

Fortinet Professional Service Terms and Conditions Master Professional Services Agreement

CAREFULLY READ THE FOLLOWING TERMS OF FORTINET'S PROFESSIONAL SERVICES BETWEEN YOU AND FORTINET, INC., OR FORTINET, INC.'S SUBSIDIARIES OR AFFILIATES ("FORTINET"). YOU ARE AGREEING TO BE BOUND BY AND ACCEPT THESE TERMS AND CONDITIONS OF SALE. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT SIGN THE STATEMENT OF WORK PROVIDED BY FORTINET.

FORTINET SHALL NOT BE BOUND BY ANY ADDITIONAL, INCONSISTENT, AND/OR CONFLICTING PROVISIONS IN ANY ORDER, RELEASE, ACCEPTANCE OR OTHER CORRESPONDENCE UNLESS EXPRESSLY AGREED TO IN A WRITING SIGNED BY FORTINET,'S GENERAL COUNSEL, AND IN NO EVENT SHALL FORTINET BE DEEMED TO HAVE ACCEPTED ANY TERMS IN YOUR PURPORTED OFFER OR OFFER DOCUMENTS.

1. SERVICES AND PROJECT MANAGERMENTS

- 1.1. **Statement of Work.** Fortinet agrees to provide certain security information technology, installation, or modification services (the "**Services**") to Company that are mutually agreed from time to time between the Parties. The specific Services will be set forth in one or more Statements of Work that the Parties may execute pursuant to these terms and conditions ("**Statement of Work**" or "**SOW**"), substantially in the form above. Each SOW shall be incorporated into and become part of these terms and conditions and be governed by the provisions of these terms and conditions. In the event of a conflict between the terms and conditions of these terms and conditions and a SOW, the provisions of these terms and conditions shall prevail unless the Parties have obtained the express written consent of authorized signatories of each Party to deviate from the terms and conditions of these terms and conditions for a particular SOW and the SOW expressly states that the conflicting terms in the SOW shall prevail over the terms of these terms and conditions. Fortinet shall not be required to commence work under these terms and conditions unless a Statement of Work is duly executed. To the extent applicable, "**Deliverables**" shall mean those items specifically described and itemized in the SOW as final work products to be delivered by Fortinet pursuant to such SOW. For clarity, unless expressly and specifically described in an SOW, Fortinet shall not have responsibility to perform Services.
- 1.2. **Points of Contact.** Fortinet and Company will each designate an individual in the Statement of Work to act as a primary point of contact between the Parties with respect to the Services ("**POCs**"). Such POCs will have the power to make technical and project-level decisions within the scope of these terms and conditions (including, for example, staffing decisions, Change Orders, and Acceptance of Deliverables) that are binding on their respective entities. Amendments to these terms and conditions, however, must be made in accordance with the clause hereto governing contract amendments.
- 1.3. **Changes to Services.** Either Party may request a change order ("**Change Order**") in the event of actual or anticipated change(s) to the agreed scope of Services, Deliverables, project schedule, price, or any other aspect of the Statement of Work. Fortinet will prepare a Change Order reflecting the proposed changes, including but not limited to the impact on the Deliverables, project schedule, and price. Absent a Change Order signed by the Parties, Fortinet shall not be bound to perform any additional or out-of-scope services beyond what is stated in the SOW. The Parties agree to negotiate all Change Order requests expeditiously and in good faith. The Parties further agree that: (a) Fortinet may at its discretion undertake and accomplish tasks of a de minimis nature necessary to perform its obligations under any SOW at no additional cost and without requiring the execution of a Change Order; and (b) Fortinet shall be compensated with or without a Change Order for unplanned idle time and project delays (to the extent such delays are not caused by Fortinet).
- 1.4. **Acceptance.** If applicable, following submission of any Deliverable(s) by Fortinet, Company will perform testing and review in accordance with previously agreed testing standards and procedures as agreed by the Parties in the SOW. By the expiration of such review period, Company will submit a written statement (a "**Deliverable Review Statement**") to the Fortinet Project Manager indicating acceptance of the Deliverable(s) ("**Acceptance**") or specifying in detail how the submitted Deliverable(s) fails to materially conform to the agreed specification, in which case Fortinet shall be afforded a commercially reasonable period of time not less than thirty (30) days to correct any nonconformities, whereupon the review cycle will recommence. Deliverables will be deemed to be fully and finally accepted by Company in the event Company has not submitted a Deliverable Review Statement to Fortinet before the expiration of the applicable review period, or when Company uses the Deliverable in its business, whichever occurs first ("**Deemed Acceptance**"). Fortinet may request that Company execute a Work Complete as confirmation of acceptance and Company shall execute such Work Complete and/or identify any issues with the Services that prevent confirmation of the Work Complete within five (5) business days of Fortinet's request. Unless specifically agreed in an SOW, Fortinet's invoicing will be on a periodic basis and not linked to Acceptance. Notwithstanding anything to the contrary, Company shall be obligated to pay for Services performed regardless of Acceptance.
- 1.5. **Company Input and Responsibilities.** Company will supply in a timely manner information, materials and actions necessary to the project including as applicable data, designs, programs, specifications, management decisions, approvals, acceptance criteria, and other information and material, plus any other assistance and materials as reasonably requested by Fortinet at Company's cost, for Fortinet's use in carrying out the Services ("**Inputs**"). Further Company responsibilities

