applicable Products, service commencement date) (collectively, “Purchase Orders”). Purchase Orders for Appliances must be placed in accordance with the lead-time restrictions set forth in Section 1.2.1 below. Any terms of a Purchase Order that conflict with, or in any way purport to amend, any of the terms of this Agreement are hereby specifically objected to and will be of no effect.

ExtraHop will make all Software (whether licensed on a subscription basis or in connection with an ExtraHop appliance) ordered via Purchase Order available to Customer for electronic download at an electronic delivery web site to be provided to Customer. Through the Internet URL, Customer can access and electronically download to Customer’s location the current production release as of the effective date of the applicable Purchase Order of the Software and related Software documentation (“Documentation”) for each Product listed. Provided that Customer has continuously maintained technical support for the Products listed, Customer may continue to download the Software and related Documentation. Customer acknowledges that ExtraHop is under no further delivery obligation with respect to Software under the applicable Purchase Order, electronic download or otherwise. Customer is responsible for installation of the Software unless the Software has been pre-installed by ExtraHop on an appliance Customer is purchasing under the Purchase Order or Customer purchases installation services from ExtraHop with respect to such Products.

1.1. For Subscription Licenses: The Software will be made available to Customer by provision of a license key to install and host the Software on servers that are controlled by Customer during the Term. Customer may only use the Software within a supported environment with hardware and software that is compatible with the Software, as set out in the Documentation. None of the foregoing is ExtraHop’s responsibility and ExtraHop disclaims any obligation to provide access to the Software where Customer is not in compliance with this requirement.



1.2. For Appliance Purchases:

1.2.1. Customer will provide ExtraHop with a minimum order lead-time (i.e., the time between receipt of a Purchase Order by ExtraHop and the requested Product shipment date) for the shipment of Products of no less than 30 business days. For those Purchase Orders for which Customer fails to provide the minimum order lead-time, ExtraHop will not be obligated to accept the Purchase Order, but if ExtraHop does accept the Purchase Order, ExtraHop will use reasonable efforts to fill the Purchase Order by the shipment date requested by Customer.

1.2.2. No later than five business days after receipt of a Purchase Order, ExtraHop will advise Customer in a written or electronic notice whether it has accepted the Purchase Order ("Order Acknowledgement") or it is requesting a modification to the Purchase Order ("Change Order"). If ExtraHop fails to deliver an Order Acknowledgement or Change Order within the five business day period, the Purchase Order will be deemed accepted.

1.2.3. For the purposes of this Agreement, an "Accepted Order" is an order described in (a) a Purchase Order that is automatically deemed accepted by ExtraHop in accordance with Section 1.2.2; or (b) an Order Acknowledgement delivered by ExtraHop in accordance with Section 1.2.2.

1.2.4. ExtraHop will use reasonable efforts to promptly fill all Accepted Orders for Products in accordance with the terms specified in the Accepted Orders, subject to any rescheduling requested by Customer in accordance with Section 1.2.5. ExtraHop will notify Customer promptly in writing if the delivery of any Products will be delayed until after the shipment date specified in the Accepted Order.

1.2.5. At least 30 business days before the Product shipment date specified in an Accepted Order, Customer may reschedule the shipment of the Product by providing written notice to ExtraHop that must include the following information: the number of Products for which delivery is to be rescheduled, and the rescheduled shipment date, which must be more than 30, but less than 75, business days after the date on which the rescheduling notice is received by ExtraHop. ExtraHop will acknowledge all requests for rescheduled delivery within five business days after ExtraHop's receipt of such request.

1.2.6. All Products delivered pursuant to this Agreement will be suitably packed for shipment in ExtraHop's standard shipping cartons, marked for shipment to Customer's address noted in the Purchase Order or to an address specified in an Order Acknowledgement, and delivered to Customer or its carrier agent FCA Origin, at which time risk of loss and title will pass to Customer. Unless otherwise instructed in writing by Customer, ExtraHop will select the carrier. Customer will pay all freight, insurance, and other shipping expenses, as well as any special packing expense. Customer will also bear all applicable taxes, duties, and similar charges that may be assessed against the Products after delivery to the carrier at ExtraHop's facilities. ExtraHop will retain all right, title, and interest, including any intellectual property rights, in and to any software provided as part of a Product and licensed hereunder. Appliances must not be resold. As used in this Agreement, the term FCA will be construed in accordance with the International Chamber of Commerce "Incoterms" (published 2010).

For Subscription Licenses and Appliance Purchases:

1.3. ExtraHop regularly upgrades and updates the Software. This means that the Software is continually evolving. It is Customer's responsibility to schedule and implement the Software changes made available by ExtraHop. The changes may also mean that Customer needs to upgrade its software or hardware in order to make efficient use of the Software. ExtraHop will provide Customer with advance notification in this case.

