

## QUALYSGUARD® END-USER AGREEMENT

**This QUALYSGUARD END-USER AGREEMENT (this “Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”), by and between QUALYS, INC., a Delaware corporation (“Qualys”), and Monterey County, a political subdivision of the State of California (“End-User”).** This Agreement, including the information submitted to Qualys upon registration for the Service (“Registration”), governs End-User’s use of and access to the QualysGuard service (the “Service”), whether such subscription is obtained directly from Qualys or from an authorized Qualys Reseller (“Authorized Reseller”).

**1. Service Description.** Upon End-User's completion of Registration and Qualys' acceptance of End-User's Registration request, End-User will be entitled to use the Service in accordance with the terms of this Agreement. The Service will permit End-User to scan the IP addresses, web applications and/or domain names identified by End-User to Qualys for those vulnerabilities contained within the Service's vulnerability database. Qualys will automatically provide End-User with the results of such scans, including reports summarizing Qualys' findings regarding the IP addresses, website URLs in the case of Web Application Scanning Service referred herein as (“Web Applications”), and/or domain names identified by End-User for scanning (the "Reports"). End-User must notify Qualys or its Authorized Reseller, using the Service interface, of any changes in the IP addresses, Web Applications, and/or domain names submitted for scanning. End-User also must notify Qualys or its Authorized Reseller in writing if End-User desires to increase the number of IP addresses, Web Applications, and/or domain names to be tested under the Service. Pursuant to Section 8, any increase in the number of IP addresses, Web Applications, and/or domain names covered by the Service may require the payment of additional fees. If End-User allocates IP address to devices by the Dynamic Host Configuration Protocol (“DHCP”), End-User may submit a range (or ranges) of IP addresses for scanning, provided that End-User will not be entitled to use the Service to scan a number of devices greater than the number covered by End-User's subscription. Any such attempts to scan a greater number of devices or Web Applications will result in an error message and a prompt to upgrade to an appropriate subscription level.

**2. User Name and Password.** Upon Qualys' acceptance of End-User's Registration, End-User will be registered and receive a user name and password for the Service. Qualys generates End-User's password in encrypted form and only End-User has access to it. End-User will be responsible for keeping End-User's user name and password confidential. End-User shall notify Qualys or its Authorized Reseller immediately upon learning of any unauthorized use of End-User's user name or password. Until such time as End-User notifies Qualys of any unauthorized use of End-User's user name or password, End-User will be responsible for all activities and charges incurred through the use of End-User's user name and password, and will indemnify and hold harmless Qualys for any claims, liability, damages, losses and costs (including reasonable attorneys' fees) to the extent resulting from such use.

**3. API.** Upon Qualys' agreement, End-User may choose to have access to the Service through Qualys' proprietary API (the “API”) by paying to Qualys a non-refundable annual API Maintenance Fee, if applicable, according to Qualys' pricing described in Section 8 below. If End-User chooses the API option, during the period for which End-User has paid the applicable API Maintenance Fee, Qualys will provide End-User with the API, through which End-User may access and query the Service and receive raw data generated from scans of End-User's IP addresses and/or Web Applications (the “Scan Data”). If the API option is selected, Qualys hereby grants End-User a nonexclusive, nontransferable, and revocable right to (i) access and process the Scan Data via the API for the purpose of generating Reports based on the Scan Data and (ii) use and reproduce such Reports solely for internal business purposes and solely for the purpose of vulnerability assessment with regard to the relevant IP address and/or Web Application.

**4. Card Programs.** Qualys will provide End-User, as part of the Service, a customized version of the Reports containing information designed to meet the criteria of the Qualys-supported payment card compliance program of the PCI Security Standards Council (the "Card Program"). In certain circumstances, Qualys personnel may also provide individualized assistance to End-User to facilitate a determination regarding End-User's compliance with Card Program. Qualys provides the Service in connection with Card Program, including any customized Reports and individualized assistance, solely as a tool to enable End-User to evaluate its compliance with such Card Programs. End-User acknowledges and agrees that third party payment card organizations, and not Qualys, establish the security criteria and other terms and conditions of the Card Program ("Criteria").

