

# OPSWAT, INC. TERMS OF SERVICE

Effective as of November 7, 2022

These OPSWAT Inc. Terms of Service (“Terms”), outline the terms regarding Your use of OPSWAT websites (including the [OPSWAT Community](#)), products, services (including Professional Services, Cloud Services), online stores, Software, Support, [OPSWAT Portal](#) (“Portal”), and other properties OPSWAT owns or operates (collectively, “Services”).

These Terms are a legally binding contract between You and OPSWAT Inc. (“OPSWAT”) so read carefully. If You do not agree with these Terms, do not register for a Portal account, purchase Services from OPSWAT’s online stores, or use Services.

By using or accessing the Services, or registering for a Portal account, You agree to be bound by these Terms.

If You use the Services on behalf of an entity, You agree to these Terms for that entity and represent and warrant to OPSWAT that You have the authority to bind that entity to these Terms (in which event, "You" and "Your" refer to that entity), unless that entity has a separate paid contract in effect with OPSWAT, in which event the contract governs Your use of the Services.

## 1. DEFINITIONS

The following capitalized terms have the following meanings:

“Account Information” means Your Confidential Information OPSWAT maintains for supporting You as a OPSWAT customer, consisting only of (a) names, emails, addresses, telephone numbers, and other business contact information of Your employees or independent contractors, (b) communications between You and OPSWAT relating to the performance of Services, and (c) communications between You and OPSWAT relating to the negotiation of Quotes, SOWs, and other contracts governed by, incorporated into, and made part of these Terms.

“Affiliates” means, with respect to each party, entities that Control, are controlled by, or are under common Control with such party.

“Aggregated Data” means statistics, benchmarks, measures, and other information or data that is: (a) anonymized by removing personal or other information so the data cannot be attributable to a specific OPSWAT customer or user, or You (using commercially reasonable efforts or as required by Applicable Laws), or (b) combined with the other data, or (c) presented in a way which does not reveal a specific OPSWAT customer or user, or Your identity (using commercially reasonable efforts or as required by Applicable Laws).

“API” means the application-programming interface You use to access certain functionality OPSWAT provides.

“Applicable Laws” means applicable national, federal, state, and local laws, rules, guidelines, court or government agency orders, and regulations.

“CCPA” means [California Consumer Privacy Act of 2018, Cal. Civil Code § 1798.100 et seq.](#) and related regulations, as amended.

“Claim” means claim, demand, lawsuit, dispute, or proceeding.

“Cloud Services” means OPSWAT-branded software-as-a-service application, including Software, made available to You via the Internet from equipment owned or operated by or for OPSWAT.

“Consumer” means a natural person who purchases Services for personal use.

“Consumer Rights Request” means a request from an individual relating to that individual’s Personal Information that is Your Personal Information.

“Control” means the beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity.

“Data Protection Legislation” means Applicable Laws of the European Union, the European Economic Area and/or member states, United Kingdom, and Switzerland, including the GDPR, relating to the Processing of Your Personal Data under these Terms (in all cases, as amended, superseded, or replaced).

“Documentation” means OPSWAT then-current operating manuals, user instructions, technical literature, and functional materials describing the features, plans, options, and functions of the Services made generally available by OPSWAT to its customers or users, including user guides, knowledge base, release notes, featured articles published at <https://docs.opswat.com>

“Fees” means fees quoted to You.

“Feedback” means suggestions regarding features, functionality, modifications, enhancements, improvements, or performance.

“Force Majeure Event” means cause beyond the reasonable control of an affected party (including, without limitation, pandemic (e.g. COVID-19), war, wind, natural disaster, lightning, fire, earthquake, flood, hurricane, riots, acts of God, Internet service provider failures or delays, denial of Internet service attacks).

“GDPR” means [General Data Protection Regulation 2016/679](#).

“Hardware Product” means a hardware device OPSWAT sells for the sole purpose of executing, delivering, or operating the specific Software supplied with the device.

“Insolvency Proceeding” means bankruptcy or insolvency proceeding.

“Intellectual Property” means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights.

“Issue” means a single, reproducible problem affecting the features and functionality of the Services.

“Losses” means damages, attorney fees, expert witness fees, and litigation costs.

“Malware” means viruses, worms, time bombs, Trojan horses, and other malicious code, files, scripts, agents, or programs. License keys or other programs used by OPSWAT to terminate or suspend Your access to Services when You violate Section 6 (Acceptable Use) or Services use restrictions detailed in the Documentation or this Agreement, or exceed the Subscription Period shall not be considered Malware.

“MetaDefender Drive Hardware Product” means a hardware device OPSWAT sells for the sole purpose of executing, delivering, or operating the MetaDefender Drive Software supplied with the device.

"Open Source Software" or "OSS" means any software component that is subject to any open source copyright license agreement or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

“OPSWAT” means OPSWAT Inc.

"OPSWAT Academy" means OPSWAT online critical infrastructure protection training and certification platform accessible at <https://opswatacademy.com/>.

“OPSWAT Community” means a free community site accessible at <https://go.opswat.com/OPSWATCommunity> (accessible through [OPSWAT.com/Services](https://opswat.com/Services) and through the [Portal](#)) for OPSWAT customers, users, OPSWAT channel partners, and prospects to have discussions, share ideas, get help from each other, and suggest and vote on enhancements to OPSWAT products and services.

“Outsourced Providers” means third parties to whom You or Your Affiliates outsource information technology functions.

“Personal Data” means information relating to an identified or identifiable individual.

“Personal Information” has the meaning set forth under section 1798.140 of the CCPA.

“Portal” means the OPSWAT Portal at <https://portal.opswat.com>.

“Process” means any operation or set of operations performed upon Your Personal Information or Personal Data, whether by automatic means, including collection, recording, organization,

use, transfer, disclosure, storage, manipulation, combination, and deletion of Your Personal Information or Personal Data.

“Professional Services” means implementation, education, operational, or technical consulting related to the Software.

“Proof of Entitlement” means a record (i.e. invoice, payment receipt or confirmation, API or license key, product or license certificate) of the SKUs, types, quantities, and other use metrics of Your purchases from OPSWAT.

“Quote” means an enrollment or ordering document.

“Representatives” means a party’s employees or independent contractors.

“Services” means collectively the OPSWAT websites, products, services (including Professional Services, Cloud Services), online stores, Software, Support, Portal, and other properties OPSWAT owns or operates.

“Site” means [www.opswat.com](http://www.opswat.com).

“Software” means OPSWAT-branded software, releases, tools and utilities.

“SOW” means a statement of work issued by OPSWAT that describes the Professional Services.

“Subscription Period” means the duration of Your Software or Cloud Services specified in a Quote or online store Services plan, commencing on the start date, and continuing up to the renewal date or end date.

“Support” means telephone, email, chat, or web assistance in the resolution of an Issue You report to OPSWAT.

“Taxes” means all transaction taxes, including foreign withholding taxes, and local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added taxes, excise, use, goods and services taxes, consumption taxes.

“Third-Party Products” means software, code, applications, services, products, files, or data from OPSWAT’s Third-Party Providers.

“Third-Party Providers” means OPSWAT licensors or suppliers.

“You” and “Your” means a natural person or entity that is the customer, end user, or user of Services.

“Your Personal Information or Personal Data” means Personal Information or Personal Data that You provide or make available to OPSWAT, or that OPSWAT otherwise Processes on Your behalf, in each case, in connection with the provision of or as a part of the Services pursuant to these Terms at any time until the expiration or termination of the Terms or the Services.

## 2. CHANGES TO THESE TERMS

OPSWAT reserves the right to modify these Terms. OPSWAT will post the most current version of these Terms at the Site. If OPSWAT makes material changes to these Terms, OPSWAT will notify You via the Services and/or email You at the email associated with Your Portal or OPSWAT online store account. If You do not accept the changes, stop using and close Your accounts at [Request About My Personal Data](#) by choosing the option “Delete My Data – Request that we remove your data completely from our systems”. Your continued use of Services after OPSWAT publishes or notifies You about OPSWAT’s changes to these Terms means You consent to the updated terms.