1.4. ExtraHop recognizes that Customer may have legitimate business reasons for not upgrading to a new version of the Software as soon as the version becomes available. However, ExtraHop will not support old versions indefinitely. ExtraHop reserves the right to limit or terminate development support (including error correction services) of any Software version six (6) months after the date of release of a subsequent Software version. The foregoing restriction shall apply even if Customer elects to install a Software version other than the then-currently shipping version of the Software. When an old version used by Customer is at end-of-life, ExtraHop may remove Customer's access to that version and upgrade Customer to a new version.

1.5. Customer acknowledges that ExtraHop will retain all right, title and interest in and to the Product(s), all technology, inventions and pre-existing content incorporated therein, all derivative works, modifications and



enhancements thereto and all intellectual property rights in any of the foregoing. Customer acknowledges that ExtraHop will retain all right, title and interest to transactional and performance data (but not to Customer Data (as defined in Section 4.2 below)) related to use of the Software which ExtraHop may aggregate and collect, in such a way as to not allow identification of Customer, any user or any of its suppliers or service providers, for its business purposes (including software use optimization) provided that such use does not (i) include any marketing or sales activities, or (ii) reveal the identity of Customer, any Customer employee, supplier or service provider or specific software use characteristics that may be identified to Customer. If Customer sells, leases, lends, rents, transfers or otherwise distributes any hardware to a third party, Customer will ensure that it erases all copies of the Software from such hardware.

1.6. Subject to Customer's payment of the applicable license fees (and, in the case of any Appliance purchase, any applicable support fees) set forth in its Order Form, ExtraHop will provide the level of support for the Software identified in Customer's Order Form and in accordance with the support and maintenance terms and conditions set forth on Exhibit A ("Support and Maintenance Terms and Conditions"), attached hereto and made a part hereof. ExtraHop is not obligated to support, update or upgrade any Software provided without charge or for evaluation.

2. Software License; Conditions of Use.

The Software licensed to Customer (in object code only) under this Agreement is licensed on a non-exclusive, non-transferable (except as provided in Section 15.4), non-sublicensable and revocable (in the case of an Appliance purchase, only in the case of Customer non-payment or a willful breach of this Section 2) basis, and for Customer's internal business use only, except as otherwise specifically authorized by ExtraHop in writing. Any subscription license is for the number of, and/or size of, and/or scope of any or all of the following: devices, virtual machines, modules and other measures of licensed functionality, as specified in the Order Form and as accessible through a license key.

The Software also includes software that is subject to Open Source Software licenses and such Open Source Software is licensed under the terms of the license that accompanies such Open Source Software. To the extent portions of the Software are distributed under and subject to Open Source Software licenses obligating ExtraHop to make the source code for such portions publicly available (such as the GPL or LGPL), ExtraHop will make such source code portions (including ExtraHop modifications, as appropriate) available upon request for a period of up to three years from the date of distribution. Such request can be made in writing to ExtraHop Networks, Inc., 520 Pike Street, Suite 1700, Seattle, Washington 98101, Attn: Legal. You may obtain a copy of the GPL at <http://www.gnu.org/licenses/gpl.html>, and a copy of the LGPL at <http://gnu.org/licenses/lgpl.html>. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for such Open Source Software; however the licenses to the Software include the right to use the Open Source Software included in the Software in the same manner and to the same extent as the Software.

Customer agrees and acknowledges that (a) at Customer's election, data may be exported from the ExtraHop system via syslog export, SNMP traps, Application Inspection Triggers, third-party interfaces, and other methods; (b) it is solely responsible for choosing to export data from the ExtraHop platform and accepts any consequences arising therefrom, including but not limited to any improper use of such data by a third party; and (c) the security and integrity of Customer's exported data is solely the responsibility of Customer once it leaves the ExtraHop platform.

Customer is solely responsible for all activities that occur in Customer's or its users' account(s) and for the security of all of Customer's and its users' passwords. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXTRAHOP HAS NO LIABILITY OF ANY KIND (WHETHER BY CONTRACT, TORT OR OTHERWISE) FOR ANY UNAUTHORIZED ACCESS TO CUSTOMER'S OR ITS USERS' ACCOUNTS AS A RESULT OF CUSTOMER'S OR ITS USERS' ACTIONS OR INACTIONS.

