

## End User License Agreement

*Last updated 11-15-23*

This End User License Agreement (as defined below) is entered into and agreed upon by you, either an individual or an entity (“You” or “Company”) and N-able Technologies Ltd. and (collectively, “N-able”) for the Software (as defined below). This Agreement is made and entered into as of the date that You first accept this Agreement either by executing a Sales Order that references this Agreement or by downloading, installing and/or utilizing the Software or Services (the “Effective Date”).

**BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING A SALES ORDER THAT REFERENCES THIS AGREEMENT, OR BY DOWNLOADING, INSTALLING, UTILIZING, OR RECEIVING THE SOFTWARE OR SERVICES (AS DEFINED BELOW), YOU AGREE TO ALL THE TERMS OF THIS AGREEMENT.**

This Agreement is a legally binding contract between you and N-able. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind that entity to this Agreement.

N-able does not accept any changes, additions or deletions to this Agreement; any such changes You make will not be accepted and will not be a part of this Agreement. If you do not accept the terms of this Agreement as-is, you must not access, download, install, use, or receive the Software or Services.

You acknowledge and agree that N-able has made the current version of this Agreement, including the terms and conditions of the documents that are incorporated in this Agreement by reference, available to you on N-able’s website or otherwise. You acknowledge and agree that, other than the Sales Order you enter into with N-able, N-able may revise and update the terms and conditions of the Agreement from time to time, including terms and conditions and other documents that are incorporated in the Agreement by reference. N-able will make such revised and updated versions of the Agreement available on its website, and you can subscribe to receive notice of updates to the Agreement in [N-able’s Preference Center](#).

Your continued use or receipt of the Services shall represent your acceptance of and agreement to the then-current terms and conditions of this Agreement. You agree that you will either subscribe to receive notice of updates of this Agreement or frequently check the N-able website for any revisions and updates.

### **1. DEFINITIONS.**

**1.1 Affiliates** means an entity controlled by, under common control with, or controlling such entity, where control is denoted by having fifty percent (50%) or more of the voting power (or equivalent) of the applicable entity. Subject to the terms and conditions of this Agreement, Your Affiliates may use the license granted hereunder, and You are responsible for their compliance with this Agreement and their actions and/or omissions.

**1.2 Agreement** means the End User License Agreement, the Data Processing Addendum, the Software Support and Maintenance Terms and Conditions, the Sales Order, N-able’s invoices for charges due from You in accordance with the Sales Order or any other documents incorporated by reference in this Agreement.

- 1.3 Client(s)** means, if You are an MSP, Your customer(s).
- 1.4 Data Processing Addendum** means the terms of the then-current data processing addendum that N-able provides or makes available to you, including on N-able's website, and which N-able will revise as needed or as required by law.
- 1.5 Devices** means (whether physical or virtual) a server, system, workstation, computer, mobile device, or end point upon which or through which the Software is used and/or on which the Software is installed.
- 1.6 Documentation** means the then-current official user documentation prepared and provided by N-able to You on the use of the Software and Services, which documentation N-able may update from time to time. For the avoidance of doubt, any installation guide or end user documentation not prepared or provided by N-able, any online community site, unofficial documentation, videos, white papers, or related media or feedback does not constitute Documentation.
- 1.7 Initial Sales Order** means Your first Sales Order with N-able for any Software or Services.
- 1.8 Initial Service Term** means the term listed on your Initial Sales Order, usually twelve (12) months unless provided otherwise.
- 1.9 MSP** means a managed service provider.
- 1.10 N-able Content** means, if applicable, N-able marketing documents and other content that are made available by N-able on N-able's website from time to time for MSPs to use in connection with selling to their customers their services that utilize the Software or Services.
- 1.11 N-able Marks** means the trademarks and service marks that are specifically approved by N-able for MSPs to use in connection with selling to their customers their services that utilize the Software or Services.
- 1.12 N-hanced Services** means any technical, professional, and other services specifically identified and designated in a Sales Order as "N-hanced Services" to be provided by N-able
- 1.13 N-hanced Support** means N-hanced Support purchased by you as set forth in the Sales Order.
- 1.14 Personal Data** means any information that can be used to identify an individual as that term is defined under Regulation (EU) 2016/679 ("General Data Protection Regulation" or "GDPR") or related data protection laws.
- 1.15 Product Addendum** means additional terms and conditions set forth in Section 15 that relate to the applicable Software, Services or Documentation.
- 1.16 Renewal Term(s)** means the successive period(s) of time for which the Agreement automatically renews. The Renewal Term(s) will depend on the Services purchased and billing frequency (e.g., monthly or annually) as provided in the applicable Sales Order.
- 1.17 Sales Order** means the N-able order form, product information dashboard, or other N-able ordering document that specifies Your purchase of the Software or Services, including specified

N-hanced Services, if any, pricing, and other related information. In case of a conflict between any Sales Order and any other language in the Agreement, the Sales Order will control.

**1.18 Services** means N-hanced Services and Support.

**1.19 Software** means the object code versions of the product and any other downloadable software provided by N-able under this Agreement, together with the updates, new releases or versions, and modifications or enhancements, owned and licensed by N-able to You pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, “Software” also includes any software delivered to you by N-able as part of any N-hanced Services provided by N-able.

**1.20 Support** means the maintenance or support provided by N-able or its designated agents for the Software as set forth in this Agreement. If you have purchased N-hanced Support, “Support” includes N-hanced Support.

**1.21 Term** means Initial Service Term and the Renewal Term(s), collectively.

**1.22 User** means an individual authorized by You to use the Software, Services, and Documentation, for whom You have purchased a license or to whom You have supplied a user identification and password. User(s) may only include Your employees, consultants, and contractors, and if applicable, Your Clients. Notwithstanding anything to the contrary in this Agreement, User(s) of N-hanced Services may only include Your employees, consultants, and contractors.

