

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

22-800

SAP Number

Innovation and Technology Department

Department Contract Representative	Jennifer Mancebo
Telephone Number	909-388-5579
Contractor	OPSWAT Inc.
Contractor Representative	Dylan Higgs
Telephone Number	202-964-6706
Contract Term	September 13, 2022 until terminated
Original Contract Amount	Purchase amounts as authorized by County Policy
Amendment Amount	N/A
Total Contract Amount	N/A
Cost Center	1200604048

Briefly describe the general nature of the contract: Terms of Service, including non-standard terms, with OPSWAT Inc. for cloud-based advanced threat prevention and malware analysis software, support and professional services for purchase amounts as authorized by County Policy, for the period of September 13, 2022, until terminated.

FOR COUNTY USE ONLY

Approved as to Legal Form

► Bonnie Uphold
Bonnie Uphold, Supervising Deputy County Counsel

Date 9-1-2022

Reviewed for Contract Compliance

► _____

Date _____

Reviewed/Approved by Department

► _____

Date _____

OPSWAT, INC. TERMS OF SERVICE

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

These Terms are a legally binding contract between San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California ("County") and OPSWAT Inc. ("OPSWAT") and are effective as of September 13, 2022.

1. DEFINITIONS

The following capitalized terms have the following meanings:

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

"Affiliates" means, with respect to OPSWAT, entities that Control, are controlled by, or are under common Control with OPSWAT, and with respect to County means local government agencies, departments and special districts, or other local governmental body or corporation, including applicable K-12 schools and community colleges, where County is authorized and empowered to expend public funds for such entity located within San Bernardino County's applicable jurisdictional and geographical boundaries..

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

"API" means the application-programming interface County uses to access certain functionality OPSWAT provides.

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

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

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

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

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

“County” means San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California.

“Data Protection Legislation” means Applicable Laws of the United States and the State of California.

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

“Fees” means fees quoted to County.

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

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

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

“Insolvency Proceeding” means bankruptcy or insolvency proceeding.

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

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

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

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

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

“OPSWAT” means OPSWAT Inc.

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

“Outsourced Providers” means third parties to whom County or County’s Affiliates outsource information technology functions.

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

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

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

“Process” means any operation or set of operations performed upon County’s Personal Information or Personal Data, whether by automatic means, including collection, recording, organization, use, transfer, disclosure, storage, manipulation, combination, and deletion of County’s Personal Information or Personal Data.

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

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

“Quote” means an enrollment or ordering document.

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

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

"Site" means www.opswat.com.

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

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

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

"Support" means telephone, email, chat, or web assistance in the resolution of an Issue County reports to OPSWAT.

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

"Third-Party Products" means software, code, applications, services, products, files, or data from OPSWAT's Third-Party Providers.

"Third-Party Providers" means OPSWAT licensors or suppliers.

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

2. CHANGES TO THESE TERMS

Any alterations, variations, modifications, or waivers of the provisions of these Terms, shall be valid only when reduced to writing and executed by the person(s) authorized to do so on behalf of each party.

3. COUNTY'S ACCOUNT

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

County is entirely responsible and liable for all information County Representatives upload, post, or otherwise transmit via the Services, and all activities occurring under County's account.

County is responsible for maintaining the confidentiality of County account passwords, access designations, and API keys. OPSWAT will not be liable for loss or damage County incurs as a result of breach of the foregoing. Only County and its Representatives may use County's OPSWAT account. If County become aware of unauthorized use of the Services or County's account, or have questions about County's account, contact OPSWAT Support at <https://www.opswat.com/support/contact-support>.

County has rights to County's account and may: (a) manage County Representatives' accounts (including suspending or canceling); (b) reset passwords; and (c) view County's usage and data, including how and when County's account is used.

Online Stores. Not applicable

4. ELECTRONIC COMMUNICATIONS

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

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

5. PRIVACY

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

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

Aggregated Data. Provided that You opt-in, OPSWAT will be free (during and after the expiration or termination of the Terms or the Services), without obligation to You, to collect,

develop, create, extract, compile, synthesize, analyze, use, and/or commercialize, or share with third parties, Aggregated Data for any purpose.

6. ACCEPTABLE USE

County agrees County will not, nor will County encourage or assist others to, harm the Services or use the Services to harm others.

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

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

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

County agrees to comply with Services use restrictions detailed in the Documentation for the specific Services.