## 3. YOUR ACCOUNT

Certain aspects of the Services may require You to obtain an account by completing a registration form and designating a user ID and password. When registering with OPSWAT You must: (a) provide true, current, accurate, and complete information about Yourself on the registration form and (b) maintain such information so it continues to be true, current, accurate, and complete.

You are entirely responsible and liable for all information You upload, post, or otherwise transmit via the Services, and all activities occurring under Your account.

You are responsible for maintaining the confidentiality of, and You agree not to share or transfer account passwords, access designations, and API keys. OPSWAT will not be liable for loss or damage You incur. Only You may use Your OPSWAT account. If You become aware of unauthorized use of the Services or Your account, or have questions about Your account, contact OPSWAT Support at <https://www.opswat.com/support/contact-support>.

If an entity (e.g. employer) provided You with Your account, this entity has rights to Your account and may: (a) manage Your account (including suspending or canceling); (b) reset Your password; and (c) view Your usage and data, including how and when Your account is used.

**Online Stores.** To create an account to make purchases through OPSWAT’s online stores:

(a) You must use an email from an entity or registered domain (i.e. employer, not free email domains such as Hotmail, Gmail, Yahoo, Outlook).

(b) You must not be employed by or represent an entity in the cybersecurity industry, which OPSWAT determines in its sole discretion it does not desire to do business with through its online stores.

(c) You agree OPSWAT may terminate the Services and refund Your payments, prorated for Services unused, within forty-eight (48) hours of receiving Your payments if OPSWAT determines in its sole discretion it does not desire to do business with You through its online stores.

(d) You may not purchase Services as a Consumer.

#### 4. ELECTRONIC COMMUNICATIONS

By registering an account with OPSWAT or purchasing or signing up for Services, You understand OPSWAT may send (including via email) You information regarding the Services, such as: (a) notices about Your use of the Services, including use violations; (b) updates to the Services and new features, functionalities, services, or products; (c) promotional information regarding OPSWAT or third party products and services; and (d) Proof of Entitlements. You may unsubscribe by following the instructions in the notices or complete [Request About My Personal Data](#).

If You don't consent to receive notices (other than promotional information) electronically, stop using the Services.

#### 5. PRIVACY

The [OPSWAT Privacy Policy](#) identifies how OPSWAT collects, stores, protects, and uses certain information collected about You to operate and provide the Services.

You acknowledge Your use of the Services is subject to the [Privacy Policy](#), and You agree to the [Privacy Policy](#).

**Data Protection and Onward Transfer of Data.** In providing the Services, OPSWAT may Process Personal Data on behalf of You and, in such event, You instruct OPSWAT to Process Your Personal Data: (a) to provide the Services; (b) as set forth in these Terms, online store Services plan, or a Quote; and (c) as documented by mutually agreed written instruction given by You and accepted by OPSWAT. The parties agree to comply with the Data Protection Legislation for onward transfer of Your Personal Data. Until expiration or termination of the Terms or the Services, OPSWAT will maintain a legally recognized method for onward transfer of Your Personal Data.

**CCPA Consumer Rights Request.** If OPSWAT receives a Consumer Rights Request, to the extent legally permissible, OPSWAT will advise the individual to submit the Consumer Rights Request to You. You will be responsible for responding to such Consumer Rights Request. OPSWAT shall reasonably cooperate with Your written requests to enable You to comply with a Consumer Rights Request.

**Aggregated Data.** Provided that You opt-in, OPSWAT will be free (during and after the expiration or termination of the Terms or the Services), without obligation to You, to collect, develop, create, extract, compile, synthesize, analyze, use, and/or commercialize, or share with third parties, Aggregated Data for any purpose.

#### 6. ACCEPTABLE USE

You agree You will not, nor will You encourage or assist others to, harm the Services or use the Services to harm others.

You must not: (a) conduct activity designed to overload, harm, impede the normal functioning, damage, disable, overburden, or impair the Services (or any network connected to the Services); (b) make generally available to third parties as a billable service, resell, redistribute, package, repackage, sell, rent, sub-rent, lease, sub-license, or sublease the Services or any part of it; (c) use unauthorized means to modify, reroute, or gain access to the Services or attempt to carry out these activities; (d) use any malicious automated process or service (such as Malware bots, spiders, or periodic cachings of information stored by OPSWAT) to access or use the Services; (e) violate the allocations and amounts, and the features and functionality provided in that Service; (f) use the Services to violate Applicable Laws, or distribute Malware; (g) distribute, post, share, use information You don't have the right to or is illegal (i.e. violates or infringes the Intellectual Property rights or the privacy or publicity rights of any natural person or entity (e.g. attempt to obtain unauthorized access to OPSWAT Services, servers, computers, or databases; prove or disprove a concept; mine information to obtain Personal Information or Personal Data; discredit a third party; publicly attribute Services results to Third-Party Providers, OPSWAT channel partners, or Anti-malware engines without the appropriate third party's express written permission)); (h) disclose, conduct, perform, publicly display, publish, or republish the results of benchmark, performance, comparison, or competitive tests or analysis involving the Services for any reason or purpose without OPSWAT prior written approval; (i) use Services in a way intended to hinder the mission of the cybersecurity vendor industry to protect customers from Malware infection; (j) reverse-engineer (including reverse compiling to ensure interoperability), decompile, disassemble, modify, translate, or make any attempt to discover or gain access to the source code, source files, or structure of all or any portion of Services or create derivative works from Services; (k) transfer or use node-locked Software to hardware other than Hardware Products on which Software was originally installed, or use Software with grey-market hardware; (l) violate OPSWAT's copyright fair use policy; or (m) use a Service in any manner not authorized by these Terms.

To the extent required by Applicable Laws, OPSWAT will make available to You information reasonably required to ensure Services interoperability (such information considered Confidential Information and subject to Section 11 (Confidential Information)) with Your independently created products or services, upon Your written request identifying relevant details of the products or services which interoperability is sought and the information needed, provided that You first pay OPSWAT any outstanding Fees.

OPSWAT retains the right to block, or otherwise prevent delivery, of any file, email, or other communication to or from the Services.

You agree to comply with Services use restrictions detailed in the Documentation for the specific Services.

**Content.** You agree that You are either the original owner of uploaded files, submitted hashes, application and dependent files, and meta-data associated with all files, including hash values, scan results, application intelligence, and vulnerabilities, photos, drawings, documents, or other media ("Content") You submit to the Services, or You have the necessary rights and permissions to authorize OPSWAT to use Your submitted Content. You agree to give OPSWAT evidence of such rights and permissions if OPSWAT requests.

**ITAR.** International Traffic in Arms Regulations (“ITAR”) controls the dissemination of technical data related to weapons, weapon systems, and other defense articles contained on the U.S. Munitions List. You agree not to use or allow a third party under Your control to submit content that is subject to ITAR maintained by the U.S. Department of State (i.e. ITAR-controlled technical data), or otherwise cause OPSWAT to provide a Defense Service as defined in ITAR.

**Permitted Third Party Usage.** You may permit Your Affiliates, Outsourced Providers, and customers to use the Services provided that: (a) You shall provide prior written notice to OPSWAT of the names and contact information of the Affiliates, Outsourced Providers, and customers (b) the Affiliates, Outsourced Providers, and customers shall only use and/or operate the Services, in accordance with the rights granted herein and Services use restrictions (including Section 6 (Acceptable Use) and Section 23 (Specific Services Terms), (c) the actual usage of Services by You, Your Affiliates, Outsourced Providers, and customers, in aggregate shall not exceed the Proof of Entitlement You purchased, (d) You shall ensure that Your Affiliates, Outsourced Providers, and customers are aware of and comply with these Terms; and (e) You shall be responsible for the acts and omissions of Your Affiliates’, Outsourced Providers’, and customers’ use of the Services.