**1.23 Viruses** mean any malicious code, Trojan horses, malware, spam, viruses, or other destructive technology.

**1.24 Your Data or Data** means data, files, or information, including Personal Data, accessed, used, communicated, processed, stored, or submitted by You or Your Users in connection with Your or Your User’s use of the Software or Services.

## **2. PROVISION OF SOFTWARE AND SERVICES.**

**2.1 Subscription License.** Upon payment of the fees and subject to Your continuous compliance with the terms and conditions of this Agreement, N-able hereby grants You, for Software obtained on a subscription license basis (as shown on the Sales Order), a limited, revocable, non-exclusive, non-transferable license for the applicable Term to internally use the Software and Documentation, subject to all of the terms of the Agreement, including those contained in this Section 2.1.

a) For each Software license that You obtain from N-able, You may: (i) use the Software on any single Device, unless the Documentation clearly states otherwise; and (ii) copy the Software for back-up and archival purposes, provided each copy must contain all of the original Software’s proprietary notices and a notice that it will not be used for transfer, distribution, or sale.

b) The Software is in use on a Device when it is loaded into temporary memory or installed in permanent memory (hard drive or other storage media or device). You agree that You will register the Software only with N-able and that You will only install a Software license key

obtained directly from N-able. You may provide, make available to, or permit Your Users to use or access the Software or Documentation, in whole or in part.

c) **Services Delivery; Updates and Modifications.** You agree that N-able may deliver the Software to You with the assistance of its Affiliates, licensors, and service providers. You further agree that , N-able may update or modify the Software and Documentation at any time to reflect changes in, among other things, laws, regulations, technology, industry practices, patterns of system use, or availability of a third party program. N-able will use commercially reasonable efforts to provide an alternative Software or Documentation that does not materially reduce the level of performance, functionality, or security of the Software during the Term.

**2.2 Perpetual License Legacies.** Upon payment of the fees and subject to Your continuous compliance with the terms and conditions of this Agreement, N-able hereby grants You, for Software obtained on a perpetual license basis (as shown on the Sales Order), a perpetual, non-exclusive, non-transferable license to internally use the Software and Documentation subject to all of the terms and conditions of the Agreement, including the terms contained in this Section 2.2.

a) For each Software license that You obtain from N-able, You may: (i) use the Software on any single Device, unless the Documentation clearly states otherwise; and (ii) copy the Software for back-up and archival purposes, provided each copy must contain all of the original Software's proprietary notices and a notice that it will not be used for transfer, distribution or sale.

b) The Software is in use on a Device when it is loaded into temporary memory or installed in permanent memory (hard drive or other storage media or device). You agree that You will register the Software only with N-able and that You will only install a Software license key obtained directly from N-able. You may provide, make available to, or permit Your Users to use or access the Software or Documentation, in whole or in part.

c) **Services Delivery; Updates and Modifications.** You agree that N-able may deliver the Services or Software to You with the assistance of its Affiliates, licensors, and service providers. You further agree that, N-able may update or modify the Software and Documentation at any time to reflect changes in, among other things, laws, regulations, technology, industry practices, patterns of system use, or availability of a third party program. N-able will use commercially reasonable efforts to provide alternative Software or Documentation that does not materially reduce the level of performance, functionality, security, or availability of the Software during the Term.

**2.3 Evaluation or Beta License.** If the Software is provided to You for evaluation or beta purposes, N-able grants to You a limited, revocable, non-exclusive, non-transferable, license to use the Software internally solely for evaluation purposes prior to purchase or implementation (an "Evaluation License"), subject to this Agreement and Your continuous compliance with its terms. The Evaluation License is not for production use and shall terminate on the end date of the pre-determined evaluation period or immediately upon notice from N-able, in its sole discretion. Notwithstanding any other provision contained herein, Software and Documentation provided pursuant to an evaluation license is provided to you "AS IS" and without indemnification, liability, Support, or statutory, express or implied warranty of any kind. Except to the extent such terms conflict with the specific Evaluation License terms set forth in this Section, all other terms of this Agreement shall apply to Software licensed under an Evaluation License.

**2.4 Demonstration License.** If the Software and Documentation are provided to You for demonstration purposes, N-able grants to You a limited, revocable, non-exclusive, non-transferable license to use internally the Software solely for demonstration purposes with Clients (a “Demonstration License”), subject to this Agreement and Your continuous compliance with its terms. The Demonstration License is not for production use. The Demonstration License shall terminate on the end date of the pre-determined evaluation period or immediately upon notice from N-able, in its sole discretion. Notwithstanding any other provision contained herein, Software and Documentation provided pursuant to a demonstration license is provided to you “AS IS” and without indemnification, liability, support, or statutory, express or implied warranty of any kind. Except to the extent such terms conflict with the specific Demonstration License terms set forth in this Section, all other terms of this Agreement shall apply to Software licensed under a Demonstration License.

**2.5 N-hanced Services.** Upon payment of the fees and subject to Your continuous compliance with the terms and conditions of this Agreement, N-able will provide the N-hanced Services, if any, set forth in the Sales Order, subject to all the terms of the Agreement.