Content. County agrees that County is either the original owner of uploaded files, submitted hashes, application and dependent files, and meta-data associated with all files, including hash values, scan results, application intelligence, and vulnerabilities, photos, drawings, documents, or other media (“Content”) County submits to the Services, or County has the necessary rights and permissions to authorize OPSWAT to use County’s submitted Content. County agrees to give OPSWAT evidence of such rights and permissions if OPSWAT requests.

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

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

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

7. SUSPENSION AND TERMINATION OF THE SERVICE

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

8. OPSWAT PROPRIETARY RIGHTS

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

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

Feedback. In the event County provides Feedback that OPSWAT adopts for its products or services, such Feedback shall be deemed automatically assigned under these Terms to OPSWAT, and become the sole and exclusive property of OPSWAT. Prior to submitting Feedback to OPSWAT, County agrees to obfuscate County's Personal Data or Personal Information, and Confidential Information.

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

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

9. THIRD PARTY SERVICES

The Services may include Third-Party Products. OPSWAT grants County the specific rights these Third-Party Providers provide OPSWAT in these Third-Party EULAs: <https://docs.opswat.com/policies/terms-of-service/3rd-party-eula>

If County has questions or concerns regarding Third-Party Products, contact the Third-Party Providers.

10. COPYRIGHT COMPLAINTS AND REMOVAL POLICY

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

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

Report alleged copyright violations to:

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

11. CONFIDENTIAL INFORMATION

During County's use of the Services, either party may share with the other party Confidential Information, defined as non-public information that is designated in writing as confidential or of a type that a reasonable person should understand to be confidential, and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250 ("Regulations")), including without limitation, Personal Information or Personal Data, a third party's information, discounts, strategic roadmaps, product plans, product designs, architecture, technology and technical information, security processes, security audit reviews, business and marketing plans, business processes, credit card/banking information, and information contained in County's account.

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

OPSWAT hereby advises and You acknowledge that OPSWAT does not want or need Personal Data to provide the Services beyond the names, email addresses, physical addresses, telephone numbers, and other business contact information relating to Your Representatives involved in carrying out the obligations under the Terms.

OPSWAT hereby advises and County acknowledges that (a) OPSWAT does not want County's Confidential Information other than Account Information, (b) OPSWAT only requires Account Information to perform the Services. County agrees to disclose only Account Information to OPSWAT.

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

If the receiving party is requested or compelled by Applicable Laws to disclose the disclosing party's Confidential Information ("Compelled Disclosure"), the receiving party's disclosure of such Confidential Information shall not constitute a breach of these Terms provided that the receiving party gives the disclosing party prompt written notice, unless notice is prohibited by Applicable Laws, so that the disclosing party may seek an appropriate remedy. . Unless the subpoena or process is timely limited, quashed or extended, the receiving Party will then be entitled to comply with the request to the extent permitted by law. OPSWAT represents that it has a good faith belief that its Confidential Information shared with County is exempt from

disclosure under the Regulations and agrees to reimburse County for, and to indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature arising from or relating to County's non-disclosure of any such information.

Confidential Information always remains the property of its owner.

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

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

12. SUPPORT AND SERVICES UPDATES

OPSWAT generally describes its Support options at https://onlinehelp.opswat.com/safeconnect-enforcer/Service_Level_Agreement.html (only applicable to SafeConnect (now renamed MetaAccess) product customers existing prior to the Effective Date), and <https://www.opswat.com/support>, which OPSWAT may update at its sole discretion.

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

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

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

OPSWAT Community. The [OPSWAT Inc. Community Terms of Service](#) ("Community Terms") outline the terms regarding County's use of the [OPSWAT Community](#). County acknowledges County's use of the [OPSWAT Community](#) is subject to the [Community Terms](#), and County agrees to the [Community Terms](#).

13. FEES; TAXES

Fees. OPSWAT offers no cost and paid Services. If County chooses a paid Service, County agrees to pay the Fees when County purchases that Service. OPSWAT reserves the right to change its Fees any time. Discounts and changes in Fees do not apply to completed purchases. However, if OPSWAT offered a specific duration and Fees for County's use of the Services, OPSWAT agrees the Fees will remain in force for that duration. After a Subscription Period ends, County's use of the Services will be charged at the then-current Fees. If County doesn't agree to the Fees, County will stop using the Services and cancel via email to Accounting@opswat.com.

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

Currency. County will pay the Fees in United States currency. County is responsible for all charges related to using the purchased Services (including data charges and currency exchange settlements).

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

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

14. BILLING/PAYMENT

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

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

At OPSWAT's discretion, past due amounts, outstanding for a period over 60 days, may accrue a late fee equal to the lesser of (a) 1.5% per month, or (b) the maximum Applicable Laws allow.

