Metasploit Express™

End User License and Services Terms and Conditions

Customer agrees to be bound by the following terms and conditions (this "Agreement") in connection with its purchase and use of Rapid7 LLC's ("Rapid7") Software and Services (each as defined below). Before installing and using any Software and/or obtaining and using any Services you should read this Agreement carefully. Clicking "accept" or otherwise installing and/or using the Software and/or obtaining and/or using any Services establishes a binding agreement between Rapid7 and you as the person licensing the Software and/or obtaining the Services; provided that 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 such entity to this Agreement, in which case the term "Customer" shall refer to such entity. If you do not have such authority or if you do not accept all of the terms of this Agreement, you shall have not right to install and/or use the Software and/or obtain and/or use any Services.

1. DEFINITIONS

1.1 "Documentation" means the published and generally available user manuals and written materials Rapid7 delivers or makes available with the Software.

1.2 **"Product Order Form"** means each Rapid7 ordering document signed by the duly authorized representatives of Customer and Rapid7 which identifies the Software ordered by Customer from Rapid7, sets forth the price to be paid for such Software, the number of Users who may access and use the Software and contains additional terms and conditions regarding Customer's use of such Software.

1.3 "Services" means Rapid7's Maintenance and Support Services as described in Section 10.

1.4 "Software" means Rapid7's proprietary Metasploit Express™ software product and all updates, enhancements, bug fixes and new releases thereto made available by Rapid7 to Customer.

1.5 "User" means those specific individual named users who are granted access to the Software by Customer. For the sake of clarity, Users shall include full and part-time employees, contractors, agents, or other workers of Customer; provided, however each individual person shall count as only one User. Once a User has been deactivated by the Software's administrator (even if as a result of employee turnover) such User license may be transferred to another person.

2. SOFTWARE LICENSE

2.1. *License*. Subject to the terms and conditions of this Agreement, Rapid7 hereby grants to Customer a non-exclusive, non-transferable license solely during the License Term (as defined below) to use the Software solely for Customer's internal business purposes and only in accordance with the applicable Documentation. Customer shall ensure that its use of the Software does not exceed the number of Users licensed and paid for by Customer (such number shall be set forth on the applicable Product Order Form). For purposes of the foregoing, the "License Term" shall mean the period of time in which Customer may use the Software (as indicated on the Product Order Form). If no License Term is set forth on the Product Order Form, then the License Term shall be deemed to be one (1) year from the date of delivery of the applicable Software to Customer.

2.2. *Delivery and Copies*. Delivery shall be deemed to have been made upon either (i) the transfer of the Software by Rapid7 to its shipping agent, or (ii) the receipt of electronic confirmation by Rapid7 that the electronic mail to Customer containing instructions for downloading the Software from its FTP download site has been sent. Notwithstanding anything to the contrary herein, Customer may make a reasonable number of copies of the Software for the sole purpose of backing-up and archiving the Software. Each copy of the Software is subject to all of the terms and conditions of this Agreement and must contain the same titles, trademarks, and copyright notices as the original. All shipments are FOB Rapid7' designated shipping facility and shall be deemed accepted by Customer upon delivery.

2.3. *Restrictions*. As between the parties, Rapid7 retains all right, title and interest in and to the Software and in all copies, modifications and derivative works of the Software including, without limitation, all rights to patent, copyright, trade secret, trademark and other proprietary or intellectual property rights. Customer will not and will not allow a third party to: (i) decompile, reverse engineer, disassemble or otherwise attempt to derive, analyze or use any source code or underlying ideas or algorithms related to the Software by any means whatsoever, except and only to the minimal extent the provisions of this Section are expressly prohibited by applicable statutory law; (ii) remove any product identification, copyright or other notices in the Software, or (iii) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Software to or for the benefit of third parties. Customer agrees to hold in confidence, not disclose, and not use the Software or related technology, ideas, algorithms or information except as expressly permitted herein. Customer further agrees that it shall not use the Software for the purposes of conducting comparative analysis, evaluations or product benchmarks without Rapid7's prior written approval. Customer recognizes and agrees that there is no adequate remedy at law for a breach of this Section 2.3 and that such breach would irreparably harm Rapid7 for which monetary damages would not be an adequate remedy and that Rapid7 is entitled to equitable relief in addition to any other remedies.