**API Access.** Subject to these Terms, You shall have a non-exclusive right, until the expiration or termination of the Terms or the Services, to incorporate the API into any application used by or on behalf of You for the sole purpose of accessing the Services, or accessing certain functionality of the Services, provided that such access is limited to the amount of API calls You purchase or offered at no charge. If You have not entered into a paid transaction for Services with OPSWAT as evidenced by a Proof of Entitlement, You agree not to use Services results in a production environment. You agree to use Services results only for internal purposes, and not to use Services results provided by the API to build or enhance a commercially available product except in accordance with a joint development or channel partner agreement with OPSWAT.

## **7. SUSPENSION AND TERMINATION OF THE SERVICE**

OPSWAT may suspend or terminate the Services or Portal access, at any time, in its sole discretion, if OPSWAT reasonably believes in good faith You are in violation of the Terms or Applicable Laws, and Your material breach of these Terms cannot be cured within 30 days.

## **8. OPSWAT PROPRIETARY RIGHTS**

All contents of the Site and Services, including but not limited to logos, designs, text, software, technical drawings, configurations, graphics, files, icons, images, audio clips, and their compilation (meaning the selection, collection, assembly, arrangement) and OPSWAT Confidential Information belong to OPSWAT, and/or its Third-Party Providers or Affiliates.

OPSWAT or its Third-Party Providers or OPSWAT Affiliates own and reserve all right, title, and interest in and to the Services and all hardware, software, and other items used to provide the Services, other than the rights expressly granted to You to use the Services and OPSWAT Confidential Information. No title to, or ownership of, Intellectual Property or proprietary

rights related to the Services or OPSWAT Confidential Information is transferred to You pursuant to these Terms.

**Feedback.** In the event You make Feedback that OPSWAT adopts for its products or services, such Feedback shall be deemed automatically assigned under these Terms to OPSWAT, and become the sole and exclusive property of OPSWAT. Prior to submitting Feedback to OPSWAT, You agree to obfuscate Your Personal Data or Personal Information, and Confidential Information.

**Trademarks.** MetaDefender, Metascan, OPSWAT, and the OPSWAT logo are registered trademarks of OPSWAT Inc. in the United States and other countries. AppRemover, MetaAccess, OESIS, and Trust No File, Trust No Device are trademarks of OPSWAT Inc. All other trademarks, service marks, registered trademarks, or registered service marks are the property of their respective owners.

This Section 8 (OPSWAT Proprietary Rights) survives expiration or termination of the Terms or the Services.

## **9. OPEN SOURCE SOFTWARE**

The Services may include certain Open Source Software. A list of Open Source Software is available in the Documentation and will be updated from time to time. Notwithstanding anything to the contrary in this Agreement, OPSWAT makes no warranties in respect of Open Source Software in excess of the warranties set forth in the applicable Open Source Software license itself, and accepts no liability in respect of Open Source Software in excess of the limitation of liability set forth in the applicable Open Source Software license. If any license requires OPSWAT to provide source code, OPSWAT shall make such source code available to You according to the terms of the applicable Open Source Software license. To the extent required by the applicable Open Source Software licenses, the terms and conditions of such licenses shall apply to the Open Source Software in lieu of this Terms.

## **10. COPYRIGHT COMPLAINTS AND REMOVAL POLICY**

OPSWAT respects the Intellectual Property of others and will respond to alleged copyright infringement notices that comply with Applicable Laws.

OPSWAT reserves the right to close Your accounts or remove information alleged to violate copyright laws or these Terms.

Report alleged copyright violations to:

Attn: Copyright Agent, OPSWAT Inc., 5650 Breckenridge Park Drive, #201, Tampa, FL 33610

## **11. CONFIDENTIAL INFORMATION**

During Your use of the Services, either party may share with the other party Confidential Information, defined as non-public information (a) labeled or identified "confidential" (or the

like), or (b) (either in writing or verbal) of a type that a reasonable person should understand to be confidential, including without limitation, Personal Information or Personal Data, a third party's information, discounts, pricing, strategic roadmaps, product plans, product designs, architecture, technology and technical information, security processes, security audit reviews, business and marketing plans, business processes, credit card/banking information, and information contained in Your account.

Confidential Information does not include information a receiving party's written records show was: (a) already known to receiving party at the time of disclosure; (b) disclosed to the receiving party by a third party who had the right to make such disclosure without confidentiality restrictions; (c) or through no fault of the receiving party has become, generally available to the public; or (d) independently developed by receiving party without use of the disclosing party's Confidential Information.

You agree to disclose to OPSWAT only Personal Information or Personal Data (a) in which You have obtained consent from data subjects (identified or identifiable natural persons) to disclose to OPSWAT, and (b) consisting of names, emails, addresses, telephone numbers, and other business contact information relating to Your Representatives involved in carrying out the obligations under the Terms. OPSWAT hereby advises and You acknowledge that OPSWAT does not want or need other Personal Information or Personal Data, to provide the Services.

OPSWAT hereby advises and You acknowledge that (a) OPSWAT does not want Your Confidential Information other than Account Information, (b) OPSWAT only requires Account Information to perform the Services. You agree to disclose only Account Information to OPSWAT.

Both parties agree to: (a) treat each party's Confidential Information with the same degree of care a party treats its own Confidential Information, but not less than reasonable care; (b) use each party's Confidential Information only in connection with these Terms and the Services; and (c) only share Confidential Information with third parties who have a need to know to carry out these Terms or as needed for the Services, and signed a non-disclosure agreement to treat Confidential Information as confidential or have confidentiality obligations (e.g. professional responsibility rules) no less restrictive than this Section 11 (Confidential Information).

If the receiving party is requested or compelled by Applicable Laws to disclose the disclosing party's Confidential Information ("Compelled Disclosure"), the receiving party's disclosure of such Confidential Information shall not constitute a breach of these Terms provided that the receiving party gives the disclosing party prompt written notice, unless notice is prohibited by Applicable Laws, so that the disclosing party may seek an appropriate remedy. The receiving party shall (a) disclose only that portion of the Confidential Information necessary to comply with Applicable Laws, (b) assert the privileged and confidential nature of Confidential Information against the third party seeking disclosure; (c) reasonably cooperate with disclosing party to protect against disclosure and/or obtain a protective order narrowing the scope of the Compelled Disclosure at disclosing party's expense; and (d) continue to treat Compelled Disclosures as confidential in other respects.

Confidential Information always remains the property of its owner.

Upon termination or expiration of the Terms, or upon written request of the disclosing party, the receiving party shall promptly return to the disclosing party or destroy, to the extent commercially and technically feasible, all tangible materials (e.g. notes) and copies thereof, containing the Confidential Information, except the receiving party may retain copies of disclosing party's Confidential Information (a) stored electronically on data archives or back-up systems or (b) to comply with Applicable Laws applicable to the receiving party, provided that such copies shall be subject to the terms of these Terms while in receiving party's possession.

This Section 11 (Confidential Information) survives expiration or termination of the Terms or the Services.

## **12. SUPPORT AND SERVICES UPDATES**

OPSWAT generally describes its Support options at <https://www.opswat.com/support>, which OPSWAT may update at its sole discretion.

OPSWAT may end of life products and related Support, add or remove functionalities or features, or suspend or stop the Services altogether, without notice for Services OPSWAT provides at no cost, and with notice according to the Support life cycle for the specific version or release of the Services OPSWAT provides at a Fee.

OPSWAT may make unscheduled deployments of changes, releases, improvements, or enhancements to the Cloud Services any time. During such deployments, You acknowledge certain features and functionality of the Cloud Services may be unavailable and outages may occur.

**Portal Availability.** OPSWAT uses commercially reasonable efforts to make the Portal available 24 hours a day, 7 days a week, except for: (a) planned downtime (which OPSWAT gives notice), and (b) unavailability caused by a Force Majeure Event.

**OPSWAT Community.** The [OPSWAT Inc. Community Terms of Service](#) ("Community Terms") outline the terms regarding Your use of the [OPSWAT Community](#). You acknowledge Your use of the [OPSWAT Community](#) is subject to the [Community Terms](#), and You agree to the [Community Terms](#).