Customer may not:

- 2.1. transfer to any other person any of its rights to use the Product;
- 2.2. sell, sublicense, resell, rent, time-share or lease the Product (or access thereto or use thereof), or use the Product in an application service provider or managed service provider environment, or otherwise generate income from the Product;



- 2.3. make the Product available to anyone who is not an “Authorized User”. An Authorized User is an employee of Customer, or of a person to whom Customer has outsourced services, who is authorized to access the Product as either a named or concurrent user;
- 2.4. create, modify, copy, clone or transfer any derivative works based upon the Product or published Product documentation (the “Documentation”);
- 2.5. copy or clone any feature, design or graphic in, or decompile, disassemble or reverse engineer, the Product or any portion or aspect thereof, or otherwise attempt to discover or permit the discovery of any source code or other operational mechanisms of the Product;
- 2.6. access the Product (i) in order to build a competitive solution or to assist someone else to build a competitive solution; or (ii) if Customer is an employee or contractor of a ExtraHop competitor;
- 2.7. use the Product in a way that violates any criminal or civil law;
- 2.8. load-test the Product in order to test scalability or vulnerability, or to otherwise use the Product to perform benchmark testing or other types of competitive analysis intended for external distribution outside Customer’s organization without ExtraHop’s prior written approval.
- 2.9. exceed the usage (number of devices, virtual machines, modules or other measures of licensed functionality) limits listed in the Order Form for which Customer has paid the applicable fees; or
- 2.10. use any ExtraHop API provided to Customer other than for the purpose of developing extensions for use with the Product for Customer’s internal business use. Customer agrees to assume full responsibility for the performance of its extensions, and shall indemnify, hold harmless, and defend ExtraHop (including all of its officers, employees, directors, subsidiaries, representatives, affiliates and agents) and ExtraHop’s licensors and suppliers from and against any claims or lawsuits, including attorney’s fees and expenses, that arise or result from Customer’s extensions. Customer retains title to and copyright for its extensions, subject to ExtraHop’s title to and copyright for the Product as specified in the Section 1.5 above.

3. Free Trial Evaluation License Terms.

In addition to the terms of Section 2 of this Agreement (including specifically, but not limited to, Sections 2.4 and 2.5), if the applicable Order Form (which may be a form on ExtraHop’s website or a third-party form on which Customer requests the Evaluation Software (as defined below) is limited to a free trial license, then the Term will also be limited to the free trial period, if any, specified in the Order Form or with the license key. This Agreement and any license rights granted hereunder will automatically terminate at the end of the free trial period, if any, and there will be no renewal term. Customer may install and use the ExtraHop evaluation software (the “Evaluation Software”) solely (i) subject to any usage limits provided in the Order Form or with the license key, and (ii) 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. The Evaluation Software is provided to Customer on an “as is” basis and Customer agrees to use such Evaluation Software at its own risk and hereby releases ExtraHop from any and all liability associated with Customer’s use thereof. 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, if any. ExtraHop reserves the right to exercise its rights under Section 7.3 of this Agreement to ensure compliance with this Section 3. At any time while evaluating the Evaluation Software, you will have the option to pay for a commercial license to the Software. To the extent that any provision of this Section 3 is in conflict with any other term or conditions of this Agreement, this Section 3 shall supersede such other terms and conditions with respect to the Evaluation Software, but only to the extent necessary to resolve the conflict. ExtraHop reserves the right to terminate your license to use, or to reduce or otherwise change the features and/or functionality in, the Evaluation Software at any time in its sole discretion. Provisions in this Agreement regarding warranty (Section 5), payments (Section 7), support and maintenance (Exhibit A) and indemnification (Section 12) will not apply to Evaluation Software, except that Customer will be permitted access to the ExtraHop Support Portal (http://www.extrahop.com/support/support_portal) in connection with the Evaluation Software as the only form of ExtraHop support provided for Evaluation Software. Customer also acknowledges that the Evaluation Software may be limited in features, functionality, or have other limitations not present in the Software licensed under a paid license. If Customer provides ExtraHop any feedback, ideas, concepts or suggestions about the Evaluation Software or ExtraHop’s business, technology or Confidential Information (“Feedback”), Customer



grants ExtraHop, without charge, the fully paid-up, irrevocable right and license to use, share, commercialize and otherwise fully exercise and exploit such Feedback and all related rights (and to allow others to do so) in any way.

4. Remote Access; Customer Data.

4.1. Customer hereby grants permission to ExtraHop to connect to its system via remote access. Further, Customer acknowledges that ExtraHop may need to perform scheduled and, in the case of emergency (as determined in ExtraHop's sole and reasonable discretion), unscheduled maintenance, which may affect the availability of the Software.

4.2. Customer owns all the content and data provided through its account ("Customer Data") and to which ExtraHop will have access in connection with Customer's use of the Software.

4.3. ExtraHop must keep the Customer Data confidential in accordance with Section 11 of this Agreement.

4.4. ExtraHop shall not modify or use the Customer Data except (a) as necessary to provide the Services, prevent or resolve service or technical problems; (b) to observe and report back to Customer on Customer's usage of the Software, and make recommendations for improved usage of the Software; (c) only in generic and non-identifiable form, to improve ExtraHop's products and services, including benchmarking; and (d) at Customer's request in connection with customer support matters.