3. FEES AND PAYMENT TERMS

Customer shall pay Rapid7 the fees, charges and other amounts specified on the Product Order Form in accordance with the payment terms set forth on the Product Order Form. Customer shall be responsible for all shipping costs and taxes levied on any transaction under this Agreement, including, without limitation, all federal, state, and local sales taxes, levies and assessments, excluding, however, any taxes based on Rapid7's income. All annual subscription fees set forth on the Product Order Form include Maintenance and Support Services.

4. CONFIDENTIALITY

4.1. *Confidential Information*. During the term of this Agreement, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. A party will not disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party's Confidential Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the Software and the terms and pricing of this Agreement are the Confidential Information of Rapid7. The receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

4.2. *Exclusions*. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

5. LIMITED WARRANTY

5.1. *Warranty*. Rapid7 warrants that (a) for a period of ninety (90) days following the initial delivery of the Software to Customer the Software will perform in conformity with its Documentation, in all material respects, and

(b) all Services will be provided with reasonable skill and care conforming to generally accepted industry standards. Such warranty does not apply to Software that has been damaged, mishandled, mistreated, altered or used or maintained or stored other than in conformity with this Agreement and the Documentation.

5.2. _No Other Warranty_. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN SECTION 5.1 ARE YOUR EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. RAPID7 MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE SOFTWARE OR ANY UPDATES OR UPGRADES THERETO WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OR USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. RAPID7 MAKES NO WARRANTY THAT ALL SECURITY RISKS OR THREATS WILL BE DETECTED BY USE OF THE SOFTWARE OR THAT FALSE POSITIVES WILL NOT BE FOUND. YOU MAY HAVE OTHER WARRANTY RIGHTS, WHICH MAY VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.

5.3. _Remedy_. If the above warranties are breached, Rapid7 will, at its option and at no cost to Customer, (a) provide remedial services necessary to enable the Software or Services to conform to the warranty, or (b) replace any defective Software, or (c) refund amounts paid by Customer and received by Rapid7 in respect of the defective Software or Services. Customer will provide Rapid7 with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. Customer will notify Rapid7 in writing of any breach of warranty promptly after becoming aware of the same, but in any event, within the warranty period set forth in Section 5.1. The remedies set out in this subsection are Customer's sole and exclusive remedies for breach of the above warranties.

6. LIMITATION OF LIABILITY.

6.1. _Consequential Damage Waiver_. Except as may arise out of either party's breach of Section 4 or Customer's breach of Section 2.3 above, neither party nor any of Rapid7's suppliers, licensors and/or its or their officers, directors, employees or agents will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including costs, in connection with the supply, use or performance of the Software or Services, or the performance of its other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

6.2. _Limitation of Liability_ In any event, the total cumulative liability of Rapid7 (including any of its suppliers, licensors and/or its or their officers, directors, employees or agents) to Customer and/or any third party for any and all claims and damages under this Agreement, whether arising by statute, contract or otherwise, will not exceed the amounts paid by (and not otherwise refunded to) Customer to Rapid7 under this Agreement for the Software or Services which form the subject of the claim. The provisions of this Agreement allocate risks between the parties. The pricing set forth herein reflects this allocation of risk and the limitation of liability specified herein.

7. USAGE VERIFICATION

7.1 _Usage Verification_. At Rapid7's written request, and no more than every six (6) months, Customer shall provide Rapid7 with a signed certification verifying that the Software is being used pursuant to the provisions of this Agreement. In addition to the foregoing, at Rapid7's written request, and no more than annually, Customer will permit Rapid7 to review and verify Customer's records, deployment and use of the Software for compliance with the terms and conditions of this Agreement, at Rapid7's expense. Any such review shall be scheduled at least ten (10) days in advance, shall be conducted during normal business hours at Customer's facilities, and shall not unreasonably interfere with Customer's business activities.