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

15. DURATION; TERMINATION

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

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

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

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

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

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

Termination for Convenience. County and OPSWAT each reserve the right to terminate these Terms, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to OPSWAT for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice OPSWAT shall promptly discontinue services unless the notice directs otherwise. OPSWAT shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress.

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

16. LIMITED WARRANTIES AND DISCLAIMERS

Mutual Warranties. Each party represents and warrants that: (a) these Terms has been duly authorized, executed, and delivered, and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of these Terms; (c) the execution, delivery, and performance of these Terms does not violate any other agreement to which it is a party or by which it is otherwise bound; and (d) it has the right to disclose its Confidential Information.

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

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

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

Limited Support Warranty. If County enters into a paid transaction for Support with OPSWAT as evidenced by a Proof of Entitlement, OPSWAT warrants Support shall be provided in a professional and workmanlike manner with reasonable care, knowledge, experience, qualifications, resources, and skills. In the event County notifies OPSWAT of non-conforming

Support within seven (7) days of receiving the non-conforming Support, County's sole remedy shall be reperformance of the Support at no additional charge.

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

Limited Hardware Product Warranty.

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

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

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

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

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

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

(e) **Return or Replacement Procedures.** If a Hardware Product or component part does not function as warranted during the Hardware Product Warranty Period, and such non-conformity is reproducible and verifiable, County shall comply with OPSWAT's return or replacement procedures, including without limitation: (1) obtain OPSWAT's prior written approval; (2) register the Hardware Product in County's Portal account; (3) present a Proof of Entitlement and certificate of origin; (4) provide OPSWAT the Hardware Product's identification number; (5) remove all features, parts, options, alterations, data, configuration settings, programs, and attachments not under warranty or provided by OPSWAT; (6) ensure the Hardware Product is free of legal obligations or restrictions that prevent exchange,

including Hardware Product owner authorization to have OPSWAT service the Hardware Product; (7) backup and secure all programs and data in the Hardware Product; and (8) inform OPSWAT of changes to the Hardware Product physical location. In the event OPSWAT must repair or replace a Hardware Product at County's premises, County agrees to provide OPSWAT sufficient work space and safe access to facilities.

(f) Transportation costs incurred in connection with the return of a Hardware Product to OPSWAT shall be borne by OPSWAT. County agrees to ship the Hardware Product or component part suitably packaged according to OPSWAT guidelines to the OPSWAT designated location. Transportation costs incurred in connection with the redelivery of a repaired or replacement Hardware Product or component part to County by OPSWAT shall be borne by OPSWAT; provided, however, that if OPSWAT determines, in its sole discretion, that the Hardware Product is not covered by this Limited Hardware Product Warranty or made after the Hardware Product Warranty Period, the repair or replacement costs, including shipping, shall be paid by County, and OPSWAT shall have no obligation to deliver the repaired or replaced Hardware Product or component part to County until County provides PSWAT County's shipping carrier and account.

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

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

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

Disclaimer of Warranties. EXCEPT AS PROVIDED IN THIS SECTION 16 (LIMITED WARRANTIES AND DISCLAIMERS), NEITHER PARTY MAKES ANY (AND EACH PARTY SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS, WARRANTIES OR CONDITIONS: (A) ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (B) OF: (I) SATISFACTORY QUALITY; (II) FITNESS FOR A PARTICULAR PURPOSE; (III) NON-

INFRINGEMENT; OR (IV) INTEROPERABILITY WITH THIRD-PARTY PRODUCTS OR SERVICES; AND (C) THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSIONS OF IMPLIED WARRANTIES. IN SUCH AN EVENT, THE ABOVE EXCLUSIONS WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY LAW.

IF COUNTY IS DISSATISFIED WITH THE SERVICES OR THESE TERMS, COUNTY'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICES.

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

17. INDEMNIFICATION AND INSURANCE

OPSWAT Indemnification. Subject to the Indemnification Process detailed below, OPSWAT will defend County, County's Affiliates, and their officers, Representatives, directors, successors and assigns ("County Indemnified Parties"), against any third party Claim brought against County Indemnified Parties alleging the Services infringe or misappropriate a United States registered patent, registered trademark, copyright, or trade secret, and indemnify County Indemnified Parties from all Losses arising from a Claim. If OPSWAT receives information about an infringement or misappropriation related to the Services, OPSWAT may in its discretion and at no cost to County (a) modify the Services so they are no longer claimed to infringe or misappropriate, (b) obtain a license for County to continue using the Services in accordance with these Terms, or (c) terminate County's rights to the Services upon thirty (30) days' written notice and refund County prepaid Fees, prorated for the use period. OPSWAT shall have no indemnification obligations with respect to (1) modification or alteration of the Services by anyone other than OPSWAT or without OPSWAT's written approval, or (2) Claims arising out of use of the Services, or any part thereof, (A) in combination with software, technology, processes, equipment, services, or other products not supplied by OPSWAT, or explicitly supported in the Documentation, if such Claims would have been avoided without such combination, or (B) not in accordance with these Terms.