4.5. ExtraHop shall not disclose the Customer Data except as compelled by law or legal proceedings in accordance with Section 11.3(iv), or as expressly permitted in writing by Customer.

5. Warranties.

ExtraHop warrants that: (i) for a period of ninety (90) days after the earlier of delivery or activation of Customer's license key, the Software will function substantially as described in the Documentation; (ii) for a period of three (3) years from the date of delivery of the Product to Customer (but terminating earlier at such time as Customer ceases to maintain a valid, paid-up support contract covering each such Product), the hardware component of any Product will be free from defects in material and workmanship under normal use; and (iii) ExtraHop owns or otherwise has the right to provide the Product to Customer under this Agreement. The remedies set out in this Section 5 are Customer's exclusive remedies for breach of the above warranties. In the event of any material Software non-conformity reported after the warranty period, ExtraHop's sole and exclusive obligation and Customer's sole and exclusive remedy shall be to obtain error corrections through ExtraHop's support services further described in Exhibit A for errors that are attributable to ExtraHop and reproducible by ExtraHop on unmodified Software as delivered to Customer.

5.1. If the Software does not function substantially in accordance with the Documentation, ExtraHop must, at its option, either (i) modify the Software to conform to the Documentation; or (ii) provide a commercially reasonable workaround solution. For subscription licenses only: If neither of these options is commercially feasible, either party may terminate the relevant Order Form under this Agreement, in which case ExtraHop shall refund to Customer all fees pre-paid, if any, to ExtraHop under the relevant Order Form for any unused time remaining on its Term.

5.2. If the hardware component of any Product fails during the warranty period, ExtraHop will repair or replace (with a new or reconditioned replacement) the Product or component at no cost to Customer. Products returned to ExtraHop must be pre-authorized by ExtraHop with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. The decision to issue an RMA shall be at ExtraHop's sole discretion, subject to the warranty terms hereof. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by ExtraHop's receiving department. All other packages will be rejected. The repaired or replaced item will be shipped to Customer, at ExtraHop's expense, no later than seven (7) days after receipt by ExtraHop. For customers with Advance Exchange RMA approval (as detailed in Customer's support contract, where applicable), a replacement Product or component will be shipped to Customer on the first business day following confirmation of the failure of the original Product or component per the terms of Customer's support contract. ExtraHop may invoice the Customer for any failed Products or components (a) with respect to which the damage to such Products or components is attributable to actions taken by Customer or any of its agents (including but not limited to the



restrictions set forth in Section 5.4 below); or (b) not returned within ten (10) days of shipment of the replacement unit(s). Title to any returned Products or components will transfer to ExtraHop upon receipt.

5.3. If the normal operation, possession or use of the Product by Customer is found to infringe any third party U.S. intellectual property right or ExtraHop believes that this is likely, ExtraHop must, at its option, either (i) obtain a license from such third party for the benefit of Customer; (ii) modify the Product so that it no longer infringes; or (iii) if neither of these options is commercially feasible, terminate the relevant Order Form under this Agreement, in which case ExtraHop shall refund to Customer: (a) in the case of a subscription license, all fees pre-paid, if any, to ExtraHop under the relevant Order Form for any unused time remaining on its Term; and (b) in the case of an Appliance purchase, the purchase price of the infringing Appliance.

5.4. However, ExtraHop has no warranty obligations for:

5.4.1. the extent that Product has been modified or serviced by Customer or any third party, unless the modification has been approved in writing by ExtraHop, or where Customer is not in compliance with Sections 1 and 2 above;

5.4.2. the extent that Product has been subjected to abnormal physical or electrical stress, misuse, negligence or accident;

5.4.3. a version of the Software that has passed its end-of-life date (see Section 1.4); or

5.4.4. problems with the Product caused by any third party software or hardware, by accidental damage or by other matters beyond ExtraHop's reasonable control.

PART TWO – GENERAL.

6. Term of Agreement.

This Agreement starts on the date that Customer executes an Order Form and ends (a) in the case of a subscription license, when ExtraHop no longer is obliged to provide Customer with access to the Software under any Order Forms; and (b) in the case of an Appliance purchase, on the end date set forth on the Order Form. If an initial Term is specified in the Order Form, this Agreement shall renew for successive Terms of the same length as that initial Term unless Customer gives ExtraHop written notice of non-renewal at least thirty (30) days prior to the next renewal Term. For Evaluation Software, the Term is as specified in Section 3.