may be set out in a Statement of Work or project planning document agreed between the Parties. Company may further provide equipment and software (“**Project Tools**”) to Fortinet in order for Fortinet to provide the Services. Company shall bear all license, procurement and maintenance expenses related to the Project Tools.

- 1.6. **Performance Generally.** Fortinet’s failure to perform its contractual responsibilities, to perform the services, or to meet agreed service levels shall be excused if and to the extent Fortinet’s non-performance is caused by Company’s omission to act, delay, wrongful action, failure to provide Inputs, or failure to perform its obligations under these terms and conditions

2. STAFFING

- 2.1. **Team Composition.** Fortinet shall determine, after consultation with Company, the size, composition and distribution of the resource team, which Fortinet may change from time to time based upon the scope and complexity of the Services.
- 2.2. **Removal.** Company may require Fortinet to remove a team member if, after due consultation with Fortinet, it is reasonably determined that the individual is not suitable to perform the Services. Any such removal shall be effective after a minimum of fourteen (14) days written notice. Fortinet shall assign a replacement resource to the Services as soon as practicable. Company understands and acknowledges, however, that removal of a resource in fixed-price or fixed-schedule engagements may affect the pricing and project schedule for the affected Services and agrees to execute appropriate Change Orders to accommodate such removal.

3. PRICING, INVOICING & PAYMENT

- 3.1. **Pricing & Payments.** Projects will be performed as stated on this SOW and be billed in accordance with Fortinet’s then-current rates as of the date of execution of the SOW. Unless stated otherwise in the applicable SOW, if applicable, Customer must pay invoices within thirty (30) days from the date of Fortinet’s invoice. Fortinet may charge interest at the lower of (a) a rate of 1.5% per month for delayed payments or (b) to the maximum extent allowed by law.
- 3.2. **Taxes.** The fees chargeable by Fortinet are stated exclusive of all taxes, duties and levies imposed by any government body. Company shall be liable and will pay for all applicable tax liabilities such as sales, services, use or value added taxes, but specifically excluding employment related taxes concerning Fortinet personnel and corporate taxes based on Fortinet’s net income.