## **13. FEES; TAXES**

**Fees.** OPSWAT offers no cost and paid Services. If You choose a paid Service, You agree to pay the Fees when You purchase that Service. OPSWAT reserves the right to change its Fees any time. Discounts and changes in Fees do not apply to completed purchases. However, if OPSWAT offered a specific duration and Fees for Your use of the Services, OPSWAT agrees the Fees will remain in force for that duration. After a Subscription Period ends, Your use of the Services will be charged at the then-current Fees. If you don't agree to the Fees, stop using the Services and cancel via email to [Accounting@opswat.com](mailto:Accounting@opswat.com).

**Taxes.** All Fees for Services do not include Taxes. OPSWAT may calculate Taxes payable by You based on the billing information You provide at the time of purchase. All Fees are payable in full and without reduction for Taxes. You shall not withhold from Fees the Taxes imposed upon You by a taxing authority. You are responsible for paying all Taxes associated with Fees, excluding OPSWAT income taxes. If You are legally entitled to an exemption from the payment of Taxes, You will promptly provide OPSWAT with legally sufficient tax exemption certificates for each taxing jurisdiction for which You claim exemption. Unless otherwise prohibited by law, OPSWAT will apply the benefits of a requested tax exemption to charges after the date OPSWAT receives and reasonably processes the tax exemption certificates.

**Currency.** You will pay the Fees in the currency OPSWAT quotes at the time of purchase. OPSWAT reserves the right to change the eligible currencies any time. You are responsible for all charges related to using the purchased Services (including data charges and currency exchange settlements).

**Non-refundable and No Cancellation.** Except as specifically set forth in these Terms, all payment obligations are non-cancelable, and all payments made are non-refundable, to the extent not prohibited by Applicable Laws. If You purchase Services through OPSWAT's online stores, and request a refund for any reason within fourteen (14) days of purchase or an automatic renewal, OPSWAT will refund You the Fees paid for the online store Services. Shipping, handling, taxes, and other charges are not refundable, except in jurisdictions where these items are refundable. Request refunds using Your online store account or email [Accounting@opswat.com](mailto:Accounting@opswat.com) with the subject heading "Online Store Refund Request".

This Section 13 (Fees; Taxes) survives expiration or termination of the Terms or the Services.

#### **14. BILLING/PAYMENT**

If You select a paid Service, You must provide OPSWAT current, complete, accurate, and authorized payment method information. You authorize OPSWAT or its third party payment processing service provider (e.g. PayPal, Stripe) to charge immediately Your payment method for the Services You select. Upon receiving Your payment, OPSWAT will provide You a Proof of Entitlement.

You shall pay Fees according to the payment terms in a Quote. Failure to pay charges or Fees may result in the suspension or termination of Services.

At OPSWAT's discretion, past due amounts may accrue a late fee equal to the lesser of (a) 1.5% per month, or (b) the maximum Applicable Laws allow.

This Section 14 (Billing/Payment) survives expiration or termination of the Terms or the Services.

#### **15. DURATION; TERMINATION**

When You make purchases through OPSWAT online stores, You may elect one of the following plans and billing options (**NOTE:** There might be only one option available depending on the Services):

(a) A monthly plan with a period thirty (30) calendar days from the purchase date.

(b) An annual plan with a period three hundred sixty-five (365) calendar days from the purchase date. **NOTE:** Under the annual plan You will not be permitted during the one year to cancel, downgrade the Services, or reduce the number of licenses, agents, usage limits, or named users.

If You select the monthly plan, You can switch to the annual plan any time. If You select the annual plan, You may not change to the monthly plan until the end of one year.

Unless either party notifies the other party in writing of its intent not to renew a Services plan at least thirty (30) days' prior to the end of the then-current plan, the Services purchased through OPSWAT's online stores automatically renew at the then-current Fees for the same plan. OPSWAT or its third party payment processing service provider (e.g. PayPal, Stripe) will charge Your payment method on file on the first day of plan renewal.

**Termination for Cause.** Either party may terminate these Terms or the Services for cause upon thirty (30) days' written notice to the other party of a material breach of the Terms if such breach remains uncured after the expiration of such period.

**Termination for Insolvency.** Either party may terminate these Terms or the Services for cause if the other party becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to an Insolvency Proceeding. The Cloud Services is a service, not a good, provided pro rata over the Subscription Period on a daily basis. Your use of the Services after an Insolvency Proceeding commencement is an actual, necessary cost and expense of preserving Your estate. Nothing herein limits OPSWAT's rights of offset or recoupment. OPSWAT is entitled to offset or recoup the value of Services provided after You become subject to an Insolvency Proceeding against any Claim brought by or on behalf of You, including state or federal preference, fraudulent transfer, or other avoidance action.

**Post-Termination Obligations.** Upon expiration or termination of these Terms or the Services for any reason, You will have thirty (30) days following the expiration or termination, and subject to Your prior written request, to retrieve Content remaining on the Services. After such 30 days, You will have no further rights to access the Services, and OPSWAT may delete Content.

## **16. LIMITED WARRANTIES AND DISCLAIMERS**

**Mutual Warranties.** Each party represents and warrants that: (a) these Terms has been duly authorized, executed, and delivered, and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any

third party is required in connection with such party's execution, delivery, or performance of these Terms; (c) the execution, delivery, and performance of these Terms does not violate any other agreement to which it is a party or by which it is otherwise bound; and (d) it has the right to disclose its Confidential Information.

**OPSWAT Warranty.** OPSWAT warrants that it owns or has obtained all necessary rights from its Third-Party Providers to the Services. The Services are not warranted to be totally error-free.

**Limited Cloud Services Warranty.** If You enter into a paid transaction for Cloud Services with OPSWAT as evidenced by a Proof of Entitlement, in the event You report to OPSWAT, during the Subscription Period, the Cloud Services do not materially conform with the Documentation under normal use, and such non-conformity is reproducible and verifiable, OPSWAT, at its discretion, shall either (a) cure the non-conformity within thirty (30) days of verifying and reproducing the non-conformity You report, or (b) refund the prepaid Cloud Services not rendered. This Limited Cloud Services Warranty excludes non-conformity resulting from accidents, abuse, modifications, misapplication, or use of Cloud Services in a manner materially inconsistent with the Documentation.

**Limited Software Warranty.** If You enter into a paid transaction for Software with OPSWAT as evidenced by a Proof of Entitlement, the initially-delivered version of the Software shall materially conform to the Documentation for ninety (90) days, provided that You are on the then-current release of the Software made generally available by OPSWAT to its customers or users ("Software Warranty Period"). In the event You report to OPSWAT, during the Software Warranty Period, the Software does not materially conform with the Documentation under normal use, and such non-conformity is reproducible and verifiable, OPSWAT, at its discretion, shall either (a) repair or replace the Software, or (b) refund the fees received for the non-conforming Software, prorated for the use period. This Limited Software Warranty excludes non-conformity resulting from accidents, abuse, unauthorized repair, modifications, misapplication, or use of the Software in a manner materially inconsistent with the Documentation.

**Limited Support Warranty.** If You enter into a paid transaction for Support with OPSWAT as evidenced by a Proof of Entitlement, OPSWAT warrants Support shall be provided in a professional and workmanlike manner with reasonable care, knowledge, experience, qualifications, resources, and skills. In the event You notify OPSWAT of non-conforming Support within seven (7) days of receiving the non-conforming Support, Your sole remedy shall be reperformance of the Support at no additional charge.

**Limited Professional Services Warranty.** If You enter into a paid transaction for Professional Services with OPSWAT as evidenced by a Proof of Entitlement, OPSWAT warrants that the Professional Services shall be performed in a professional and workmanlike manner with reasonable care, knowledge, experience, qualifications, resources, and skills. In the event You notify OPSWAT of non-conforming Professional Services within seven (7) days of receiving the non-conforming Professional Services, and such non-conforming Professional Services do not result from Your fault or delay, OPSWAT will re-perform the non-conforming Professional Services at no additional charge.