7. Payments.

Customer must pay the fees listed in the relevant Order Form or disclosed through the License Manager, whichever is greater, on the terms specified in the Order Form (or if none are specified, within thirty (30) days of invoice date). In the case of a subscription license, if the License Manager or other method reveals that Customer's usage of the Software is in excess of those limits set forth in the Order Form, Licensee will be billed for those overages at a pro-rated amount for the remainder of the Term, based on ExtraHop's then-current standard pricing unless otherwise specifically provided in an Order Form. Unless stated otherwise in the Order Form, after the first year of a subscription license, ExtraHop reserves the right to increase the applicable fees year-over-year by up to five percent (5%) on a per-Product basis. All payments will be made in US dollars. ExtraHop may accept payment in any amount without prejudice to its right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere will be construed as an accord or satisfaction.

7.1. Customer must pay a finance charge on any overdue payment of one and one-half percent (1-1/2%) for each month or portion of a month that the payment is overdue, or the highest interest rate permitted by applicable law, whichever is the lower. Interest shall compound monthly. The fees do not include any taxes, and Customer shall pay any sales, use, value added or other taxes or import duties (other than corporate income taxes payable by ExtraHop) due as a result of any amounts paid to ExtraHop. ExtraHop may be required to collect and remit taxes from Customer, unless Customer provides to ExtraHop a valid tax exemption certificate. Customer shall bear all of ExtraHop's costs of collection of overdue fees, including reasonable attorneys' fees. ExtraHop reserves the right to charge a 15% restocking fee, where applicable.



7.2. If Customer initially purchases a subscription license to the Software for a term, and subsequently increases its usage, the purchase price for the additional Software shall be pro-rated so that the added subscriptions terminate on the same day as the initial Term.

7.3. ExtraHop may track Customer's actual use of the Software through a license manager (the "License Manager"). Customer agrees to allow the License Manager to send periodic information to ExtraHop for invoicing and/or auditing purposes. If Customer disables or otherwise prevents the operation of the License Manager, Customer agrees at Customer's cost to allow ExtraHop to audit Customer's use of the Software monthly, upon twenty-four (24) hours notice, to determine the actual Software use, using a commercially reasonable auditing procedure. In addition, at ExtraHop's written request, Customer shall furnish ExtraHop with a certification signed by its authorized representative verifying that the Software is being used in accordance with the terms and conditions of this Agreement and the applicable Order Form. If any audit reveals an underpayment greater than five percent (5%) across the applicable measurement period, Customer shall reimburse ExtraHop's reasonable and actual costs of such audit.

7.4. Except as otherwise expressly provided in an Order Form, all payment obligations are non-cancelable and all amounts paid are non-refundable.

8. Termination and Suspension.

8.1. Either party may terminate this Agreement or rights granted under a particular Order Form if the other breaches any material term of the Order Form (including a material term of this Agreement insofar as it applies to the Order Form) and the breach is not cured within 30 days of written notice. Any breach by Customer of Section 2 of this Agreement shall be considered a material breach.

8.2. Instead of terminating the Agreement or rights granted to a Customer under an Order Form, ExtraHop may suspend Customer's access to the Software for a period of up to 45 days. At any time during that period, ExtraHop may terminate the Agreement or any rights granted to Customer.

8.3. Sections 2, 4.3, 7, 9, 10, 11, 12, 13 and 15 continue after this Agreement ends.

8.4. If ExtraHop terminates an Order Form under this Agreement because of non-payment by Customer, all unpaid fees owed for the remainder of the Term immediately fall due for payment.

8.5. Upon termination of a subscription license, (a) Customer must either destroy any and all instances or copies of the Software in its possession or under its direct or indirect control; and (b), ExtraHop will not store any Customer Data and may destroy such Customer Data (except for generic and unidentifiable information and data which can be retained and will be owned by ExtraHop, and may be used by ExtraHop for customer support purposes and to improve ExtraHop's products and services, including benchmarking).

9. Warranty Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PRODUCT AND ANY EXTRAHOP SERVICES ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND EXTRAHOP DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR DOES EXTRAHOP WARRANT THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR DATA ACCESSED OR USED IN CONNECTION WITH THE PRODUCT. EXTRAHOP DOES NOT WARRANT THAT THE USE OF, OR ACCESS TO, THE PRODUCT WILL BE UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE.

CUSTOMER HEREBY ACKNOWLEDGES THE NEED TO MAKE PERIODIC BACKUP COPIES OF THE DATA AND CONFIGURATION STORED ON THE PRODUCT AS A PRECAUTION AGAINST POSSIBLE FAILURES, ALTERATION OR LOSS. BEFORE RETURNING THE PRODUCT FOR ANY REASON, CUSTOMER SHOULD REMOVE ANY CONFIDENTIAL, PROPRIETARY OR PERSONAL INFORMATION. EXTRAHOP IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS OF, OR SECURITY OF ANY PROGRAMS, DATA, CONFIGURATION, OR PHYSICAL MEDIA. EXTRAHOP IS NOT RESPONSIBLE FOR THE RESTORATION OR REINSTALLATION OF ANY PROGRAMS, DATA, OR CONFIGURATION OTHER THAN THE SOFTWARE INSTALLED BY EXTRAHOP WHEN THE PRODUCT WAS INITIALLY DELIVERED TO CUSTOMER.