### **3. RESTRICTIONS; OBLIGATIONS.**

**3.1 Restrictions.** You may not do any of the following: (i) provide, make available to, or permit individuals other than Your Users to use the Software, Services, or Documentation, either in whole or part, except under the terms expressly set forth in this Agreement; (ii) copy, reproduce, republish, upload, post, or transmit the Software, Services, or Documentation (except for back-up or archival purposes, which may not be used for transfer, distribution, or sale); (iii) license, sell, resell, rent, lease, transfer, sublicense, distribute, or otherwise transfer rights to the Software, Services, or Documentation; (iv) modify, translate, reverse engineer, decompile, disassemble, create derivative works of, or otherwise attempt to derive the source code of the Software, Services, or Documentation; (v) create, market, distribute add-ons or enhancements or incorporate into another product the Software, Services, or Documentation without prior written consent of N-able; (vi) remove any proprietary notices or labels on the Software, Services, or Documentation, unless authorized in writing by N-able; (vii) license or purchase the Software, Services, or Documentation (a) if You (or any of Your Users) are a direct competitor (or an agent of a direct competitor) of N-able, (b) for the purposes of monitoring the Software’s or Services’ availability, performance, or functionality, or (c) for any other benchmarking or competitive purposes; (viii) use the Software or Services to violate any rights of third parties, including, without limitation, privacy rights, or storing or transmitting infringing, libelous, unlawful, or tortious material or to store or transmit material in violation of any applicable laws; (ix) use the Software or Services to store or transmit Viruses; (x) interfere with, impair, or disrupt the integrity or performance of the Software or Services or any other third party’s use of any software, hardware, equipment or network; (xi) use the Software or Services in a manner that results in excessive use, bandwidth, or storage; or (xii) alter, circumvent, or provide the means to alter or circumvent the Software or Services, including seeking any back end or unauthorized access or circumvention of the technical limitations, and/or (xiii) attempt to avoid any recurring fees. Any such prohibited use shall immediately terminate Your license to the Software or access to the Services. The Software is intended only for use with public domain or properly licensed third-party materials. All responsibility for obtaining such a license is Yours, and N-able shall not be responsible for Your failure to do so.

**3.2 Usage.** You and Your Users usage of the Software and Services shall not exceed your rights to use the Software and Services set forth in the Agreement and applicable Sales Orders. You are responsible for Your and Your Users’ usage of the Software and Services, including any



unauthorized usage. N-able may monitor usage of the Software and Services by all Users at any time. In addition, N-able, or its designated representatives, will have the right upon reasonable notice, during regular business hours, to access and review your books and records for the purpose of verifying Your compliance with the terms and conditions of this Agreement, including any usage limitations.

**3.3 Your Obligations.** You acknowledge, agree, and warrant that: (i) You are and will be responsible for Your and Your Users' activity and compliance with this Agreement, and if You become aware of any violation, You will immediately terminate the offending party's access to the Software, Services, and Documentation and notify N-able; (ii) You and Your Users will comply with all applicable local, state, federal, and international laws; (iii) You will use the Software and Services only in accordance with the applicable Documentation, and you will ensure that the Software is installed on a supported platform as set forth in the applicable Documentation and that the Software and Services are used only with public domain or properly licensed third party materials; (iv) You will install the latest version of the Software on Devices accessing or using the Software; (v) You are legally able to process and provide Your Data to N-able and its Affiliates, including obtaining appropriate consents or rights for such processing; (vi), You have the right to access and use Your infrastructure, including any system or network, to obtain or provide the Software and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; and (vii) You will keep your registration information, billing information, passwords and technical data accurate, complete, secure and current for as long as You subscribe to the Software, Services, and Documentation.

If You are an MSP, You further acknowledge, agree, and warrant that: (i) You have sufficient technical infrastructure, knowledge, and expertise to perform the services You provide for Your Clients; (ii) You will provide all sales, problem resolution, and support services to Your Clients; (iii) You will be responsible for billing, invoicing, and collection for Your Clients; and (iv) You will operate at Your own expense and risk under Your own name as an MSP.

**3.4 Injunctive Relief.** The parties agree that, in addition to any other relief to which the non-breaching party may be entitled, any material breach of this Section 3 will cause irreparable injury and the non-breaching party may seek injunctive relief in a court of competent jurisdiction without the need of posting bond.

## **4. PROPRIETARY RIGHTS.**

**4.1 License to N-able Content.** This paragraph applies to You only if You are an MSP. Subject to the terms of this Agreement and Your continuous compliance with the same, N-able hereby grants to You a personal, limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use, reproduce and distribute the N-able Content in Your marketing and advertising materials that are provided to Clients. No right to modify or prepare derivative works of the N-able Content (including any translation into another language) is granted to You.

**4.2 License to N-able Marks.** This paragraph applies to You only if You are an MSP. Subject to this Agreement and Your continuous compliance with its terms, N-able hereby grants to You a personal, limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use the N-able Marks during this Agreement solely to market and advertise to Clients that Your services utilize the Software. Your use of the N-able Marks will strictly comply with N-able's Trademark and Copyright Guidelines (the "Guidelines"), which are incorporated in the Agreement by this reference, and which N-able may update or revise from time to time.

You agree to obtain N-able's prior written approval of all uses of the N-able Marks. N-able may withdraw any approval of any use of the N-able Marks at any time and at its sole discretion, although no such withdrawal will require the recall of any previously distributed physical printed materials. You shall cooperate with N-able, at N-able's request in facilitating N-able's monitoring and control of the nature and quality of the materials bearing the N-able Marks and will supply N-able with specimens of Yours use of the N-able Marks upon request. If N-able notifies You that Your use of the N-able Marks is not in compliance with this Agreement, then You shall promptly take such reasonable corrective action as reasonably directed by N-able. N-able is the sole and exclusive owner of the N-able Marks and is also the owner of all goodwill associated with the N-able Marks. You shall do nothing inconsistent with such ownership, either during the term of this Agreement or afterwards. Without limitation, You shall not attempt to register the N-able Marks or any similar marks in any jurisdiction or challenge N-able's ownership of the N-able Marks.

Your use of the N-able Marks shall be on behalf, and inure to the benefit, of N-able. Your utilization of the Marks will not create any right, title or interest in such N-able Marks for Your benefit. You shall use the N-able Marks so that each N-able Mark creates a separate and distinct impression from any other trademark that may be used or affixed to materials bearing the N-able Marks. You may not delete, remove, hide, move or alter any trademark, logo, icon, image or text that represents the company name of N-able, or create or use any derivation thereof, or any icon, image, or text that is likely to be confused with the same. All representations of the company name or mark of N-able or any of its Affiliates' names or marks must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice.