## **Limited Hardware Product Warranty.**

This Limited Hardware Product Warranty applies only to Hardware Products You purchase for internal use, and not for resale.

Provided that You purchase OPSWAT's Platinum Hardware Support Plan, generally described at <https://www.opswat.com/support>:

(a) OPSWAT warrants the hardware components of the Hardware Products shall be free from material defects in design, materials, and workmanship, and will function, under normal use, in accordance with Documentation, for one (1) year from the Hardware Product shipment date ("Hardware Product Warranty Period").

(b) In the event You report to OPSWAT, during the Hardware Product Warranty Period, the Hardware Product does not materially conform with the Documentation under normal use, and such non-conformity is reproducible and verifiable, OPSWAT, at its discretion, shall either (1) repair or replace the Hardware Product, or (2) refund Fees received for the non-conforming Hardware Product, prorated for the use period.

(c) All replacement parts furnished to You under this Limited Hardware Product Warranty may be new or refurbished, and warranted as new for the remainder of the Hardware Product Warranty Period.

(d) All component parts, which have been replaced, becomes OPSWAT property. All component parts that have been repaired remains Your property.

(e) **Return or Replacement Procedures.** If a Hardware Product or component part does not function as warranted during the Hardware Product Warranty Period, and such non-conformity is reproducible and verifiable, You shall comply with OPSWAT's return or replacement procedures, including without limitation: (1) obtain OPSWAT's prior written approval; (2) register the Hardware Product in Your Portal account; (3) present a Proof of Entitlement and certificate of origin; (4) provide OPSWAT the Hardware Product's identification number; (5) remove all features, parts, options, alterations, data, configuration settings, programs, and attachments not under warranty or provided by OPSWAT; (6) ensure the Hardware Product is free of legal obligations or restrictions that prevent exchange, including Hardware Product owner authorization to have OPSWAT service the Hardware Product; (7) backup and secure all programs and data in the Hardware Product; and (8) inform OPSWAT of changes to the Hardware Product physical location. In the event OPSWAT must repair or replace a Hardware Product at Your premises, You agree to provide OPSWAT sufficient work space and safe access to facilities.

(f) Transportation costs incurred in connection with the return of a Hardware Product to OPSWAT shall be borne by OPSWAT. You agree to ship the Hardware Product or component part suitably packaged according to OPSWAT guidelines to the OPSWAT designated location. Transportation costs incurred in connection with the redelivery of a repaired or replacement Hardware Product or component part to You by OPSWAT shall be borne by OPSWAT; provided, however, that if OPSWAT determines, in its sole discretion, that the Hardware Product is not

covered by this Limited Hardware Product Warranty or made after the Hardware Product Warranty Period, the repair or replacement costs, including shipping, shall be paid by You, and OPSWAT shall have no obligation to deliver the repaired or replaced Hardware Product or component part to You until You provide OPSWAT Your shipping carrier and account.

(g) You acknowledge that in order to perform this Limited Hardware Product Warranty, OPSWAT may ship all or part of the Hardware Product to third parties located anywhere in the world, and You authorize OPSWAT to do so.

(h) **Hardware Product Warranty Exclusions.** The Limited Hardware Product Warranty shall be void as to Hardware Products damaged or rendered unserviceable by: (1) improper or inadequate maintenance by anyone other than OPSWAT or OPSWAT authorized Representatives; (2) software or interfacing supplied by anyone other than OPSWAT; (3) modifications, alterations, repairs, installations, openings, or additions to the Hardware Products by anyone not certified by OPSWAT or OPSWAT authorized Representatives; (4) negligence by any person other than OPSWAT or OPSWAT's authorized Representatives; (5) misuse, abuse, accident, electrical irregularity, theft, vandalism, water, or Force Majeure Event; (6) damage caused by containment and/or operation outside the environmental specifications for the Hardware Products; (7) alteration or connection of the Hardware Products to systems, equipment, or devices (other than those OPSWAT specifically approved) without OPSWAT prior approval; (8) governmental actions or inactions; (9) strikes or work stoppages; (10) Your failure to follow Documentation, including handling or storage not according to OPSWAT guidelines or Services specifications; or (11) repair or replacement contrary to Applicable Laws.

(i) The Hardware Product Warranty Period is not extended when OPSWAT repairs or replaces a Hardware Product or component part.

OPSWAT, at its discretion, may change the availability of the Limited Hardware Product Warranty, but changes will not be retroactive, or affect existing signed Quotes.

**Disclaimer of Warranties.** EXCEPT AS PROVIDED IN THIS SECTION 16 (LIMITED WARRANTIES AND DISCLAIMERS), NEITHER PARTY MAKES ANY (AND EACH PARTY SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS, WARRANTIES OR CONDITIONS: (A) ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (B) OF: (I) SATISFACTORY QUALITY; (II) FITNESS FOR A PARTICULAR PURPOSE; (III) NON-INFRINGEMENT; OR (IV) INTEROPERABILITY WITH THIRD-PARTY PRODUCTS OR SERVICES; AND (C) THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSIONS OF IMPLIED WARRANTIES. IN SUCH AN EVENT, THE ABOVE EXCLUSIONS WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY LAW.

IF YOU ARE DISSATISFIED WITH THE SERVICES OR THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICES.

This Section 16 (LIMITED WARRANTIES AND DISCLAIMERS) survives expiration or termination of the Terms or the Services.

## 17. INDEMNIFICATION

**Your Indemnification.** You will defend and indemnify OPSWAT, its Affiliates, and their officers, Representatives, directors, successors and assigns (“OPSWAT Indemnified Parties”), against any third party Claim: (a) that Your, Your Affiliates’, Outsourced Providers’, or customers’ use of the Services in breach of these Terms, infringes or misappropriates a registered trademark, copyright, trade secret, or United States registered patent (to the extent such infringement or misappropriation is not the result of OPSWAT’s actions); (b) relating to Your, Your Affiliates’, Outsourced Providers’, or customers’ use of the Services in violation of Services use restrictions (including Section 6 (Acceptable Use) and Section 24 (Specific Services Terms)); or (c) relating to the acts and omissions of Your Affiliates’, Outsourced Providers’, and customers’ use of the Services. You will, with respect to any Claim against OPSWAT Indemnified Parties that is subject to this Section 17 (Indemnification), indemnify OPSWAT Indemnified Parties for Losses finally awarded against OPSWAT Indemnified Parties to such third party by a court of competent jurisdiction or agreed in settlement.

**OPSWAT Indemnification.** If You enter into a paid transaction with OPSWAT as evidenced by a Proof of Entitlement, OPSWAT will defend You, Your Affiliates, and their officers, Representatives, directors, successors and assigns (“You Indemnified Parties”), against any third party Claim brought against You Indemnified Parties alleging the Services infringe or misappropriate a United States registered patent, registered trademark, copyright, or trade secret, and indemnify You Indemnified Parties from Losses finally awarded against You Indemnified Parties by a court of competent jurisdiction as a result of, or for amounts paid by You Indemnified Parties under a Claim settlement approved by OPSWAT in writing. If OPSWAT receives information about an infringement or misappropriation related to the Services, OPSWAT may in its discretion and at no cost to You (a) modify the Services so they are no longer claimed to infringe or misappropriate, (b) obtain a license for You to continue using the Services in accordance with these Terms, or (c) terminate Your rights to the Services upon thirty (30) days’ written notice and refund You prepaid Fees, prorated for the use period. OPSWAT shall have no indemnification obligations with respect to (1) modification or alteration of the Services by anyone other than OPSWAT or without OPSWAT’s written approval, or (2) Claims arising out of use of the Services, or any part thereof, (A) in combination with software, technology, processes, equipment, services, or other products not supplied by OPSWAT, or explicitly supported in the Documentation, if such Claims would have been avoided without such combination, or (B) not in accordance with these Terms.