4. CONFIDENTIALITY

- 4.1. The Parties agree that with respect to any business information of the disclosing Party which (a) is marked as “confidential,” proprietary” or some similar indication; (b) is expressly advised by the disclosing Party to be confidential through some contemporaneous written means; or (c) which the receiving Party would reasonably construe to be confidential information under the circumstances (collectively referred to as “Confidential Information”): (i) to use such Confidential Information only in relation to the Services; (ii) not to disclose any such Confidential Information or any part thereof to a person outside the Party’s business organization for any purposes unless expressly authorized by the owner of such Confidential Information; (iii) to limit dissemination of such Confidential Information to persons within the Party’s business organization who are directly involved in the performance of Services under these terms and conditions and have a need to use such Confidential Information; (iv) to safeguard the Confidential Information to the same extent that it safeguards its own confidential materials or data.
- 4.2. Confidential Information shall not include information that: (a) is as of the time of its disclosure part of the public domain; (b) is subsequently learned from a third Party without a duty of confidentiality; (c) at the time of disclosure was already in the possession of the receiving Party; (d) was developed by employees or agents of the receiving Party independently of and without reference to any information communicated to the receiving Party; or (e) is required to be disclosed pursuant to a court order or government authority, whereupon the receiving Party shall, at its earliest opportunity, provide written notice to the disclosing Party prior to such disclosure and where feasible giving the disclosing Party a reasonable opportunity to secure a protective order or take other action as appropriate.
- 4.3. The Parties’ obligations under this Section shall extend to the non-publicizing of any dispute arising out of these terms and conditions.
- 4.4. The terms of this clause shall continue in full force and effect for a period of three(3) years from the date of disclosure of such Confidential Information.
- 4.5. In the event of termination of these terms and conditions, upon written request of the disclosing Party, the receiving Party shall immediately return the disclosing Party’s Confidential Information, or at the disclosing Party’s option destroy any remaining Confidential Information and certify that such destruction has taken place, provided however that Fortinet may retain a minimum of one copy of all work product and relevant project documentation for archival and audit purposes.

5. PROPRIETARY RIGHTS

- 5.1. Retained Rights. Each Party owns, and will continue to own all right, title and interest in and to any inventions however embodied, know how, works in any media, software, information, trade secrets, materials, property or proprietary interest that it owned prior to these terms and conditions, or that it created or acquired independently of its obligations pursuant to these terms and conditions (collectively, "Retained Rights"). All Retained Rights not expressly transferred or licensed herein are reserved to the respective owner.
- 5.2. Deliverables and Fortinet Materials. All intellectual property rights in, or related to, any developments, Deliverables, enhancements, or other work product of Fortinet or related to the services to be performed hereunder or under any SOW shall be owned solely by Fortinet. Fortinet owns (or will own) any such material that is used in, enhanced, or developed in the course of providing services hereunder, and all intellectual property rights to such material, including: any and all rights throughout the word, arising out of, or associated with models, designs, patents, applications therefor, all trade secrets, proprietary information rights, know how, works of authorship, mask works, trade names, logos, trademarks, service marks, methodologies; delivery procedures; manuals; generic software tools, routines, frameworks, and components; generic content, research and background materials; templates; analytical models; project tools; development tools; and all other intellectual property and ownership rights (collectively, "Fortinet Materials"). To the extent any Fortinet Materials are necessarily required for the proper functioning of the Deliverables (such that the Deliverables will not function without the Fortinet Materials) or are embedded into the Deliverables, Fortinet grants to Company a perpetual, nonexclusive, non-transferable, royalty-free, worldwide license to use such Fortinet Materials solely in conjunction with its use of such Deliverables. Company acknowledges that the Fortinet Materials are Confidential Information of Fortinet, regardless of whether so designated. This section shall not prohibit fee-based licensing of certain intellectual property of Fortinet as may be agreed by the Parties.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 6.1. Authority to Contract. The Parties each represent and warrant that they have obtained all necessary corporate approvals to enter into these terms and conditions and that no consent, approval, or withholding of objection is required from any external authority with respect to the entering into of these terms and conditions. The Parties further represent and warrant that they are under no obligation or restriction, nor will they assume any such obligation or restriction, that would in any way interfere or conflict with any obligations under these terms and conditions.
- 6.2. Compliance with Laws. The Parties covenant that they will comply with all applicable laws and regulations in their conduct pursuant to these terms and conditions. The Parties further covenant that a change in laws that materially alters the assumptions upon which Fortinet entered these terms and conditions or a particular SOW shall warrant a Change Order.
- 6.3. Warranty on Services. Fortinet warrants that it will perform the Services in a professional and workmanlike manner and that its personnel have the requisite skills and experiences to perform the Services. Company agrees that in the event of a breach of the foregoing warranty, its only remedy shall be the re-performance of the Services by Fortinet.
- 6.4. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, FORTINET EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR STATEMENTS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT DELIVERABLES WILL BE ERROR-FREE