**4.3 Ownership of N-able Intellectual Property.** The Software, N-able Content, N-able Marks and Documentation are licensed, not sold. Use of "purchase" in conjunction with licenses under this Agreement does not imply a transfer of ownership. Except for the limited rights expressly granted by N-able to You under this Agreement, You acknowledge and agree that all right, title and interest in and to all copyrights, trademarks, patents, trade secrets, intellectual property (including without limitation algorithms, business processes, improvements, enhancements, modifications, derivative works, and information collected and analyzed in connection with the Software) and other proprietary rights arising out of or relating to the Software, Services, N-able Content, N-able Marks, and Documentation, and the provision of them, belong exclusively to N-able or its suppliers or licensors. All right, title, and interest in and to content which may be accessed through the Software, Services, and Documentation is the property of the respective owner and may be protected by applicable intellectual property laws and treaties. This Agreement gives You no rights to such content, including use of the same.

You hereby grant N-able a royalty-free, fully-paid, worldwide, exclusive, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate into its products and Services, and Software any information, data, suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the Software, Services, or Documentation. All rights not expressly granted to You under this Agreement are reserved by N-able. There are no implied rights to the Software, Services, Documentation, N-able Content, or N-able Marks.

**4.4 Ownership of Your Data.** You and Your Users retain all right, title, and interest in and to all copyright, trademark, patent, trade secret, intellectual property, and other proprietary rights in and to Your Data. N-able's right to access and use the same are limited to those expressly granted in this Agreement. No other rights with respect to Your Data are implied.

## 5. TERM AND TERMINATION.

**5.1 Term.** Unless otherwise agreed upon in writing, the Agreement will begin on the Effective Date and will continue for the time periods described in the applicable Sales Orders. All Sales Orders executed after your Initial Sales Order are coterminous with the Initial Sales Order. The Agreement will automatically renew for successive Renewal Terms unless and until the Agreement is properly terminated or unless otherwise provided on the applicable Sales Order at the time of renewal.

### 5.2 Your Rights.

(a) **If you are billed on a monthly basis:** You may terminate this Agreement at any time by providing N-able with prior written notice of Your intention to terminate this Agreement by completing a cancellation request through the Customer Care portal. The effective date of termination under this Section 5.2(a) will be the last day of the first full calendar month after N-able's receipt of the termination notice. Notwithstanding anything to the contrary in the Sales Order, if You terminate the Agreement pursuant to this Section during the Initial Service Term: (i) fees charged for the final month of the Agreement will be based on the price or prices set forth in the applicable Sales Orders, and (ii) an early termination fee of one (1) month of fees at the full non-discounted contract price or charge price will be added to the final invoice and due from You upon receipt.

(b) **If you are billed on an annual basis:** you may terminate this Agreement effective at the end of the Term by providing N-able written notice of Your intention to terminate this Agreement. Written notice can be provided by completing a cancellation request through the Customer Care portal and must be received at least thirty (30) days prior to the end of the Term.

(c) In the event of any conflict between this Section and the Sales Order, the Sales Order shall control. Nothing in this Agreement shall supersede or be construed as a modification to the Term(s) specified in the Sales Order.

**5.3 Termination by N-able.** Unless as otherwise set forth herein, and in addition to any other right or remedy N-able may have, N-able may suspend or terminate the Agreement by providing thirty (30) days' prior written notice or **immediately:** (i) if You become subject to bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (ii) if You infringe or misappropriate N-able's intellectual property rights; (iii) if You breach this Agreement in any way, including failure to make any payment due hereunder; or (iv) pursuant to or in compliance with applicable law, regulation, or sanctions, or our receipt of a subpoena, court order, or other request by a law enforcement agency.

**5.4 Effect of Termination.** The termination does not relieve You of the obligation to pay any fees or other amounts accrued or payable to N-able through termination. N-able will not provide refunds of any amounts paid prior to termination or any credits towards amounts due, no matter how much time is left in the current Term as of the date of termination.

Without prejudice to any other rights N-able may have, upon termination You must cease all use of the Software, N-able Marks, N-able Content and Documentation and destroy or return (upon request by N-able) all copies of the Software, N-able Content and Documentation and destroy all materials bearing the N-able Marks.



**You acknowledge and agree that it is your responsibility to retrieve Your Data from N-able within five (5) business days of the termination of this Agreement for any reason (including nonpayment).** You acknowledge and agree that if you do not retrieve Your Data within that timeframe N-able has the right to delete Your Data, including any and all copies thereof and that once it is deleted, Your Data cannot be recovered.

Sections 1 (Definitions), 4.3 (Ownership of N-able Intellectual Property), 4.4 (Ownership of Your Data), 5.4 (Effect of Termination), 6-8 (Fees and Payment; Taxes; Data; Protection of Your Data; Confidential Information), 9.2 (Warranty Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), and 14 (General), shall survive any termination or expiration of this Agreement, along with any other provisions which by their express terms do survive or by their nature should survive.

## **6. FEES AND PAYMENT; TAXES.**

**6.1 Fees and Payment.** All orders placed will be considered final upon acceptance by N-able. Fees shall be at N-able's then-standard rates at the time of invoice unless otherwise set forth in the Sales Order and all fees will be due and payable as set forth in the Sales Order.

If You fail to pay as required, N-able shall be entitled, at its sole discretion, to: (i) suspend the license to the Software and Services until; (ii) charge You an interest rate designated by N-able at the time of invoice; and/or (iii) terminate this Agreement.

If You or your Users exceed the license capacity designated in Your Sales Order, in addition to N-able's other remedies, charges for product usage above your monthly commitment will be calculated at your negotiated commitment charge price. Unless otherwise provided in the Sales Order, all payments made under this Agreement shall be in United States dollars. Fees are non-refundable.

If You believe all or any part of an invoice is in error, you must notify N-able within ninety (90) days of your receipt of the invoice. If You fail to do so, N-able will not be required to make any adjustment to the invoice, and You shall be deemed to have waived any right to contest the invoice.