8. TERMINATION

8.1 This Agreement or an individual license granted hereunder may be terminated (a) by mutual agreement of Rapid7 and Customer, (b) by either party if the other party is adjudicated as bankrupt, or if a petition in

bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing, or (c) by either party if the other party materially breaches this Agreement and fails to cure such breach to such party's reasonable satisfaction within thirty (30) days following receipt of written notice thereof. Customer's license to use the Software shall also terminate upon the expiration of the License Term. Upon any termination of this Agreement or a license granted hereunder by Rapid7, all applicable licenses are revoked and Customer shall immediately cease use of the applicable Software and certify in writing to Rapid7 within thirty (30) days after termination that Customer has destroyed or returned to Rapid7 such Software and all copies thereof. Termination of this Agreement or a license granted hereunder shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve Customer of its obligation to pay all fees that have accrued, have been paid, or have become payable by Customer hereunder. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive such termination.

9. INDEMNIFICATION

9.1 _Indemnification_. Rapid7 will defend and indemnify, at its own expense, any third party claim against Customer that arises due to a claim that the Software infringes any valid United States copyright or involves the misappropriation of a trade secret. Rapid7 will pay such damages or costs as are finally awarded against Customer or agreed to in settlement for such claim provided that Customer gives Rapid7: (a) written notice of any such claim or threatened claim within ten (10) days of Customer being made aware of the claim or threat; (b) sole control of the defense, negotiations and settlement of such claim; and (c) full cooperation in any defense or settlement of the claim (at Rapid7's cost). Rapid7 will not be liable for the settlement of a claim made without Rapid7's prior written consent.

If Customer's use of the Software results in, or in Rapid7's opinion is likely to become subject to a claim of infringement or misappropriation, then Rapid7 will, at its sole option and expense, either: (i) obtain for the Customer the right to continue using the Software; (ii) replace or modify the Software so that it is non-infringing and substantially equivalent in function to, and interchangeable with, the enjoined Software; or (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Rapid7, then Rapid7 may terminate Customer's rights and Rapid7's obligations under this Agreement. When option (iii) is elected, Rapid7 will refund all collected license fees under this Agreement for the infringing Software for the then current License Term. THE RIGHTS GRANTED TO CUSTOMER UNDER THIS SECTION 9 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT BY THE SOFTWARE OF ANY PATENT, COPYRIGHT OR OTHER PROPRIETARY RIGHT.

9.2 _Exclusions_. Rapid7 shall have no obligation under this Section 9 with respect to any claim of infringement or misappropriation based upon: (i) combination of the Software with products, programs or data not furnished by Rapid7 where, but for the combination, the claim would have been avoided; (ii) any modification of the Software not performed by Rapid7, if such claim would have been avoided by use of the unmodified Software; (iii) compliance by Rapid7 with Customer's custom requirements or specifications if and to the extent such compliance with Customer's custom requirements or specifications resulted in the infringement of a third party's patent(s); or (iv) failure of Customer to use replacement Software provided by Rapid7 to Customer in a timely manner to avoid such claim of infringement or misappropriation.

10. MAINTENANCE AND SUPPORT SERVICES.

10.1 Generally. Rapid7 will provide one (1) Customer User only with technical support ("Support") by the following methods: through its customer Care Website or by telephone. Support will include: (i) assistance related to questions on the installation and operational use of the Software; (ii) assistance in identifying and verifying the causes of suspected errors in the Software; and (iii) providing workarounds for identified Software errors or malfunctions, where reasonably available to Rapid7. Customer agrees to provide reasonable access to all necessary personnel to answer questions about any problems reported by Customer regarding the Software. Customer agrees to promptly implement all updates and error corrections provided by Rapid7 under this Agreement. Customer may contact Customer Support directly between the hours of 8:30 a.m. and 5:30 p.m.,

Eastern time, Monday through Friday, excluding Rapid7's holidays. Rapid7's Software support obligation is limited to the current production release only.