**Indemnification Process.** Indemnification obligations shall be subject to the party seeking indemnification (“Indemnified Party”) (a) notifying the other party (“Indemnifying Party”) in writing within ten (10) days of receiving information of any threatened or actual Claim; provided, however, the failure to give notice shall not relieve the Indemnifying Party’s obligations except to the extent that the Indemnifying Party is prejudiced by such failure; (b) giving the Indemnifying Party exclusive control and authority over the defense or settlement of such Claim; (c) not entering into any settlement or compromise of any Claim without the

Indemnifying Party's prior written consent; and (d) providing reasonable assistance requested by the Indemnifying Party.

**Exclusive Remedy.** This Section 17 (Indemnification) states OPSWAT's sole and exclusive remedy against, and OPSWAT's sole liability to, You for Claims under this Section 17 (Indemnification).

This Section 17 (Indemnification) survives expiration or termination of the Terms or the Services.

## **18. LIMITATION OF LIABILITY**

EXCEPT FOR INDEMNIFICATION OBLIGATIONS IN SECTION 17, TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL OPSWAT'S AND ITS AFFILIATES' TOTAL AND CUMULATIVE LIABILITY, FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF OR RELATED TO THESE TERMS EXCEED THE TOTAL FEES PAID BY YOU TO OPSWAT FOR THE SPECIFIC SERVICES UPON WHICH THE FIRST EVENT GIVING RISE TO LIABILITY WAS BASED ("LIABILITY EVENT") DURING THE TWELVE (12) MONTHS PRECEDING THE LIABILITY EVENT DATE, OR ONE HUNDRED UNITED STATES DOLLARS (\$100 USD), WHICHEVER IS MORE.

IN NO EVENT WILL OPSWAT BE LIABLE FOR YOUR COSTS TO PROCURE SUBSTITUTE GOODS OR SERVICES.

THE LIMITATIONS AND EXCLUSIONS APPLY IF THIS REMEDY DOES NOT FULLY COMPENSATE YOU FOR ANY LOSSES OR FAILS OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL OPSWAT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, COVER, LOSS OF PROFITS OR REVENUE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF GOODWILL, LOSS OR USE OF DATA, DAMAGE TO FIXTURES, STRUCTURES OR WIRING, OR ELECTRICITY LOSS, RESULTING FROM USE OF HARDWARE PRODUCTS) HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, OR OTHER LIABILITY THEORY, EVEN IF OPSWAT HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSIONS OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT, THE ABOVE EXCLUSIONS WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY LAW.

This Section 18 (LIMITATION OF LIABILITY) survives expiration or termination of the Terms or the Services.

## **19. GOVERNING LAW; VENUE; EQUITABLE RELIEF**

**Governing Law.** These Terms will be construed and enforced in all respects in accordance with the laws of the State of Delaware, U.S.A., without reference to its choice of law rules.

**Venue.** In the event of a Claim arising out of the Terms, the parties submit to exclusive venue in, and the exclusive jurisdiction of, federal and state courts, as applicable, located in Delaware, U.S.A.

**Equitable Relief.** The foregoing does not restrict either party from enforcing a judgment, or seeking equitable relief without having to prove actual damages or posting bond, from any court of competent jurisdiction.

English is the language governing these Terms.

This Section 19 (Governing Law; Venue; Equitable Relief) survives expiration or termination of the Terms or the Services.

## **20. MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER**

**READ THIS SECTION 20 CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.**

**DO NOT RELY SOLELY UPON THE INFORMATION PROVIDED IN THESE TERMS WHEN DECIDING WHETHER TO AGREE TO SECTION 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER). THESE TERMS ARE NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION OR WAIVER OF CLASS ACTIONS. CONDUCT FURTHER RESEARCH AND CONSULT WITH OTHERS, INCLUDING BUT NOT LIMITED TO AN ATTORNEY, REGARDING THE CONSEQUENCES.**

You agree these Terms affect interstate commerce and the Federal Arbitration Act, 9 U.S.C. § 1 et seq. governs the interpretation and enforcement of these arbitration provisions, not state law. This Section 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER) is intended to be interpreted broadly and, subject to the Excluded Claims, governs Claims between OPSWAT and You, including but not limited to Claims arising out of or relating to any aspect of the relationship between the parties, whether based in contract (including formation, performance, breach), tort (including intentional tort), statute, fraud, misrepresentation, or other legal theory, including consumer protection, advertising, common law; Claims arising out of or relating to these Terms, and/or Your download of, access to, or use of Services; Claims that arose before these Terms; and Claims that may arise after the termination or expiration of these Terms or the Services.

**Excluded Claims.** Excluded from the broad prohibition are Claims relating to: (a) Intellectual Property, including but not limited to enforcement actions, validity determinations, or Claims arising from or relating to theft, piracy, or unauthorized use of Intellectual Property, (b) breach of Sections 6 (Acceptable Use), 8 (OPSWAT Proprietary Rights), 13 (Fees), and 14 (Billing/Payment), (c) either party seeking equitable relief from a court of competent jurisdiction, or (d) Claims that can be resolved in the Small Claims Courts located in (1) San Francisco, California, U.S.A.: <https://www.sfsuperiorcourt.org/divisions/small-claims>, Department 506, 400 McAllister Street, San Francisco, CA 94102-4514 or (2) Tampa, Florida, U.S.A.: <https://www.hillsclerk.com/Court-Services>, Hillsborough County Courthouse, 800 E. Twiggs St. Tampa, FL 33602, Tel: (813) 276-8100. (“Excluded Claims”).

**Initial Dispute Resolution.** If You have a Claim involving OPSWAT, You agree that before taking formal action, You will email OPSWAT at [Legal@opswat.com](mailto:Legal@opswat.com), and provide a written description of the Claim and Your contact information (including account user ID). The parties

agree to use reasonable efforts to settle any Claim, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration.

**Binding Arbitration.** If the parties do not reach a mutually agreed solution within thirty (30) days from the time informal dispute resolution is initiated under the above Initial Dispute Resolution paragraph, either party may initiate binding arbitration as the sole means to resolve Claims (except for Excluded Claims). Except for Excluded Claims, all Claims arising out of or relating to these Terms, the parties' relationship with each other, and/or Your use of the Services shall be finally settled by binding arbitration administered by JAMS (or, if unavailable, such other similar group that can provide former judges as arbiters) in accordance with the JAMS Streamlined Arbitration Procedure Rules for Claims that do not exceed \$250,000 and the JAMS Comprehensive Arbitration Rules and Procedures for Claims exceeding \$250,000, in effect at the time the arbitration is initiated, excluding rules or procedures governing or permitting class actions, by a single arbiter who is (a) fluent in written and spoken English, and (b) skilled and experienced with software, software-as-a-service applications, and Internet services.

**Venue.** The place of arbitration may be (a) virtual, (b) San Francisco, California, U.S.A, (c) Tampa, Florida, U.S.A, or (d) Delaware, U.S.A. You and OPSWAT agree to submit to the personal jurisdiction of federal or state courts located in San Francisco County, California, U.S.A. or Hillsborough County, Florida, U.S.A. in order to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

**Arbitrator's Powers.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all Claims arising out of or relating to the interpretation, applicability, enforceability, or formation of these Terms, including but not limited to any Claim that all or any part of these Terms is void or voidable, whether a Claim is subject to arbitration, any unconscionability challenge, or the question of waiver by litigation conduct. The arbitrator shall be empowered to grant whatever relief available in a court under law or in equity. The arbitrator's award shall be written and binding on the parties and may be entered as a judgment in any court of competent jurisdiction. The judgment of the arbitrator will be final, non-appealable (to the extent not inconsistent with Applicable Laws).

**No Jury or Court Trial.** The parties understand that, absent this Section 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER), they would have the right to sue in court and have a jury or court trial. They understand that, in some instances, arbitration costs could exceed litigation costs and the right to discovery may be more limited in arbitration than in court.