You may, add additional subscription licenses at any time. Once additional licenses are added, the price change is effective immediately and prorated for the first month according to your billing cycle.

**6.2 Taxes.** All fees are exclusive of taxes, and You shall pay or reimburse N-able for all taxes arising out of transactions contemplated by this Agreement. If You are required to withhold any tax for payments due, You shall gross up Your payments to N-able so that N-able receives the amount due in full, free of any deductions. As reasonably requested, You will provide documentation to N-able showing that taxes have been paid to the relevant taxing authority. "Taxes" means any sales, VAT, use, and other taxes (other than taxes on N-able's income), export and import fees, customs duties and similar charges imposed by any government or other authority. You hereby confirm that N-able can rely on the name and address that You provide to N-able when You agree to the fees or in connection with Your payment method as being the place of supply for sales tax and income tax purposes or as being the place of supply for VAT purposes where You have established Your business.

## 7. DATA; PROTECTION OF YOUR DATA.

**7.1 Your Data.** N-able and its Affiliates may remove Your Data or any other data, information, or content of data or files used, stored, processed or otherwise by You or Your Users that N-able, in its sole discretion, believes to be or is: (a) a Virus; (b) illegal, libelous, abusive, threatening, harmful, vulgar, pornographic, or obscene; (c) used for the purpose of spamming, chain letters, or dissemination of objectionable material; (d) used to cause offense, defame or harass; or (e) in violation of this Agreement in any way; or (f) infringing the intellectual property rights or any other rights of any third party.

You agree that You and Your Users are responsible for maintaining and protecting backups of Your Data directly or indirectly processed using the Software or Services and that N-able is not responsible for exportation of, the failure to store, the loss, or the corruption of Your Data.

You hereby grant to N-able a nonexclusive, worldwide, royalty-free, fully-paid, transferable license to process Your Data to assist with the necessary operation and function of the Software and Services, to improve N-able products and services and Your and Your Users' experience with them, and for any purpose set forth in this Agreement or pursuant to N-able's Data Processing Addendum or Privacy Notice, which are incorporated in this Agreement by this reference and which N-able may update or revise from time to time.

You represent and warrant that, with regard to processing of Personal Data, You and Your Users shall be the data controller and N-able shall be the data processor that shall determine the purpose and manner in which Personal Data is or will be processed.

**7.2 Protection of Data.** Each party shall comply with its respective obligations under applicable data protection laws. Each party shall maintain appropriate administrative, physical, technical and organizational measures that ensure an appropriate level of security for Confidential Information and Personal Data. N-able and its Affiliates will process Personal Data in accordance with its Data Processing Addendum.

You are responsible for ensuring that the security of the Software and Services are appropriate for Your intended use and the storage, hosting, or processing of Personal Data and any other categories of data. You are also responsible for executing the Data Processing Addendum.

N-able employs physical, technical and administrative safeguards to help secure the Software and Services against accidental or unauthorized loss, access, or disclosure. You understand that no system of data transmission, storage or retrieval can be made entirely impenetrable or free from vulnerabilities, and despite all measures employed, the Software and Services are not guaranteed against all security threats or other vulnerabilities. You agree that You use the Software and Services at your own risk.

You agree that N-able's security obligations extend only to those systems, networks, network devices, facilities and information technology components over which N-able has control. You are responsible for the proper configuration and maintenance of physical, administrative and technical safeguards as they relate to access and use of the Software and Services. In no event will N-able be responsible, nor will we have any liability, for physical, administrative, or technical controls related to the Software or Services (including without limitation Personal Data) that You control, including but not limited to access credentials, network connectivity and internet connectivity.

You agree to: (i) change passwords and other access credentials related to the Software or Services on a regular basis and immediately upon becoming aware of any unauthorized access to, or use or compromise of, the Software or Services, and require Your Users and Clients to do the same; and (ii) promptly apply any updates, upgrades, modifications or other enhancements that N-able determines are necessary or appropriate to maintain the security, confidentiality, integrity, availability or performance of the Software or Services, and require Your Users and Clients to do the same.

**7.3 No Protected Health Information.** Cove Data Protection is the only N-able product that may be used to process or store protected health information (“PHI”) as defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). You expressly acknowledge and agree that You shall neither submit to any non-Cove Services or Software, nor use those Services or Software to store, maintain, process or transmit any data or information that constitutes PHI or otherwise use non-Cove Services or Software in any manner that would require N-able or those Services or Software to be compliant with HIPAA. You acknowledge and agree that N-able shall have no liability to You for any such data or information. You further acknowledge and agree that neither N-able or its Affiliates are acting on Your behalf as a Business Associate (as defined under HIPAA) unless You obtain a Business Associate Agreement as described in Section 15.2. N-able may immediately and upon notice suspend all or portion of Your access to the Services and Software (without any liability to You in connection with such suspension), if N-able has a good faith belief that You have breached this paragraph.

## **8. CONFIDENTIAL INFORMATION.**

As used in this Agreement, “**Confidential Information**” means any nonpublic information or materials disclosed under this Agreement by either party to the other party, either directly or indirectly, in writing, orally, or by inspection of tangible objects, which the disclosing party clearly identifies as confidential or proprietary. Confidential Information includes Personal Data, and N-able’s Confidential Information includes the Software and Services, and any information or materials relating to the Software and Services (including pricing), or otherwise. Confidential Information may also include confidential or proprietary information disclosed to a disclosing party by a third party.

The receiving party will: (i) hold the disclosing party’s Confidential Information in confidence and use reasonable care to protect the same; (ii) restrict disclosure of such Confidential Information to those employees or agents with a need to know such information and who are under a duty of confidentiality respecting the protection of Confidential Information substantially similar to those of this Agreement; and (iii) use Confidential Information only for the purposes for which it was disclosed, unless otherwise set forth in this Agreement. The restrictions will not apply to Confidential Information, excluding Personal Data, to the extent it: (i) is (or through no fault of the recipient, has become) generally available to the public; (ii) was lawfully received by the receiving party from a third party without such restrictions; (iii) was known to the receiving party without such restrictions prior to receipt from the disclosing party; or (iv) was independently developed by the receiving party without breach of this Agreement or access to or use of the disclosing party’s Confidential Information.