10. Limitation of Liability.



NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST REVENUES OR PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE PRODUCT AND DOCUMENTATION NECESSARY TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE PRODUCT. EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND RELATED TO THE RELEVANT ORDER FORM SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY CUSTOMER TO EXTRAHOP UNDER SUCH RELEVANT ORDER FORM DURING THE 12 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES.

THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE BARGAIN BETWEEN EXTRAHOP AND CUSTOMER AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE TO EXTRAHOP.

11. Confidentiality.

11.1. The Product (including any data, drawings, benchmark tests, specifications, trade secrets, logins, passwords and other access codes, algorithms, know-how, formulas, processes, ideas or inventions (whether patentable or not) relating thereto) and Documentation contain valuable trade secrets that are the sole property of ExtraHop, and Customer agrees to use reasonable care to prevent other parties from learning of these trade secrets. Customer must take reasonable care to prevent unauthorized access to or duplication of any aspect of the Product or Documentation.

11.2. The Customer Data may include valuable trade secrets that are the sole property of Customer. ExtraHop must take reasonable care to prevent other parties from learning of these trade secrets.

11.3. Sections 11.1 and 11.2 do not apply to any information that (i) is now, or subsequently becomes, through no act or failure to act on the part of receiving party (the "Receiver"), generally known or available; (ii) is known by the Receiver at the time of receiving such information, as evidenced by the Receiver's records; (iii) is subsequently provided to the Receiver by a third party, as a matter of right and without restriction on disclosure; or (iv) is required to be disclosed by law, provided that the party to whom the information belongs is given prior written notice of any such proposed disclosure.

12. Indemnification by ExtraHop.

ExtraHop must indemnify and hold harmless Customer, its affiliates, directors and employees from any damages finally awarded against Customer (including, without limitation, reasonable costs and legal fees incurred by Customer) arising out of any third party suit, claim or other legal action alleging that the use of the Product or Documentation by Customer infringes any copyright, trade secret or United States patent, ("Legal Action"). ExtraHop must also assume the defense of the Legal Action.

12.1. However, ExtraHop shall have no indemnification obligations for any Legal Action arising out of: (i) a combination of the Product with any products not supplied, or approved in writing, by ExtraHop; (ii) any repair, adjustment, modification or alteration to the Product by Customer or any third party, unless approved in writing by ExtraHop; or (iii) any refusal by Customer to install and use a non-infringing version of the Product. This Section 12 states the entire liability of ExtraHop with respect to any intellectual property infringement by the Product.

12.2. Customer must give written notice to ExtraHop of any Legal Action no later than 30 days after first receiving notice of a Legal Action, and must give copies to ExtraHop of all communications, notices and/or other actions relating to the Legal Action. Customer must give ExtraHop the sole control of the defense of any Legal Action, must act in accordance with the reasonable instructions of ExtraHop and must give ExtraHop such assistance as ExtraHop reasonably requests to defend or settle such claim. ExtraHop must conduct its defense at all times in a manner that is not adverse to Customer's interests. Customer may employ its own counsel to assist it with respect to any such claim. Customer must bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with ExtraHop or its counsel, or



because ExtraHop fails to assume control of the defense. Customer must not settle or compromise any Legal Action without ExtraHop's express written consent. ExtraHop shall be relieved of its indemnification obligation under Section 12 if Customer materially fails to comply with Section 12.2.

13. Indemnification by Customer.

Customer must indemnify and hold harmless ExtraHop, its affiliates, directors, and employees from any damages finally awarded against ExtraHop (including, without limitation, reasonable costs and legal fees incurred by Customer) arising out of any third party suit, claim or other legal action (including but not limited to any governmental investigations, complaints and actions) in connection with the Customer Data, including, without limitation, any action for infringement of any trademark, copyright, trade secret, right of publicity or privacy (including defamation), patent or other proprietary right with respect to the Customer Data ("Legal Claim").

13.1. ExtraHop must give written notice to Customer of any Legal Claim no later than 30 days after first receiving notice of a Legal Claim, and must give copies to Customer of all communications, notices and/or other actions relating to the Legal Claim. ExtraHop must give Customer the sole control of the defense of any Legal Claim, must act in accordance with the reasonable instructions of Customer and must give Customer such assistance as Customer reasonably requests to defend or settle such claim. Customer must conduct its defense at all times in a manner which is not adverse to ExtraHop's interests. ExtraHop may employ its own counsel to assist it with respect to any such claim. ExtraHop must bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with Customer or its counsel, or because Customer fails to assume control of the defense. ExtraHop must not settle or compromise any Legal Claim without Customer's express written consent. Customer shall be relieved of its indemnification obligation under Section 13 if ExtraHop materially fails to comply with Section 13.1.