**CLASS ACTION WAIVER.** The parties agree that the arbitration shall be conducted in the party's respective individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. **YOU AND OPSWAT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, OR REPRESENTATIVE PROCEEDING, OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. NEITHER YOU NOR OPSWAT WILL BE**

**ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER OPSWAT CUSTOMERS OR USERS IN COURT OR IN ARBITRATION.** You cannot seek relief that will affect other OPSWAT customers or users. The arbitral tribunal has no power to consider the enforceability of this Class Action Waiver and any challenge to the Class Action Waiver may only be raised in a court of competent jurisdiction. If any court determines this Class Action Waiver is void or unenforceable for any reason or an arbitration can proceed on a class basis, then the arbitration provisions set forth in this Section 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER) shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate Claims.

**30-Day Right to Opt Out.** You may opt out and not be bound by Section 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER) by sending written notice (including name, physical address, account user ID, email, telephone, and a clear statement that You want to opt out of this Section 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER)) to opt out to OPSWAT Inc., 5650 Breckenridge Park Drive, #201, Tampa, FL 33610, with a copy to: [Legal@opswat.com](mailto:Legal@opswat.com), Attn: ARBITRATION AND CLASS ACTIONS WAIVER OPT-OUT, within thirty (30) days of Your acceptance of these Terms. Otherwise You shall be bound to arbitrate Claims in accordance with Section 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER). If You opt out of Section 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER), OPSWAT also will not be bound by Section 20.

This Section 20 (MANDATORY ARBITRATION AND CLASS ACTIONS WAIVER) survives expiration or termination of the Terms or the Services.

## **21. GOVERNMENT USERS**

If You are a U.S. government entity or these Terms becomes subject to the Federal Acquisition Regulations, You acknowledge that elements of the Services constitute software and documentation and are provided as “Commercial Items” as defined at 48 C.F.R. 2.101, and licensed to the U.S. government as commercial computer software subject to the restricted rights described in 48 C.F.R. 2.101 and 12.212 (or successor sections).

If You are an entity purchasing Services through the U.S. General Services Administration, 1800 F St, NW, Washington, DC 20405 (“GSA”), in the event of a conflict between these Terms and the GSA Acquisition Regulation (“GSAR”), the GSAR prevails for the specific provision in these Terms when agreed by OPSWAT in a Multiple Award Schedule contract.

This Section 21 (Government Users) survives expiration or termination of the Terms or the Services.

## **22. THIRD-PARTY REFERRALS**

You agree that third parties (e.g. CrowdStrike Holdings, Inc., [Salesforce.com](https://www.salesforce.com), inc.), which refer You to Services are not parties to these Terms, and have no liability or responsibility to You or OPSWAT with respect to compliance or non-compliance with these Terms.

## **23. MISCELLANEOUS**

**No Publicity.** Except for Compelled Disclosures pursuant to Section 11 (Confidential Information), each party will not use the other party's name, logos, identifiers, trademarks, and symbols (collectively, "Identifiers") in any customer or vendor lists, advertisements, websites, news or press releases, releases to professional or trade publications, or in any document that a party plans to file with the Securities and Exchange Commission or other government authority, without the other party's written approval.

**Severability.** In the event any provision of these Terms becomes or is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the Terms continue in full force and effect and the application of such provision will be interpreted so as reasonably to effect the parties' intent.

**Force Majeure.** In the event that either party is prevented from performing, or unable to perform obligations under the Terms due to a Force Majeure Event (except for Your obligations under Sections 13 (Fees; Taxes) and 14 (Billing/Payment)), the affected party's performance will be excused and the time for performance extended for the period of delay or inability to perform due to such occurrence; provided that the affected party: (a) provides the other party prompt notice (to the extent possible) of the nature and expected duration of the Force Majeure Event; (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such Force Majeure Event; (c) provides periodic notice of relevant developments; and (d) provides prompt notice of the end of such Force Majeure Event. You understand that the Services may not be provided in countries listed on the Office of Foreign Assets Control sanction list and that Your rights to Services may be restricted in such countries and such prohibitions shall not constitute a Force Majeure Event.

**Integration.** These Terms constitute the entire agreement between the parties and supersedes all prior agreements or communications between the parties with regard to the subject matter. Subject to Section 2 (Changes to These Terms), these Terms may not be amended or modified except by a writing signed by each party. These Terms supersedes and controls over conflicting or additional terms and conditions of any purchase order, acknowledgement, confirmation, or other document You issue.

**Assignment.** You will not, directly, indirectly, by operation of law or otherwise, assign or transfer all or part of these Terms or its rights or delegate performance of its duties without the prior written consent of OPSWAT. Any attempted assignment or transfer by You without consent shall be void and of no effect. OPSWAT may assign the Terms without obtaining Your consent: (a) to an OPSWAT Affiliate; or (b) in connection with a successor in interest in a merger, acquisition, reorganization, sale of all or substantially all of the assets, or other change of control. Subject to the foregoing, the Terms will be fully binding upon, inure to the benefit of, and be enforceable by, the parties and their respective permitted successors and assigns.

**Third Party Beneficiaries.** Nothing in these Terms shall confer, or is intended to confer, on any third party any benefit or the right to enforce these Terms.

**Relationship.** The parties enter into the Terms as independent contracting parties. Neither party will have, or hold itself out as having, any right or authority to incur any obligation on behalf of the other party. These Terms will not be construed to create an association, joint

venture, or partnership between the parties or to impose any partnership liability upon any party.

**Nonwaiver.** The failure of either party to insist upon or enforce strict performance of any Terms provision or to exercise rights or remedies under the Terms will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision, right, or remedy in that or any other instance; rather, the same will remain in full force and effect.

**Compliance with Laws.** OPSWAT and You agree to comply with Applicable Laws, including but not limited to those relating to anti-corruption, anti-bribery (e.g. U.S. Foreign Corrupt Practices Act, as amended), and exports (including restrictions on destinations, end users, and end use).

**Notices.** Notice given by a party to any other party will be in writing and effective upon confirmed delivery as follows: (a) if to You, when sent via email or physical address specified in a Quote or otherwise on record for You; and (b) if to OPSWAT, when sent via email to [Legal@OPSWAT.com](mailto:Legal@OPSWAT.com) or 5650 Breckenridge Park Drive, #201, Tampa, FL 33610, Attn: Terms of Services Notices. A notice must specifically reference that it is a notice given under these Terms. Emailed notices will be considered given and received when the email is sent. You agree to accept service of process by mail.

This Section 23 (Miscellaneous) survives expiration or termination of the Terms or the Services.

## **24. SPECIFIC SERVICES TERMS**

You agree to the following terms for the specific Services You purchase, use, or access:

### **Professional Services.**

You may receive Professional Services, as further described in a mutually agreed SOW or as outlined in a Quote. Each SOW will include: (a) a description of the services, deliverables, and OPSWAT Materials to be provided to You; and (b) hourly rate and labor categories, or milestone payments and deadlines, and expense reimbursements. OPSWAT will perform Professional Services with Representatives under OPSWAT's sole direction.

OPSWAT shall own all rights, title and interest in and to the Documentation, templates, training materials, recordings, notes, drawings, designs, inventions, systems, processes, development, discovery, work of authorship, equipment, methods, and other items (collectively the "OPSWAT Materials"), including enhancements, improvements, and derivatives, OPSWAT may provide You as part of the Professional Services (including Intellectual Property therein, but excluding Your Confidential Information and Your Identifiers that may be included in the OPSWAT Materials, collectively, "Your Property"). OPSWAT shall have the right to use Your Property solely to provide Professional Services to You. Until the expiration or termination of these Terms or the Services, OPSWAT hereby provides You a royalty free, limited, non-exclusive,

non-sublicensable, non-transferable, and terminable license to use OPSWAT Materials solely for Your internal operations in connection with Your authorized use of the Services.

OPSWAT shall own all Intellectual Property in the tools, libraries, know-how, ideas, concept, techniques, and expertise OPSWAT uses to develop the OPSWAT Materials (“OPSWAT Tools”). Nothing herein shall be construed to assign or transfer Intellectual Property in the OPSWAT Tools, and to the extent such OPSWAT Tools are delivered with or as part of the OPSWAT Materials, they are licensed, not assigned, to You, on the same terms as the OPSWAT Materials.