The recipient may disclose Confidential Information to the extent the disclosure is required by law, regulation, or judicial order, provided that the receiving party will provide to the disclosing party prompt notice, where permitted, of such order and will take reasonable steps to contest or limit

the steps of any required disclosure. The parties agree that, in addition to any other relief to which the non-breaching party may be entitled, any material breach of this Section 8 will cause irreparable injury and the non-breaching party may seek injunctive relief in a court of competent jurisdiction without the need of posting bond.

## **9. LIMITED WARRANTY AND WARRANTY DISCLAIMER.**

**9.1 Limited Warranty.** N-able warrants that, for a period of thirty (30) days following Your initial purchase of the license and delivery of the Software to You, the Software will perform substantially in conformance with the Documentation. N-able does not warrant that the Software will meet Your requirements or that the use of the Software will be uninterrupted or error-free. The foregoing warranty applies only to failures in operation of the Software that are reproducible in standalone form and does not apply to: (i) Software that is modified or altered by You or any third party that is not authorized by N-able; (ii) Software that is otherwise operated in violation of this Agreement or other than in accordance with the Documentation; or (iii) failures that are caused by hardware products or software not supplied by N-able. To the maximum extent permitted under applicable law, as N-able's and its suppliers' entire liability, and as Your exclusive remedy for any breach of the foregoing warranty, N-able will, at its sole option and expense, promptly repair or replace any Software that fails to meet this limited warranty or, if N-able is unable to repair or replace the Software, refund to You the applicable license fees paid upon return, if applicable, of the nonconforming item to N-able. The warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software under this limited warranty will be warranted for thirty (30) days from the replacement date.

**9.2 Warranty Disclaimer.** EXCEPT AS EXPRESSLY WARRANTED IN SECTION 9.1, THE SOFTWARE, SERVICES, DOCUMENTATION, N-ABLE CONTENT, N-ABLE MARKS, SUPPORT, AND ALL OTHER PRODUCTS AND SERVICES PROVIDED HEREUNDER OR MADE AVAILABLE UNDER THIS AGREEMENT, INCLUDING THIRD PARTY HOSTED SERVICES OR SOFTWARE (COLLECTIVELY, FOR THE PURPOSES OF THIS PARAGRAPH, "PRODUCTS"), ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY STATED IN SECTION 9.1, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, N-ABLE DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, RELIABILITY, SECURITY, LOSS OR CORRUPTION OF DATA, CONTINUITY, OR ABSENCE OF DEFECT RELATING TO THE PRODUCTS OR THE RESULTS OF THE SAME. N-ABLE DOES NOT WARRANT THAT THE PRODUCTS, INCLUDING ANY SPECIFICATIONS OR FUNCTIONS CONTAINED IN THEM, WILL MEET YOUR REQUIREMENTS OR THAT DEFECTS IN THEM WILL BE CORRECTED.

N-ABLE SPECIFICALLY DISCLAIMS RESPONSIBILITY FOR THIRD-PARTY PRODUCTS AND SERVICES WITH WHICH YOU MAY UTILIZE THE SOFTWARE, AND YOU SPECIFICALLY DISCLAIM AND WAIVE ANY RIGHTS AND CLAIMS AGAINST N-ABLE WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS AND SERVICES.

## **10. INDEMNIFICATION.**

**10.1 N-able Indemnification.** Subject to Section 11 below, N-able will indemnify, defend, and hold You harmless from any third party claim brought against You that the Services, Software, Documentation, N-able Content, or N-able Marks infringes or misappropriates any U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party (an

“Infringement Claim”), provided: (i) use of the Services, Software, Documentation, N-Able Content, and N-able Marks by You is in conformity with the Agreement and applicable Documentation; (ii) the alleged infringement is not caused by modification or alteration of the Services, Software, Documentation, N-Able Content, or N-able Marks; (iii) the alleged infringement was not caused by a combination or use of the Services, Software, Documentation, N-Able Content, or N-able Marks with products or content not supplied by N-able; and/or (iv) You have not continued to use the Services, Software, Documentation, N-Able Content, or N-able Marks after You are notified of the alleged infringement and provided with Services, Software, Documentation, N-Able Content, or N-able Marks that avoids the alleged infringement. N-able’s indemnification obligations are contingent upon You: (i) promptly notifying N-able in writing of the Infringement Claim; (ii) granting N-able sole control of the selection of counsel, defense, and settlement of the Infringement Claim; and (iii) providing N-able with reasonable assistance, information and authority required for the defense and settlement of the Infringement Claim. This Section states N-able’s entire liability (and shall be Your sole and exclusive remedy) with respect to Infringement Claims.

**10.2 Your Indemnification.** You agree to indemnify, defend, and hold harmless N-able and its Affiliates, and its and their directors, officers, employees, and agents from and against any claims, liabilities, damages, costs, and expenses (including attorneys’ fees and expenses) arising out of or due to: (i) Your Data; (ii) Your (or Your User’s) breach of this Agreement; (iii) Your (or Your User’s) use of the Software, Services, Documentation, or N-Able Content in violation of third party rights, including any intellectual property or privacy rights, or any applicable laws; or (iv) Your (or Your User’s) misuse of the Software, Services, Documentation, N-Able Content, or N-able Marks.