**5. Grant of Rights.** Subject to End-User's payment of any applicable fees and End-User's compliance with the terms and conditions of this Agreement, Qualys grants End-User a non-exclusive, non-transferable right to access the Service's user interface and to reproduce solely for End-User's own internal business purposes only such vulnerability test results as set forth in the Reports.

**6. Hardware.** Qualys hardware products, including the QualysGuard Intranet Scanner appliance delivered to End-User under this Agreement ("Hardware") are provided to End-User under subscription on an annual basis, during the term of the relevant subscription. End-User acknowledges that not all Service subscriptions include Hardware. (a) Qualys will select the carrier for delivery and bear the cost of shipment, insurance and duties for delivery of the Hardware to the location designated by End-User in an accepted Purchase Order. Notwithstanding the foregoing, Qualys will not be liable for damage or penalty for delay in delivery. (b) Subject to the Hardware warranty in Section 13(a), End-User assumes all risk of loss and shall pay for all cost of repair, replacement, or refurbishment caused by accident, misuse, abuse, neglect, or End-User's other failure to install, use and maintain the Hardware in accordance with the applicable documentation and specifications. Subject to the terms and conditions of this Agreement, Qualys and its suppliers grant End-User a limited, non-exclusive, non-transferable, non-sublicenseable right to use the software embedded in the Hardware in executable code form only, during the term of the relevant subscription, solely as necessary to operate the Hardware in connection with the Service. (c) Notwithstanding anything to the contrary in this Agreement, Qualys will at all times retain title to the Hardware. End-User may retain and use Hardware during any subscription renewal term, provided that End-User pays the applicable subscription fee for such renewal term. Upon termination or expiration (including non-renewal) of this Agreement or End-User's subscription, End-User will return all Hardware provided under this Agreement within fifteen (15) days of such expiration or termination, in substantially the same condition in which it was delivered to End-User. End-User will pay all return transportation and delivery costs.

**7. Restrictions.** The rights granted to End-User in this Agreement are subject to the following restrictions, and End-User hereby covenants as follows: (a) End-User may use the Service and the Hardware only to scan IP addresses, Web Applications, and/or map domain names owned by and registered to End-User, or for which End-User otherwise has the full right, power, and authority to consent to have the Service scan and/or map. End-User may not rent, lease, or loan the Service, or any part thereof. Neither may End-User permit third parties to benefit from the use or functionality of the Service via timesharing, service bureau arrangements or otherwise. (b) While there is no software transfer necessary from Qualys to End-User to effectuate the Service, End-User agrees not to reverse engineer, decompile, or disassemble any software that is embedded in or related to the Hardware or that provides the Service, or otherwise attempt to derive the processes by which the Service is provided or the Reports are generated, except to the extent the foregoing restriction is expressly prohibited by applicable law. (c) End-User may not use the Service or the Hardware except for the limited purpose of vulnerability management with regard to the IP addresses and/or Web Applications for which End-User has purchased a subscription package. (d) End-User may not make any alteration, addition or modification to the

Hardware; open, disassemble or tamper with the Hardware in any fashion; or transfer possession of the Hardware to any third party.

**8. Payment.** Upon the Effective Date, End-User shall make an initial purchase as set forth in **Exhibit A**. End-User shall be obligated to pay Qualys or its Authorized Reseller, as applicable, (a) the fees attributable to the subscription package(s) purchased by the End-User (including subscriptions to Hardware); and (b) the API Maintenance Fee if applicable. For End-User's initial purchase, such fees will be according to **Exhibit A**. For subsequent purchases (including renewals), such fees will be according to Qualys' applicable list price, or at such other price to which the End-User and the selling party may agree in writing. The applicable scanning fees may change if End-User adds devices, IP addresses, Web Applications, and/or domain names in the manner described in Section 1. Qualys and its Authorized Resellers reserve the right to change the list price for Hardware, the Service or the API at any time; provided, however, that if End-User has already paid for Hardware, Service or the API for a particular subscription term, the price will not be changed during the term of such subscription. Payment from End-User will be due and payable within thirty (30) days of the date of the applicable invoice or as otherwise required by an Authorized Reseller. Payments by End-User that are past due will be subject to interest at the rate of one and one-half percent (1½%) per month (or the maximum allowed by applicable law). Subject to any arrangement End-User has with an Authorized Reseller, should Qualys so notify End-User at any time, any future payments under this Agreement shall be made directly to Qualys or to such party as Qualys may specify in its notice to End-User. End-User will be solely responsible for payment of any and all taxes and duties (including value-added tax, turnover tax, gross receipts tax, sales or use tax and customs duties) arising from or imposed on any transactions conducted or products delivered hereunder, excluding taxes based on Qualys' or its Authorized Reseller's net income. Without limiting the foregoing, if any amount payable by End-User under this Agreement should be subjected to any deduction or withholding on account of any tax or charge, End-User shall pay such additional amounts as may be required in order that the net amount actually received, after deduction or withholding of all related taxes and charges, shall be equal to the amount expressed to be payable pursuant to the terms of this Agreement.