Indemnification Process. If a credible Claim is made or threatened, including without limitation the filing of a lawsuit against a party seeking indemnification (the "Indemnified Party"), or the Indemnified Party receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, the Indemnified Party will use reasonable efforts to notify the other party (the "Indemnifying Party") promptly of such lawsuit, claim or election. However, the Indemnified Party's failure to provide or delay in providing such notice will relieve the Indemnifying Party of its obligations only if and to the extent that such delay or failure materially prejudices Indemnifying Party's ability to defend such lawsuit or claim. The Indemnified Party will give the Indemnifying Party sole control of the defense (with counsel reasonably acceptable to the Indemnified Party) and settlement of such claim; provided that Indemnifying Party may not settle the claim or suit absent the written consent of the Indemnified Party unless such settlement (a) includes a release of all claims pending against the Indemnified Party, (b) contains no admission of liability or wrongdoing by the Indemnified Party, and (c) imposes no obligations upon the Indemnified Party other than an obligation to stop using the Services. In the event that the Indemnifying

Party fails to or elects not to defend the Indemnified Party against any Claim for which the Indemnified Party is entitled to indemnity by the Indemnifying Party, then the Indemnifying Party shall reimburse the Indemnified Party for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from the Indemnified Party. .

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

Insurance Requirements. OPSWAT agrees to provide insurance set forth in accordance with the requirements herein. If OPSWAT uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, OPSWAT agrees to amend, supplement or endorse the existing coverage to do so. Without in anyway affecting any indemnity obligations provided and in addition thereto, OPSWAT shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of OPSWAT and all risks to such persons under this contract. If OPSWAT has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
- b. Commercial/General Liability Insurance – OPSWAT shall carry General Liability Insurance covering all operations performed by or on behalf of OPSWAT providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If OPSWAT is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If OPSWAT owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- d. **Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- e. **Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits
- f. **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

Additional Insured. All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights. OPSWAT shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit OPSWAT and OPSWAT’s employees or agents from waiving the right of subrogation prior to a loss or claim. OPSWAT hereby waives all rights of subrogation against the County.

Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

Severability of Interests. OPSWAT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between OPSWAT and the County or between the County and any other insured or additional insured under the policy.

Proof of Coverage. OPSWAT shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and OPSWAT shall maintain such insurance from the time OPSWAT commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, OPSWAT shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage. In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by OPSWAT or County payments to OPSWAT will be reduced to pay for County purchased insurance.

Insurance Review. Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. OPSWAT agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

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

18. LIMITATION OF LIABILITY

EXCEPT FOR INDEMNIFICATION OBLIGATIONS IN SECTION 17, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND VIOLATIONS OF LAW, TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL OPSWAT'S AND ITS AFFILIATES' TOTAL AND CUMULATIVE LIABILITY, FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF OR RELATED TO THESE TERMS EXCEED TWICE THE TOTAL FEES PAID BY YOU TO OPSWAT FOR THE SPECIFIC SERVICES UPON WHICH THE FIRST EVENT GIVING RISE TO LIABILITY WAS BASED ("LIABILITY EVENT") DURING THE TWELVE (12) MONTHS PRECEDING THE LIABILITY EVENT DATE.

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

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

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

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

19. GOVERNING LAW; VENUE; EQUITABLE RELIEF

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

Venue. The parties agree that the venue of any action or claim brought by any party to these Terms will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning these Terms is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

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

Attorneys' Fees and Costs. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under indemnification and insurance requirements.

English is the language governing these Terms.

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

21. GOVERNMENT USERS

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

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

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

22. THIRD-PARTY REFERRALS

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

23. MISCELLANEOUS

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

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

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

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

Assignment. Neither party will directly, indirectly, by operation of law or otherwise, assign or transfer all or part of these Terms or its rights or delegate performance of its duties without the prior written consent of the other party. Any attempted assignment or transfer without consent shall be void and of no effect. OPSWAT may assign the Terms without obtaining Your County's consent: (a) to an OPSWAT Affiliate; or (b) in connection with a successor in interest in a merger, acquisition, reorganization, sale of all or substantially all of the assets, or other change of control, provided that OPSWAT provides County with ten (10) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within 10 days after the effective date of the assignment, and County has the right to terminate this Agreement, if required by applicable law. Subject to the foregoing, the Terms will be fully binding upon, inure to the benefit of, and be enforceable by, the parties and their respective permitted successors and assigns.