7. INDEMNIFICATION

- 7.1. Subject to Section 8, Company shall indemnify, defend, and hold harmless from and against any damages, costs, attorneys' fees, penalties, fines, liabilities, or expenses that arise from third party actions or claims (collectively, "Losses") against Fortinet and its affiliates, officers and directors, employees, agents, and representatives relating to (a) death or injury to persons caused by the Company; (b) a violation of applicable laws by the Company; or (c) Company's infringement of a third Party's intellectual property rights where such third Party is located in either the country where the Services were provided or received.
- 7.2. Subject to Section 8, Fortinet shall indemnify, defend, and hold harmless from and against any damages, costs, attorneys' fees, penalties, fines, liabilities, or expenses that arise from third party actions or claims (collectively, "Losses") against Company relating to (a) death or injury to persons caused by the Fortinet; or (b) Fortinet's infringement of a third Party's intellectual property rights where such third Party is located in either the country where the Services were provided or received, provided however that Fortinet shall not have any liability to Company under this Section to the extent that any infringement or claim thereof is attributable to: (i) the combination, operation or use of a Deliverable with equipment or software supplied by Company where the Deliverable would not itself be infringing; (ii) compliance with designs, specifications or instructions provided by Company; (iii) use of a Deliverable in an application or environment for which it was not designed or contemplated under these terms and conditions; or (iv) modifications of a Deliverable by anyone other than Fortinet where the unmodified version of the Deliverable would not have been infringing. Fortinet will completely satisfy its obligations hereunder if, after receiving notice of a claim, Fortinet obtains for Company the right to

continue using such Deliverables as provided without infringement, or replace or modify such Deliverables so that they become non-infringing.

- 7.3. Promptly after an indemnitee receives notice of any claim for which it will seek indemnification pursuant to these terms and conditions, the indemnitee will notify the indemnitor of the claim in writing. No failure to so notify the indemnitor will abrogate or diminish the indemnitor's obligations under this Section if the indemnitor has or receives knowledge of the claim by other means or if the failure to notify does not materially prejudice its ability to defend the claim. Within fifteen (15) days after receiving an indemnitee's notice of a claim, but no later than ten (10) days before the date on which any formal response to the claim is due, the indemnitor will notify the Indemnitee in writing as to whether the indemnitor acknowledges its indemnification obligation and elects to assume control of the defense and settlement of the claim (a "**Notice of Election**"). In issuing a Notice of Election, the indemnitor waives any right of contribution against the indemnitee unless the Notice of Election expressly states that indemnitor believes in good faith that the Indemnitee may be liable for portions of the claim that are not subject to indemnification by the Indemnitor, in which case the indemnitee will have the right to participate in the defense and settlement of the claim at its own expense using counsel selected by it.
- 7.4. If the indemnitor timely delivers a Notice of Election, it will be entitled to have sole control over the defense and settlement of the claim except as provided in the immediately preceding paragraph. After delivering a timely Notice of Election, the indemnitor will not be liable to the Indemnitee for any attorneys' fees subsequently incurred by the indemnitee in defending or settling the claim. In addition, the indemnitor will not be required to reimburse the indemnitee for any amount paid or payable by the indemnitee in settlement of the claim if the settlement was agreed to without the written consent of the indemnitor.
- 7.5. If the indemnitor does not deliver a timely Notice of Election for a claim, the indemnitee may defend and/or settle the claim in such manner as it may deem appropriate, and the indemnitor will promptly reimburse the indemnitee upon demand for all Losses suffered or incurred by the Indemnitee with respect to the claim.
- 7.6. Exclusive Remedy. This Section 7 "Indemnification" constitutes the exclusive rights and remedies for the matters indemnified.