14. Publicity.

14.1. ExtraHop may publish a brief description highlighting Customer's deployment of the Product and list Customer as a customer and use Customer's logo on ExtraHop's marketing materials and website, on publicly available customer lists, and in media releases. ExtraHop and Customer may, upon the parties' mutual agreement, issue a joint press release to announce the relationship of the parties hereunder.

15. Miscellaneous.

15.1. This Agreement together with the Order Form represent the entire agreement of the parties, and supersede any prior or current understandings, whether written or oral. If there is a conflict between the Agreement and an Order Form, the Agreement will prevail. Facsimile signatures or signatures delivered via PDF shall hold the same force and effect as an original signature for purposes of binding the parties to this Agreement. Customer's checking of a box or clicking an "I Agree" button or other mechanism indicating that Customer agrees to this Agreement, shall also constitute full and complete assent hereto.

15.2. This Agreement may not be changed or any part waived except in writing by the parties; provided, however, that as to any Software Updates or Software Upgrades (each as defined in Exhibit A hereto), ExtraHop may amend the terms of this Agreement, which amended terms will be provided at the time of download of the Software Update or Software Upgrade. If Customer does not agree to these amended terms, Customer may elect not to accept and download the applicable Software Update or Software Upgrade.

15.3. This Agreement will be governed by the laws of Washington (excluding its choice of law rules). The parties consent to the exercise of exclusive jurisdiction by the state or federal courts in the State of Washington for any claim relating to this Agreement.

15.4. Customer must not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of ExtraHop. ExtraHop may not withhold such consent in the case of an assignment by Customer of its rights and obligations to an entity that has acquired all, or substantially all of Customer's assets, or to an assignment that is part of a genuine corporate restructure. Any assignment in breach of this Section is void.

15.5. Customer must not export or re-export, directly or indirectly, any Product, Documentation or confidential information to any countries outside the United States except as permitted under the U.S. Commerce Department's Export Administration Regulations.



15.6. Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks.

15.7. Any notice, request, demand, or other communication required or permitted in this Agreement will be in writing, will reference this Agreement, and will be effective: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (c) four business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (d) two business days after deposit with an express courier, with written confirmation of receipt; or (e) twenty-four (24) hours after transmission by electronic mail to the email address on record in Customer's account information or on the Order Form. All notices will be sent to the address set forth below or other address or email address for a party as specified in writing by that party.

15.7. The Product and Documentation provided to the U.S. Government are "Commercial Items", as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", within the meaning of 48 C.F.R. 12.212 or 48 C.F.R.227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein, as provided in FAR 12.212, and DFARS 227.7202-1(a), 227.7202-3(a), 227.7202-4, as applicable.

PART THREE – DEFINITIONS.

16. Glossary.

16.1. "Appliance" means an ExtraHop-furnished hardware device containing the Software.

16.2. "Customer Data" means any electronic information stored in the Software database.

16.3. "Documentation" means user documentation provided electronically by ExtraHop for use with the Product, as periodically updated.

16.4. "Evaluation Software" means Software licensed for internal evaluation purposes and not for productive business use.

16.5. "Open Source Software" means any software that requires as a condition of use, modification and/or distribution of such software that such software or other software incorporated into, derived from or distributed with such software (a) be disclosed or distributed in source code form; or (b) be licensed by the user to third parties for the purpose of making and/or distributing derivative works; or (c) be redistributable at no charge.

16.6. "Order Form" means a document provided by ExtraHop and signed by Customer or an ExtraHop channel partner (including but not limited to a signed ExtraHop sales quote form) that describes the specific terms of Customer's (a) subscription license of the Software or (b) purchase of one or more Appliances and licensing of the Software.

16.7. "Product" means the Appliance or Software purchased and/or licensed under an Order Form.

16.8. "Professional Services" means the training, consulting, development and other professional services provided by ExtraHop under separate terms and at additional cost.

16.9. "Software" means either the Customer-hosted (for subscription licensing) or Appliance-installed ExtraHop application performance management (APM) solutions identified in an Order Form, and any modifications periodically made by ExtraHop, but does not include any Professional Services.

16.10. "Term" means (a) in the case of a subscription license, the period of time during which ExtraHop is required to provide Customer with access to the Software under this Agreement; and (b) in the case of an Appliance purchase, the term of agreement set forth on the Order Form.



EXHIBIT A

Support Services

The current version of ExtraHop's support services terms and conditions (the "Support Terms") is set forth at: <http://www.extrahop.com/d/supportterms.pdf> and such Support Terms are hereby incorporated by reference. The Support Terms are made effective as of the date set forth on the applicable Order Form pursuant to which Customer contracted for the Covered Product(s) (as defined in the Support Terms) and, in the case of an Appliance purchase, conditioned upon Customer's payment of the applicable support services fees. For a subscription license, the license fee is inclusive of support services.