**9. Term; Termination by End-User.** (a) The initial term of this Agreement and of End-User's subscription to the Service shall be for one (1) year (or for such longer term as the parties may agree in writing), commencing on the Subscription Start Date. (Subscription Start Date shall be the date of End-User's receipt of the email "QualysGuard Registration -- Start Now" (the "Activation Email") sent by Qualys support. Qualys support will send the Activation Email on the later of the requested start date indicated on the purchase order or within five (5) business days of receipt of End-User's purchase order.) This Agreement will automatically renew for successive renewal terms of one-year each unless End-User notifies Qualys or its Authorized Reseller of its intention not to renew at least 60 days prior to the expiration of the then-current term. (b) End-User may terminate this Agreement and receipt of the Service at any time upon thirty (30) days' advanced written notice to Qualys for any reason. If End-User terminates the Agreement for convenience as set forth above, End-User will not receive any refund or credit for any unused portion of a subscription to the Service or any prepaid scanning fees. Upon termination or expiration (including non-renewal) of this Agreement or End-User's subscription, End-User must cease all use of the Service, including any downloads of the Reports and, within five (5) days of such expiration or termination, return all Hardware provided under this Agreement in substantially the same condition in which it was delivered to End-User. Qualys may terminate this Agreement at any time upon thirty (30) days' prior written notice if End-User fails to pay any amounts due hereunder or breaches any other provision of this Agreement. Sections 7 and 9 through 18 will survive any termination or expiration of this Agreement.

**10. Ownership.** As between the parties, all title, copyrights, trademarks, service marks, patents, patent applications and all other intellectual proprietary rights now known or hereafter recognized in any jurisdiction in and to the Service, API, Reports, and the design and function of the Hardware--and in each case all software embedded therein or related thereto, all data and information contained therein (excluding individual factual data gathered from the End-User's IP addresses)--(the "Intellectual Property Rights") are owned by Qualys and/or its licensors, and End-User agrees to make no claim of interest in or ownership of any such Intellectual Property Rights. End-User further acknowledges that the structure, organization, and code of all software embedded in or related to the Service and the Hardware are the valuable trade secrets of Qualys and/or its licensors. End-User acknowledges that no title to the Intellectual Property Rights in the Service or the Reports is transferred to End-User, and that End-User does not obtain any rights, express or implied, in the Service or the Reports, including any information contained within the Reports, other than the rights expressly granted in this Agreement.

**11. Confidentiality.** Each party agrees to keep in confidence any confidential or proprietary information it receives from the other party hereunder ("Confidential Information"). Neither party shall disclose Confidential Information of the other party to third parties nor use such Confidential Information for any purpose other than as expressly set forth in this Agreement. To be accorded treatment as Confidential Information under this Agreement, the disclosing party must identify any such information as confidential or proprietary at the time of disclosure. Notwithstanding the marking requirement, all data regarding End-User's IP addresses, domain names, Web Applications, or network characteristics (including data that Qualys obtains as a result of its provision of the Service hereunder) will be deemed Confidential Information of the End-User, and all data and information contained within the Service or the Reports (excluding End-User's Confidential Information) and all information concerning or materially relating to the Hardware, will be deemed Confidential Information of Qualys. Information that is already in the public domain through no fault of the receiving party, or was already known to the receiving party through no breach of a confidentiality obligation to the disclosing party, shall not be treated as Confidential Information hereunder. End-User may not access, use or refer to any information or data contained within the Service or the Reports except for the limited purpose of vulnerability management with regard to the IP addresses or Web Applications for which End-User has purchased a subscription package. Nothing in this Agreement shall prohibit Qualys from using aggregated data of End-User in any format for any purpose, provided that such data cannot be identified to or associated with End-User.