8. LIMITATION OF LIABILITY

- 8.1. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE CONTAINED IN THESE TERMS AND CONDITIONS, NEITHER PARTY SHALL, IN ANY EVENT, REGARDLESS OF THE FORM OF CLAIM, BE LIABLE FOR (1) ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, SPECULATIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, AND LOSS OF INCOME OR PROFITS, IRRESPECTIVE OF WHETHER IT HAD AN ADVANCE NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES; OR (2) DAMAGES RELATING TO ANY CLAIM THAT ACCRUED MORE THAN TWO (2) YEARS BEFORE THE INSTITUTION OF ADVERSARIAL PROCEEDINGS THEREON. TOTAL LIABILITY. SUBJECT TO THE ABOVE AND NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE CONTAINED HEREIN, THE MAXIMUM AGGREGATE LIABILITY OF FORTINET SHALL BE, REGARDLESS OF THE FORM OF CLAIM, THE CONSIDERATION RECEIVED BY FORTINET FOR THE STATEMENT OF WORK TO WHICH THE CLAIM RELATES DURING THE PRECEDING THREE (3) MONTHS. FOR CLAIMS THAT ARISE UNDER THESE TERMS AND CONDITIONS AND THAT DO NOT LOGICALLY RELATE TO A PARTICULAR STATEMENT OF WORK, THE MAXIMUM AGGREGATE LIABILITY OF FORTINET SHALL BE THE SUM OF THE CONSIDERATION RECEIVED UNDER ALL ACTIVE STATEMENTS OF WORK UNDER THESE TERMS AND CONDITIONS FOR THE PRECEDING THREE (3) MONTHS.

9. TERMINATION

- 9.1. Termination for Convenience. Fortinet may, without cause or for convenience, terminate any SOW and/or these terms and conditions upon written notice of two (2) months to the other party.
- 9.2. Termination for Cause. Either Party may terminate any SOW upon written notice to the other in the event that: (a) the other Party commits a material breach of these terms and conditions or Statement of Work and fails to cure such default to the non-defaulting Party's reasonable satisfaction within thirty (30) days after receipt of notice; or (b) the other Party becomes insolvent or bankrupt, assigns all or a substantial part of its business or assets for the benefit of creditors, permits the appointment of a receiver for its business or assets, becomes subject to any legal proceeding relating to insolvency or the protection of creditors' rights or otherwise ceases to conduct business in the normal course.
- 9.3. Effects of Termination. In the event of termination of an SOW hereunder, Company shall pay Fortinet: (1) all fees as specified in the SOW and expenses up to the effective date of the termination, including work in progress, plus fees for the applicable notice period irrespective of whether Company requires Fortinet's services during such period; and (2) any termination charges agreed by the Parties. If these terms and conditions is terminated before all SOWs executed hereunder are terminated or completed, the terms of these terms and conditions shall remain in full force until the termination or completion of such Statements of Work.

10. MISCELLANEOUS

10.1. Relationship of the Parties. It is understood and agreed that Fortinet will provide services under these terms and conditions as an independent contractor and that during the performance of Services under these terms and conditions, Fortinet's employees will not be considered employees of Company for any purpose whatsoever. Accordingly, Fortinet shall be solely responsible for the compensation of such employees and all employment-related taxes. Further, nothing herein shall be construed to entitle either Party to be a representative, agent, partner or joint venturer of the other.

11. FORCE MAJEURE

11.1. Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent 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 and is not caused by the negligence of the non-performing party. In the event such an event prevents performance thereunder for a period in excess of sixty (60) days, then the non-defaulting party may elect to terminate these terms and conditions and/or cancel or suspend any SOWs thereunder by a written notice to the defaulting party.