### **Hardware Products.**

Risk of loss passes to You upon shipment of the Hardware Product to You. Insurance, if any, covering the Hardware Product shall be Your sole responsibility.

Unless otherwise agreed by the parties in writing, OPSWAT at its option, may provide a new or refurbished Hardware Product.

You are solely responsible for complying with Applicable Laws relating to waste, health and safety, including without limitation EC Directive on Waste Electrical and Electronic Equipment (2002/96/EC) and The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations (2002/95/EC), as amended, in connection with Your use, transport, and/or disposal of a Hardware Product.

### **No Cost Services.**

OPSWAT Services available at no cost are subject to the following limitations:

Unless OPSWAT specifies in the Documentation that You may use no cost Services for internal business or personal purposes, Your use of no cost Software, Cloud Services, or Hardware shall be limited to Your evaluation, proof of concept, or internal testing (“Evaluation”) of Software, Cloud Services, or Hardware for purchase only during the Evaluation period. You shall not use no cost Software, Cloud Services, or Hardware for production purposes, such as to secure Your entity and technology infrastructure from cybersecurity threats.

You may not sub-license, rent, lease, resell, redistribute, package, repackage, sell, sub-rent, sublease, or otherwise transfer or encumber the Services, or make generally available to third parties as a billable service the Services results.

Your usage may be limited in duration and functionality (i.e. ability to upload files and hash values, ability to monitor devices from management interface), and OPSWAT may change the limits at its sole discretion without notice.

### **MetaAccess.**

Except for planned downtime (which OPSWAT gives advance notice) OPSWAT warrants to maintain 99.9% availability.

If You implement the "Threat Detection" feature of MetaAccess (which is enabled by default), Your devices running the OPSWAT Client product ("Client") will periodically submit hash values of applications then running on these devices to OPSWAT's [MetaDefender Cloud](#) to determine if any such hash values are associated with known Malware based on prior Malware analysis of files corresponding to such hash values by MetaDefender Cloud. If hash values have not previously been analyzed for Malware by [MetaDefender Cloud](#), the Client will upload the application file and dependent files to [MetaDefender Cloud](#) for Malware analysis.

Upon OPSWAT's acceptance of Your paid MetaAccess subscription order, Your usage limits will increase according to the Proof of Entitlement.

You agree to obfuscate Your Personal Data from meta-data (such as file names) associated with all files, prior to submitting Content to Services.

### **MetaDefender Cloud.**

Except for planned downtime (which OPSWAT gives advance notice) OPSWAT warrants to maintain 99.5% availability.

You agree to comply with any [MetaDefender Cloud](#) use restrictions detailed in [MetaDefender Cloud Documentation](#).

Upon OPSWAT's acceptance of Your paid MetaDefender Cloud subscription order, Your usage limits will increase according to the Proof of Entitlement, and expose tools You can use to control MetaDefender Cloud behavior, including deleting files uploaded to the [MetaDefender Cloud](#) immediately following analysis. If You choose this option, files you submit to the MetaDefender Cloud will not be shared with OPSWAT cybersecurity Third-Party Providers.

You understand OPSWAT will provide Prevention, Sandbox, and Reputation API results with a subset of the available Anti-malware engines referred to under "Available Anti-malware engines for commercial use" at <https://metadefender.opswat.com/licensing>.

You agree to the Rate Limiting and Throttling You purchase as detailed in the [MetaDefender Cloud Documentation](#).

If You are an existing MetaDefender Cloud customer or user, You may not purchase additional MetaDefender Cloud licenses, or update Rate Limiting or Throttling Limits for existing licenses through OPSWAT's online stores, and must contact sales at <https://www.opswat.com/contact>.

You agree to obfuscate Your Personal Data from meta-data (such as file names) associated with all files, prior to submitting Content to Services.

### **MetaDefender Drive.**

**Limited MetaDefender Drive Hardware Product Warranty.** This Limited MetaDefender Drive Hardware Product Warranty applies only to MetaDefender Drive Hardware Products You

purchase for internal use, and not for resale. If You enter into a paid transaction for MetaDefender Drive Software with OPSWAT as evidenced by a Proof of Entitlement:

(a) OPSWAT warrants the hardware components of the MetaDefender Drive Hardware Products shall be free from material defects in design, materials, and workmanship, and will function, under normal use, in accordance with Documentation, during the MetaDefender Drive Software Subscription Period (“MetaDefender Drive Hardware Product Warranty Period”).

(b) In the event You report to OPSWAT, during the MetaDefender Drive Hardware Product Warranty Period, the MetaDefender Drive Hardware Product does not materially conform with the Documentation under normal use, and such non-conformity is reproducible and verifiable, OPSWAT, at its discretion:

(1) For the first reported non-conformity, shall either (A) repair or replace the MetaDefender Drive Hardware Product, or (B) refund Fees received for the non-conforming MetaDefender Drive Hardware Product, prorated for the use period.

(2) For the second and succeeding non-conformity, shall repair or replace the MetaDefender Drive Hardware Product according to OPSWAT’s then-current price list.

Section 16 on Limited Hardware Product Warranty, paragraphs (c), (d), (e), (f), (g), (h), (i) apply to You.

### **MetaDefender USB Firewall.**

If You enter into a paid transaction for MetaDefender USB Firewall for internal use, and not for resale, with OPSWAT as evidenced by a Proof of Entitlement, Section 16 (Limited Warranties and Disclaimers) Limited Hardware Product Warranty applies to You without purchase of OPSWAT’s Platinum Hardware Support Plan.

### **OPSWAT Academy.**

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### 6. Links

The School has not reviewed all of the sites linked to its website and is not responsible for the contents of any such linked site. The inclusion of any link does not imply endorsement by the School of the site. Use of any such linked website is at the user's own risk.

### 7. Site Terms of Use Modifications

The School may revise these Terms of Use for its website at any time without notice. By using this website you are agreeing to be bound by the then current version of these Terms of Use.

## 8. Governing Law

Any claim relating to the School's website shall be governed by the laws of the School Owner's home jurisdiction without regard to its conflict of law provisions.

## Sandbox

1. **Sandbox On-Premises.** If Sandbox is installed on Your premises, You agree and acknowledge that You are solely responsible for ensuring that Your installation of Sandbox is in an isolated and secure environment. If You choose to establish network connectivity for Your on-premises instance of Sandbox, You assume sole responsibility for any and all liability arising from such network connectivity, including but not limited to any loss or unauthorized sharing of data You upload to Sandbox.
2. **Sandbox Software-as-a-Service ("SaaS").** Sandbox SaaS collects indicators of malware, virus, worm, Trojan horse, or other potentially malicious or harmful code or metadata ("Indicators of Compromise") from Your Uploaded Files to: (a) analyze, characterize, attribute, warn of, and/or respond to threats found in Your Uploaded Files, (b) analyze trends and performance, and (c) improve Sandbox's dynamic analysis to better identify threats. For the avoidance of doubt, Indicators of Compromise exclude Your Personal Data and any other data identifying You. By using Sandbox SaaS, You understand and agree that OPSWAT owns and retains all right, title, and interest (including all Intellectual Property rights) in and to the Indicators of Compromise.
3. **Microsoft Licenses.** OPSWAT's Sandbox environment is initially provided to You in a virtual machine with Windows 7, Windows 10, and the Microsoft Office product suite (collectively, the "Microsoft Products") already installed on such virtual machine. Upon installation of Sandbox, You are solely responsible for (a) obtaining the appropriate licenses from Microsoft Corporation to use the Microsoft Products incorporated in Sandbox; and (b) switching license keys and other license information for the Microsoft Products to Your own license keys. OPSWAT disclaims all representations, warranties, and obligations with respect to the Microsoft Products. For the avoidance of doubt, the Microsoft Products are Third-Party Products and the provisions in these Terms with respect to Third-Party Products shall also apply to the Microsoft Products.