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

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

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

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

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

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

24. SPECIFIC SERVICES TERMS

County agrees to the following terms for the specific Services County purchases, uses, or accesses:

Professional Services.

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

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

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

Hardware Products.

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

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

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

No Cost Services.

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

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

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

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

MetaAccess.

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

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

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

County agrees to obfuscate County's Personal Data from meta-data (such as file names) associated with all files, prior to submitting Content to Services.

MetaDefender Cloud.

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

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

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

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

County agrees to the Rate Limiting and Throttling County purchases as detailed in the [MetaDefender Cloud Documentation](#).

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

County agrees to obfuscate County's Personal Data from meta-data (such as file names) associated with all files, prior to submitting Content to Services.

MetaDefender Drive.

Limited MetaDefender Drive Hardware Product Warranty. This Limited MetaDefender Drive Hardware Product Warranty applies only to MetaDefender Drive Hardware Products County purchases for internal use, and not for resale. If County enters into a paid transaction for MetaDefender Drive Software with OPSWAT as evidenced by a Proof of Entitlement:

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

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

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

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

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

MetaDefender USB Firewall.

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

OPSWAT Academy.

1. Terms

By accessing this School, County is agreeing to be bound by these Terms of Use, all applicable laws and regulations, and agree that County is responsible for compliance with any applicable local laws. If County does not agree with any of these terms, County is prohibited from using or accessing this site. The materials contained in this School are protected by applicable copyright and trademark law.

2. Use License

Permission is granted to temporarily download one copy of any downloadable materials on the School's website for personal, non-commercial transitory viewing only. This is the grant of a license, not a transfer of title, and under this license County may not:

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- use the materials for any commercial purpose, or for any public display (commercial or non-commercial);
- attempt to decompile or reverse engineer any software contained on the School's web site;
- remove any copyright or other proprietary notations from the materials; or
- transfer the materials to another person or 'mirror' the materials on any other server.

This license shall automatically terminate if County violates any of these restrictions and may be terminated by Company at any time. Upon terminating County's viewing of these materials or upon the termination of this license, County must destroy any downloaded materials in County's possession whether in electronic or printed format.

3. Disclaimer

The materials on the School's website are provided 'as is'. The School makes no warranties, expressed or implied, and hereby disclaims and negates all other warranties, including without limitation, implied warranties or conditions of merchantability, fitness for a particular purpose, or non-infringement of intellectual property or other violation of rights. Further, the School does not warrant or make any representations concerning the accuracy, likely results, or reliability of the use of the materials on its website or otherwise relating to such materials or on any sites linked to this site.

4. Limitations

In no event shall the School be liable for any damages (including, without limitation, damages for loss of data or profit, or due to business interruption) arising out of the use or inability to use the materials on the School's website, even if the School or an authorized of the School has been notified orally or in writing of the possibility of such damage. Because some jurisdictions do not allow limitations on implied warranties, or limitations of liability for consequential or incidental damages, these limitations may not apply to County.

5. Revisions and Errata

The materials appearing on the School's website may include technical, typographical, or photographic errors. The School does not warrant that any of the materials on its web site are accurate, complete, or current. The School may make changes to the materials contained on its web site at any time without notice. The School does not, however, make any commitment to update the materials.

6. Links

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

7. Site Terms of Use Modifications

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

8. Governing Law

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

These Terms, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of these Terms not expressly set forth herein are of no force or effect. These Terms are executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read these Terms and signs the same of its own free will.

These Terms may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement. The parties shall be entitled to sign and transmit an electronic signature of these Terms (whether by PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed agreement upon request.

IN WITNESS WHEREOF, the San Bernardino County and OPSWAT Inc. have each caused these Terms to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► 

Curt Hagman, Chairman, Board of Supervisors

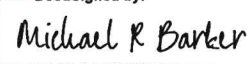
Dated: **SEP 13 2022**

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED TO
THE CHAIRMAN OF THE BOARD

By  Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County
Deputy

OPSWAT INC.

By

► DocuSigned by:

6473D4FD3EE8436...

Name

Michael Barker

(Print or type name of person signing
contract)

Title

Chief Revenue Officer

(Print or Type)

Dated:

8/29/2022

Address

5650 Breckenridge Park Dr,
Suite 201

Tampa, FL 33610