12. DISPUTE RESOLUTION

12.1. Dispute Resolution and Venue. Any controversies or claims arising from or relating to these terms and conditions, or the breach or validity thereof, which cannot be amicably settled by and between the parties, shall be referred to and finally settled by arbitration. The place of arbitration shall be Santa Clara, California, pursuant to the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services (JAMS), or its successor, before a sole, mutually agreeable arbitrator, in accordance with the laws of the State of California for agreements made in and to be performed in that State.

13. GENERAL

13.1. Governing Law. These terms and conditions shall be interpreted and construed in accordance with the laws of the State of California, without regard to its conflicts of laws provisions.

13.2. Headings. The headings used in these terms and conditions are for the convenience of the Parties only and shall not be deemed a part of, or referenced in, construction of these terms and conditions.

13.3. Assignments. These terms and conditions will be binding on the Parties hereto and their respective successors and assigns. Neither Party may assign these terms and conditions or SOWs without the prior written consent of the other. Any assignment by operation of law, order of any court, or pursuant to any plan of merger, consolidation or liquidation, will be deemed an assignment for which prior consent is required and any assignment made without any such consent will be void and of no effect as between the Parties. Notwithstanding the forgoing Fortinet may assign these terms and conditions pursuant to a merger, acquisition, or sale of at least fifty percent (50%) its assets without consent.

13.4. Entire Agreement. The provisions of these terms and conditions, including any appendices, schedules, exhibits, or SOWs referred to herein and/or attached hereto, constitute the entire agreement between the parties with respect to the subject matter hereof, and these terms and conditions supersedes all prior agreements or representations, oral or written, regarding such subject matter. Except as provided for in these terms and conditions, these terms and conditions may not be modified or amended except in a writing signed by a duly authorized representative of each party, and, furthermore, Company acknowledges and agrees that Fortinet is not bound by any purported amendment or new agreement signed by a representative of Fortinet other than Fortinet's General Counsel. For clarity, only Fortinet's General Counsel is authorized to alter, amend, or modify these terms and conditions in any way or enter a new agreement on behalf of Fortinet or its affiliates, and any amendment or new agreement that is not signed by Fortinet's General Counsel, regardless of whether including a Fortinet, or Fortinet affiliate, company seal or chop, is null and void and of no force and effect.

13.5. Modifications. No amendment or change to these terms and conditions or any waiver or discharge or any rights or obligations under these terms and conditions will be valid unless in writing and signed by an authorized representative of the Party against which such amendment, change, waiver or discharge is sought to be enforced.

13.6. Severability. In the event that any provision of these terms and conditions conflicts with the law under which these terms and conditions is to be construed or if any such provision is held invalid by a competent authority, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remainder of these terms and conditions will remain in full force and effect.

13.7. Survivability. Any provision of these terms and conditions that contemplates performance or observance subsequent to termination or expiration of these terms and conditions will survive termination or expiration of these terms and conditions and continue in full force and effect, including the following:

Pricing, Invoicing, and Payment (Section 3)
Confidentiality (Section 4)
Proprietary Rights (Section 5)
Representations, Warranties, and Covenants (Section 6)
Indemnification (Section 7)
Limitation of Liability (Section 8)
Dispute Resolution (Section 12)
General (Section 13).

Notices. All notices, requests, demands and determinations under these terms and conditions other than routine operational communications will be in writing through (i) hand delivery, (ii) express overnight courier with a reliable system for tracking delivery, or (iii) confirmed facsimile or electronic mail with a copy sent by another means specified herein, to the following:

If to Fortinet: Fortinet, Inc.
 899 Kifer Rd
 Sunnyvale, CA 94086
 Attn: General Counsel

 with a copy to: Chief Financial Officer

If to Company: Address as set forth in the Statement of Work between
 Company and Fortinet.

June 2016

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