The table below provides the details of ExtraHop's support services, which are effective upon installation of the Covered Software (as defined in the Support Terms) and activation of Customer's license key.

Training, installation and professional services must be purchased separately and are subject to separate fees from the license fees.

Gold Support Offerings:

Service Plan	ExtraHop Support
Support Hours	Monday – Friday (non-holiday) Hours: 12AM – 7PM PT
Contact	Email: support@extrahop.com Support Portal: http://www.extrahop.com/support/support_portal Phone: (877) 333-9872 Phone (APAC): +65 3163 5541 Phone (EMEA): +44 (0)845 5199150
Standard Replacement Option	Upon Support authorization, replacement equipment will be shipped once problem unit is received and evaluated (subject to ExtraHop End of Life Policy)
Software Maintenance and Upgrade Assurance	
Firmware Updates (excluding those that require hardware modifications)	Yes, while equipment is under service agreement
Software Updates labeled as 2.1, 2.2, etc. ¹	Yes, while equipment is under service agreement
Customer Services	
Access to online support portal	Yes, while equipment is under service agreement (additional fees apply)
Access to ExtraHop Networks Training Services	Yes, while equipment is under service agreement (additional fees apply)
Access to ExtraHop Networks Professional Services	Yes, while equipment is under service agreement (additional fees apply)
Response Times	
Severity 1 and 2 cases (see definitions on Exhibit B)	6 hour response
Severity 3 and 4 cases (see definitions on Exhibit B)	Next Business Day (Pacific Time) response

¹ Software Updates are improvements, bug fixes, error corrections, and patches that may include minor new features but not architectural changes or major new features, which ExtraHop makes generally available to customers of a Support Package that includes Software Update Service. Software Updates are typically labeled with a change in the version number after the first decimal (e.g. 1.0 to 1.1), although not each change may be deemed a Software Update. Software Updates do not include new features, functions, or applications that may be released as part of a Software Upgrade (new software releases, versions, modules, or feature sets that may include new features, architectural changes, and quality improvements that allow the Customer to upgrade from one version of ExtraHop's software to the next version (e.g., 1.0 to 2.0)) or that may require new hardware.



Platinum Support Offerings:

Service Plan	ExtraHop Support
Support Hours	Hours: 24 x 7
Contact	Email: support@extrahop.com Support Portal: http://www.extrahop.com/support/support_portal Phone: (877) 333-9872 Phone (APAC): +65 3163 5541 Phone (EMEA): +44 (0)845 5199150
Advance Replacement Option	Upon Support authorization, replacement equipment will be shipped in advance of receipt of problem unit (subject to ExtraHop End of Life Policy)
Software Maintenance and Upgrade Assurance	
Firmware Updates (excluding those that require hardware modifications)	Yes, while equipment is under service agreement
Software Updates labeled as 2.1, 2.2, etc.	Yes, while equipment is under service agreement
Customer Services	
Access to online support portal	Yes, while equipment is under service agreement
Access to ExtraHop Networks Training Services	Yes, while equipment is under service agreement (additional fees apply)
Access to ExtraHop Networks Professional Services	Yes, while equipment is under service agreement (additional fees apply)
Provide data analysis consulting to assist in using ExtraHop for troubleshooting and root cause analysis (calls/screen shares not to exceed 30 minutes, advanced assistance will be escalated to ExtraHop SA team for paid engagements)	Yes, while equipment is under service agreement (additional fees may apply)
Provide basic assistance for configuring or modifying data feeds to the ExtraHop environment (calls/screen shares not to exceed 30 minutes, advanced assistance will be escalated to ExtraHop SA team for paid engagements)	Yes, while equipment is under service agreement (additional fees may apply)
Provide answers and dial-in training for specific metrics (calls/screen shares not to exceed 30 minutes, advanced assistance will be escalated to ExtraHop Training Services team for paid engagements)	Yes, while equipment is under service agreement (additional fees may apply)
Response Times	
Severity 1 and 2 cases (see definitions on Exhibit B)	2 hour response
Severity 3 and 4 cases (see definitions on Exhibit B)	6 hour response



EXHIBIT B

Severity Levels

ExtraHop will assign a severity level for each technical problem based on Customer's description of the problems.

Severity Levels

Severity	Definition
1	A critical problem requiring immediate resolution. Problem may cause loss of data and/or restrict data availability.
2	A serious problem that affects major functionality. No workaround is available and operation continues in a restricted fashion.
3	A problem that does not have a major effect on business operations or for which an acceptable workaround exists.
4	A minor condition or request that has no significant effect on Customer operations.