## **11. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (I) IN NO EVENT WILL N-ABLE OR ITS AFFILIATES, OR ITS OR THEIR DIRECTORS, EMPLOYEES, OR AGENTS HAVE ANY LIABILITY, CONTINGENT OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST OR CORRUPTED DATA, LOSS OF GOODWILL, WORK STOPPAGE, EQUIPMENT FAILURE OR MALFUNCTION, PROPERTY DAMAGE OR ANY OTHER ECONOMIC DAMAGES OR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SOFTWARE, SERVICES, DOCUMENTATION, N-ABLE CONTENT, N-ABLE MARKS, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, INDEMNITY OR OTHERWISE) UPON WHICH ANY SUCH LIABILITY IS BASED; AND (II) THE AGGREGATE LIABILITY OF N-ABLE AND ITS AFFILIATES, AND ITS AND THEIR DIRECTORS, EMPLOYEES, AND AGENTS, AND THE SOLE REMEDY AVAILABLE TO YOU ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SOFTWARE, SERVICES, DOCUMENTATION, N-ABLE CONTENT, N-ABLE MARKS, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND DAMAGES NOT TO EXCEED THE TOTAL AMOUNT PAYABLE OR PAID TO N-ABLE UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO TERMINATION.

**12. THIRD PARTY PROGRAMS.** To the extent the Software is bundled with third party software programs, the third-party software programs are governed by their own license terms, which may include open source or free software licenses, and those terms will prevail over this Agreement as to Your use of the third-party software programs. Nothing in this Agreement limits



You or Your user's rights under, or grants You or Your User rights that supersede, the terms of any such third party software program. If You do not agree to the license terms applicable to this third party software, then You agree that You shall not use the Software or the third party software.

**13. SUPPORT.** N-able shall, during the Term, provide You with Support in accordance with N-able's then-current Software Support and Maintenance Terms and Conditions, which N-able may revise and update from time to time. The Software Support and Maintenance Terms and Conditions are incorporated in the Agreement by this reference. In addition, if applicable, N-able shall, during the Term, provide You with N-hanced Support as provided in the applicable Sales Order.

#### **14. GENERAL.**

**14.1 Notices.** All notices must be in writing and shall be mailed by registered or certified mail to Legal Department, 30 Corporate Drive, Suite 400, Burlington, MA 01803, Attention: General Counsel, and sent via email to [generalcounsel@n-able.com](mailto:generalcounsel@n-able.com) (with evidence of effective transmission).

**14.2 Entire Agreement; Precedence.** This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof. If there is a conflict or inconsistency between the provisions of this Agreement and the documents otherwise referred to in this Agreement, the conflict or inconsistency will be resolved in the following order of precedence, with the first document listed having the highest precedence and the last document listed having the lowest precedence: the Sales Order; the Agreement; any invoice issued by N-able hereunder; the Data Processing Addendum; and any other document referred to in this Agreement. In addition, any and all additional or conflicting terms provided by You, whether in a purchase order, an alternative license, or otherwise, shall be void and shall have no effect.

**14.3 Assignment.** You may not assign any of Your rights under this Agreement or delegate Your performance under this Agreement, whether voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or in any other manner, without N-able's prior written consent. N-able may assign its rights and delegate its performance under this Agreement to: (i) any entity that acquires all or substantially all of N-able's assets or substantially all of the assets of that portion of N-able's business that manages this Agreement; (ii) any Affiliate that controls, is controlled by, or is under common control with N-able; or (iii) any successor in a merger, acquisition, or reorganization, including any judicial reorganization. Any purported assignment of rights or delegation of performance by You in violation of this Section is void. This Agreement is binding upon, and will inure to the benefit of, the Parties hereto and their permitted assigns and successors-in-interest.

**14.4 Export Control Laws.** The Software and Documentation delivered to You under this Agreement are subject to export control laws and regulations of the United States and may also be subject to import and export laws of the jurisdiction in which it was accessed, used, or obtained, if outside those jurisdictions. You shall abide by all applicable export control laws, rules, and regulations applicable to the Software and Documentation. You agree that You are not located in or are not under the control of or a resident of any country, person, or entity prohibited to receive the Software or Documentation due to export restrictions and that You will not export, re-export, transfer, or permit the use of the Software or Documentation, in whole or in part, to or in any of such countries or to any of such persons or entities.

You further acknowledge that N-able does not offer Services or Software in the following countries:

Albania	Belarus	Bosnia and Herzegovina
Burma	Central African Republic	China
Crimea and occupied Ukraine	Cuba	Democratic Republic of the Congo
Ethiopia	Iran	Kosovo
Lebanon	Mali	Montenegro
Nicaragua	North Korea	North Macedonia
Russian Federation	Somalia	Sudan and Darfur
Syria	Venezuela	Yemen
Zimbabwe		

You agree that if you are located in any of the countries listed above You will not access the Services or Software or allow Users or Clients located in those countries to do the same.

**14.5 Modifications.** Except as N-able is otherwise permitted to do so under this Agreement, this Agreement shall not be amended or modified except in a writing signed by authorized representatives of each party.

**14.6 Severability.** If any provision of this Agreement is held to be unenforceable, illegal, or void, that shall not affect the enforceability of the remaining provisions. The parties further agree that the unenforceable provision(s) shall be deemed replaced by a provision(s) that is binding and enforceable and that differs as little as possible from the unenforceable provision(s), with considerations of the object and purpose of this Agreement.

**14.7 Waiver.** The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of that right.

**14.8 Remedies.** N-able's rights and remedies set forth in this Agreement are cumulative and are not intended to be exhaustive.

**14.9 Force Majeure.** N-able will not be liable for any delay or failure to perform obligations under this Agreement due to any cause beyond its reasonable control, including: acts of God; labor disputes; industrial disturbances; systematic electrical, telecommunications or other utility failures; earthquakes, storms, or other elements of nature; blockages; embargoes; riots; acts or orders of government; acts of terrorism; war; or any other cause beyond its reasonable control (whether similar or dissimilar to the foregoing).