**12. Identification of IP Addresses.** (a) Because of the sensitive nature of performing security checks on IP addresses and/or Web Applications, End-User represents and warrants that End-User has full right, power, and authority to consent to have the Service test for vulnerabilities ("scan") the IP addresses, Web Applications, and/or domain names identified to Qualys for scanning, whether electronically or by any other means, whether at the time of initial Registration or thereafter. Without limiting any other remedy that Qualys may have, End-User agrees to indemnify and hold Qualys and its Authorized Resellers harmless from and against any and all liabilities, losses, damages, costs and expenses, including without limitation reasonable attorneys' fees and costs, incurred by Qualys or such Authorized Reseller resulting from End-User's breach of this Section 12(a). (b) End-User also acknowledges and agrees that the scanning of such IP addresses, Web Applications, and/or domain names may expose vulnerabilities and in some circumstances could result in the disruption of services at such site(s). Certain optional features of the Service, including exploitive scans, involve substantial risk of Denial of Service (DOS) attacks, loss of service, hardware failure and loss or corruption of data. Consequently, End-User agrees that it is End-User's responsibility to perform backups of all data contained in or available through the devices connected to End-User's IP addresses, Web Applications, and/or domain names prior to invoking the use of the Service.

**13. Limited Warranty.** (a) Qualys warrants that, for the duration each particular Hardware unit's subscription (the "Warranty Period"), such Hardware, when operated by End-User in accordance with the

applicable documentation and specifications, will function without Error. For purposes of this Agreement, an "Error" is a reproducible operational error that causes the Hardware to operate at material variance from its then-current specifications. End-User's exclusive remedy for breach of this warranty is to notify Qualys of the Error in writing during the Warranty Period, whereupon Qualys, as its sole obligation and liability, will at its election, either: (i) repair or replace the Hardware such that it operates without Error; or (ii) accept return of the Hardware and refund to End-User a pro-rata portion of the subscription fee paid for such Hardware. Any error correction provided to End-User will not extend the original Warranty Period. This Section 13(a) sets forth End-User's sole and exclusive remedy and Qualys' entire liability to End-User for any Error or other malfunction in the Hardware. (b) EXCEPT AS EXPRESSLY PROVIDED IN SECTION 13(a), AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE HARDWARE, SERVICE, REPORTS AND API ARE PROVIDED "AS IS," AND QUALYS EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ALL IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, ACCURACY AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. Without limitation to the foregoing, Qualys makes no warranty that the Hardware, Service, Reports or API will be error-free, complete, free from interruption or failure, or absolutely secure from unauthorized access. Nor does Qualys guarantee that the Hardware or Service will detect every vulnerability to End-User's network. Qualys does not warrant that the Service or the Reports meet the Criteria of any Card Program; nor should End-User rely on a "Pass" designation in a Report or the statements of Qualys personnel regarding a Card Program as an indication that End-User's network is secure. (c) No person, dealer, or company may alter this disclaimer of warranties.

**14. Indemnification.** Qualys will defend, indemnify and hold harmless End-User from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees) arising from any claim brought against End-User by a third party alleging that the Service, Hardware, API or Reports infringe or misappropriate a third party's intellectual property or proprietary rights, provided that End User grants Qualys sole control over defense or settlement of such claim and cooperates reasonably in the defense or settlement of such claim. If End-User's use of the Service, Hardware, API or Reports is enjoined as a result of such a claim of infringement, or if Qualys determines that it is likely to be so enjoined, Qualys will, at its option, (a) procure for End-User the right to continue using the item in accordance with its rights under this Agreement, (b) replace or modify the item with a substantially equivalent non-infringing item; or (c) terminate this Agreement and refund to End-User a pro-rata portion of the amounts paid by End-User hereunder in connection with the Agreement based on the unexpired portion of the Subscription at the time of such termination. This Section 14 states Qualys' sole liability and End-User's sole and exclusive remedy for a claim of infringement related to the Service, Hardware, API or Reports.