10.2 Updates. All Software updates made available by Rapid7 to its customers of the Software generally will be provided to Customer during the License Term for no additional fee. Customer acknowledges that in order to access updates Customer will be required to ensure that all Customer firewalls cannot block access to the Software's update servers

11. GENERAL PROVISIONS

11.1. Miscellaneous. (a) This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Delaware; (b) this Agreement, along with the accompanying Product Order Forms constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral and any terms and conditions in Customer's purchase order, which may or may not become available, shall be of no force or effect.; (c) this Agreement may not be modified except by a writing signed by each of the parties; (d) in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement but this Agreement shall be construed as if such invalid, illegal or other unenforceable provision had never been contained herein; (e) Customer shall not assign its rights or obligations hereunder without Rapid7's advance written consent.; (f) subject to the foregoing subsection (e), this Agreement shall be binding upon the and shall inure to the benefit of the parties hereto and their successors and permitted assigns; (g) no waiver of any right or remedy hereunder with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion; and (h) the headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement..

11.2. Export; Compliance with Law. Customer acknowledges that the export of the Software is subject to export or import control and Customer agrees that the Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law. In furtherance of Customer's export restriction agreements set forth above, Customer agrees as follows: (a) Customer represents that it is not under the control of the government of Cuba, Iran, Sudan, North Korea, Syria, or any country to which the United States has prohibited export; (b) Customer will not download or otherwise export or re-export the Software or Documentation, directly or indirectly, to the countries referenced above or to citizens, nationals or residents of those countries; (c) Customer represents that it is not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, nor is Customer listed on the United States Department of Commerce Table of Denial Orders; and (d) Customer will not allow the Software to be used for any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction. Customer acknowledges that the Software can be configured by the user to obtain access to information using penetration techniques that may cause disruption in systems or services and may cause data corruption. Denial of Service attacks may be run on command that will attempt to render systems and services unavailable to authorized users. Customer specifically agrees that the Software will only be used to target devices under the authorized control of the Customer and in a way in which damage to systems or loss of access or loss of data will create no liability for Rapid7 or any third party. Customer further agrees to adhere to all federal, state and local laws and regulations governing the use of network scanners, vulnerability assessment software products, hacking tools, encryption devices, and related software in all jurisdictions in which systems are scanned or scanning is controlled.

11.3. Government Restricted Rights. This Section 11.3 applies to all acquisitions of the Software by or for the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Software. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Government's rights to use, duplicate or disclose the Software are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the government's needs or is inconsistent in any respect with Federal law, the government agrees to return the Software, unused, to Rapid7. Manufacturer is Rapid7, LLC, 545 Boylston Street, Boston, MA 02116.

11.4. Relationship of the Parties. Rapid7 and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

11.5. Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

11.6. Third Party Products. Customer acknowledges that the Software may contain or be accompanied by certain third party hardware and software products ("Third-Party Products"). These Third Party Products, if any, are identified in, and subject to, special license notices, terms and/or conditions as set forth in the Product Order Form, the Third Party Product packaging and/or in a text or installation file accompanying the Software ("Third-Party Notices"). The Third-Party Notices may include important licensing and warranty information and disclaimers. In the event of conflict between the Third-Party Notices and the other portions of this Agreement, the Third-Party Notices will take precedence (but solely with respect to the Third-Party Products to which the Third-Party Notices relate). Customer acknowledges that the Third-Party Products are licensed for use solely with the Software and may not be used on a stand-alone basis or with any other third party products and that Sections 5.1 and Section 9 of this Agreement shall not be applicable to the Third-Party Products.

11.7. Notices. Any demand, notice, consent, or other communication required by this Agreement must be given in writing and shall be deemed delivered upon receipt when delivered personally or upon confirmation of receipt following delivery by a nationally recognized overnight courier service, in each case addressed to the receiving party at its address set forth on the applicable Product Order Form. Either party may change its address by giving written notice of such change to the other party.

Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.