**14.10 Construction.** Paragraph headings are for convenience and shall have no effect on interpretation.

**14.11 Governing Law.** The validity, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and of the United States, without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods and the provisions of the Uniform Computer Information Transactions Act shall not apply to this Agreement. You hereby consent to the exclusive jurisdiction of the state and federal courts in Boston, Massachusetts. You hereby waive all rights to trial by jury with respect to any dispute arising out of or relating to this Agreement or the Software, Services, Documentation, N-able Marks, or N-able Content. If you have any claim arising out of relating to this Agreement or the Software, Services, Documentation, N-able Marks,

or N-able Content, you must bring the claim in an appropriate court as set forth in this Section within two (2) years after your right to bring the claim accrued. If N-able brings litigation against you regarding this Agreement or the Software, Services, Documentation, N-able Marks, or N-able Content, in addition to any other relief to which N-able may be entitled, N-able shall be entitled to recover reasonable attorneys' fees, expenses, and costs of litigation. If this Agreement is translated into a language other than English and there are conflicts between the translations of this Agreement, You agree that the English version of this Agreement shall prevail and control.

**14.12 Third Party Rights.** Other than as expressly provided herein, this Agreement does not create any rights for any person who is not a party to it, and no person not a party to this Agreement may enforce any of its terms or rely on an exclusion or limitation contained in it.

**14.13 U.S. Government Use.** N-able's Software and Documentation were developed exclusively at private expense and are a "commercial item" as defined in Federal Acquisition Regulation ("FAR") 2.101, and any supplement is provided with no greater than RESTRICTED RIGHTS. Such Software, Documentation, and related items consist of "commercial computer software," "commercial computer software documentation," and commercial technical data as defined in the applicable acquisition regulations, including FAR 2.101 and FAR Part 12. Use, duplication, release, modification, transfer, or disclosure ("Use") of the Software and Documentation are restricted by this Agreement and in accordance with Defense Federal Acquisition Regulation Supplement ("DFARS") Section 227.7202 and FAR Section 12.212, and the Software, and Documentation are licensed (i) only as commercial items; and (ii) with only the rights granted to commercial end users pursuant to this Agreement. Such Use is further restricted by FAR 52.227-14, 252.227-7015, or similar acquisition regulations, as applicable and amended. Except as described herein, all other Use is prohibited. This Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause addressing government rights under this Agreement or any other contract under which the Software or Documentation is acquired or licensed. Manufacturers are N-able Technologies Ltd., 20 Greenmarket, Dundee DD1 4QB, United Kingdom and N-able Solutions ULC, 450 March Road, 2nd Floor, Ottawa, Ontario K2K 3K2 Canada.

**14.14 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

## **15. PRODUCT ADDENDA.**

### **15.1 Mail Services Product.**

**15.1.1 Software Installation.** It is Your responsibility during the Term of this Agreement to comply with Documentation, including the configuration, operation, installation and use requirements of the Software on Your Devices, and shall provide any necessary assistance to N-able related thereto. You may incur additional fees in the event that You request for N-able to reinstall the Software on Your Devices due to an error unrelated to the Software or to transfer installation of the Software to other Devices.

**15.1.2 Effect of Termination.** You acknowledge and agree You are solely responsible for adjusting the relevant DNS (MX record) and/or mail server settings such that Your Data, including emails, no longer pass through the N-able systems and for exporting Your Data, including emails, from the archive, quarantine, or logging prior to termination of the license to the Software. Your failure to do so may cause Your Data to be lost.

## 15.2 Cove Data Protection.

**15.2.1. Protected Health Information.** If You purchase Cove Data Protection, which can be utilized for the processing, storage, maintenance, and transmission of protected health information as defined by HIPAA, or otherwise use the Services in any manner that would require N-able or the Services to be compliant with HIPAA information, You must request that N-able provide you with a Business Associate Agreement and execute that agreement as directed by N-able. Otherwise, You further acknowledge and agree that neither N-able nor its Affiliates are acting on Your behalf as a Business Associate (as defined under HIPAA). N-able may immediately and upon notice suspend all or portion of Your access to the Services and Software (without any liability to You in connection with such suspension), if N-able has a good faith belief that You have breached this paragraph.

**15.2.2. Additional Disclaimer.** IN ADDITION TO THE OTHER TERMS AND CONDITIONS HEREIN, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR DATA MAY NOT BE AVAILABLE OR RESTORABLE IF (1) YOU UTILIZE THE SERVICES IN EXCESS OF THE AMOUNT YOU ORDERED; (2) COPIES OF YOUR DATA WERE NOT COMPLETED FOR ANY REASON; (3) YOU ATTEMPT TO BACK UP DEVICES, FILES, FOLDERS, OR DRIVES NOT SUPPORTED BY THE SERVICES AS SET FORTH IN THE DOCUMENTATION; (4) YOU DESELECT OR DELETE A DEVICE, FILE, FOLDER, OR DRIVE FROM YOUR N-ABLE ACCOUNT, FROM YOUR DEVICE, OR FROM BEING BACKED UP BY THE SERVICES; (5) YOU MODIFY YOUR OPERATING SYSTEM IN A MANNER THAT BREAKS COMPATIBILITY OR INHIBITS THE FUNCTIONALITY OF THE SERVICES OR SOFTWARE; (6) YOUR COMPUTER IS UNABLE TO ACCESS THE INTERNET OR N-ABLE INFRASTRUCTURE; (7) YOU FAIL TO COMPLY WITH THE AGREEMENT OR DOCUMENTATION; OR (8) YOU TERMINATE OR FAIL TO RENEW YOUR SUBSCRIPTION TO THE SERVICES.

**15.3 Endpoint Detection and Response.** N-able [Endpoint Detection and Response](#) and [Managed Endpoint Detection and Response](#) are powered by SentinelOne® and SentinelOne's [Services Addendum](#) applies to these Services.

**15.4 N-able Managed Detection and Response (MDR).** N-able MDR is powered by Adlumin®. Adlumin's [End User License Agreement](#) applies to this Service; N-able's EULA does not apply.