**15. Limitation of Liability.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE, SHALL QUALYS, ITS SUCCESSORS OR ASSIGNS, OR ANY AUTHORIZED RESELLER, BE LIABLE TO END-USER UNDER THIS AGREEMENT FOR ANY LOSS OF PROFITS, LOSS OR CORRUPTION OF DATA, EQUIPMENT, WEB APPLICATION OR NETWORK DOWNTIME, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER ARISING FROM OR RELATED TO THIS AGREEMENT OR END-USER'S USE OR INABILITY TO USE THE HARDWARE, SERVICE, REPORTS OR API, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL QUALYS' AND ITS AUTHORIZED RESELLERS' TOTAL LIABILITY TO END-USER FOR ALL DAMAGES IN ANY ONE OR MORE CAUSES OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNTS PAID BY END-USER FOR THE SERVICE DURING THE TWELVE MONTHS PRECEDING THE ACCRUAL OF SUCH ACTION. The foregoing provisions

shall be enforceable to the maximum extent permitted by applicable law. This Section shall survive the termination or expiration of this Agreement.

**16. U.S. Government Rights.** For purposes of this Agreement, "commercial computer software" means software developed or regularly used for nongovernmental purposes which (i) has been sold, leased, or licensed to the public, (ii) has been offered for sale, lease or license to the public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Agreement; or (iv) satisfied a criterion expressed in (i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this Agreement. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software or technical data under this Agreement.

**17. United States Export Restrictions.** End-User may not download, export, or re-export any software or technical data received hereunder, including software and technical data embedded in the Hardware, regardless of the manner in which received, (a) into, or to a national or resident of, any country to which the United States has embargoed goods, or (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By using the Service, End-User is representing and warranting that End-User is not located in, under the control of, or a national or resident of any such country or on any such list.

**18. General.** This Agreement is governed by the laws of the United States and the State of California, without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. Any dispute between End-User and Qualys regarding this Agreement will be subject to the exclusive jurisdiction of the state and federal courts in the State of California. This Agreement is the entire agreement between End-User and Qualys and supersedes any other communications or advertising with respect to the Service and documentation, including any online agreement presented to End-User during Registration or any additional terms or conditions submitted by End-User, whether part of a purchase order or otherwise. If any provision of this Agreement is held invalid, the remainder of this Agreement will continue in full force and effect. No provision of this Agreement shall be deemed waived or modified except in a writing signed by an authorized representative of Qualys. End-User may not assign this Agreement except pursuant to a merger, or sale of all or substantially all of End-User's assets without the prior written consent of Qualys. All notices or approvals under this Agreement shall be directed to the billing addresses as set forth below or as may be revised in writing from time to time. The parties to this Agreement are independent contractors. Neither party is an agent, representative, joint venturer, or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind the other party. Each party shall bear its own costs and expenses in performing this Agreement.

**IN WITNESS WHEREOF**, the parties by their duly authorized representatives agree to and accept all terms herein, effective as of the date first written above.

**QUALYS**

**END-USER**

1600 Bridge Parkway, Suite 201  
Redwood Shores, CA 94065 USA

Billing address:  
County of Monterey Information Technology  
1590 Moffett Street

Salinas, California 93905  
ATTN: Accounts Payable  
Shipping Address: X same as billing

QUALYS

COUNTY OF MONTEREY

DocuSigned by:  
*Peter marcisz*  
By \_\_\_\_\_  
Signature of Chair, President or V.P.

By \_\_\_\_\_  
Contracts/Purchasing Officer

Peter marcisz VP Finance

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title

Approved as to Form

2016-06-10

By \_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Date

Date \_\_\_\_\_

By \_\_\_\_\_  
Signature of Secretary, Asst. Secretary,  
CFO, Treasurer or Asst. Treasurer

Approved as to Fiscal Provisions

\_\_\_\_\_  
Name and Title

By \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Date

Approved as to Liability Provisions

By \_\_\_\_\_  
Risk Manager

Date \_\_\_\_\_