

PUBLIC NOTICE

CITY OF BELLEFONTAINE NEIGHBORS, MISSOURI SPECIAL MEETING OF THE BOARD OF ALDERMEN THURSDAY, AUGUST 11, 2022

Notice is hereby given that the City of Bellefontaine Neighbors (“City”) will hold a special board of Aldermen meeting on Thursday, August 11, 2022 at 6:30 p.m. at City Hall, 9641 Bellefontaine Road, Bellefontaine Neighbors, and MO. 63137.

Persons interested in making their views known on any matter will be able to speak during the meeting under “Public Comments”. In addition, anyone may send an email with his or her comments to the City Clerk at sruffin-hall@cityofbn.com no later than Thursday, August 11, 2022 by 12:00pm. All comments received by email will be entered into the public record and publicly as time allows. All emailed comments will also be distributed to the entire Board at or before the meeting.

SPECIAL MEETING

THURSDAY-AUGUST 11, 2022-6:30 PM

**BELLEFONTAINE NEIGHBORS MAYOR AND BOARD OF ALDERMEN WILL
CONVENE FOR THE ABOVE REFERENCED MEETING AT CITY HALL**

AGENDA

- I. CALL MEETING TO ORDER**
- II. ROLL CALL**
- III. APPROVAL OF AGENDA**
- IV. NEW BUSINESS**
 - a. DISCUSSION AND APPROVAL OF BILL NO 2638 ORDINANCE
AUTHORIZING BELLEFONTAINE NEIGHBORS APPROVAL OF
SONIC WALL AND ANTI SPAM PRODUCTS INTRODUCED BY
ALDERWOMAN THERESA HESTER**
 - b. WARD 2-DISCUSSION AND APPOINTMENT OF VACANT SEAT**
 - c. ADJOURNMENT**

NOTICE IS HEREBY GIVEN THAT ON THE 11TH DAY OF AUGUST, 2022 SUBJECT TO A MOTION DULY MADE AND ADOPTED, THE BOARD OF ALDERPERSONS MAY HOLD A CLOSED MEETING FOR THE PURPOSE OF DISCUSSING MATTERS RELATING TO ONE OR MORE OF THE FOLLOWING: LEGAL ACTIONS, CAUSES OF ACTION, LITIGATION OR PRIVILEGED COMMUNICATIONS BETWEEN THE CITY'S REPRESENTATIVES AND ITS ATTORNEYS (SEC. 610.021(1); LEASE, PURCHASE OR SALE OF REAL ESTATE (SEC. 610.021(2); HIRING, FIRING DISCIPLINING OR PROMOTING EMPLOYEES (SEC. 610.021(3); PREPARATION FOR NEGOTIATIONS WITH EMPLOYEE GROUPS (SEC. 610.021(9); BIDDING SPECIFICATIONS (SEC 610.021(11); AND /OR PROPRIETARY TECHNOLOGICAL MATERIALS (SEC 610.02 (15).

THIS AGENDA WITH PUBLIC NOTICE OF THE BOARD OF ALDERPERSON'S SPECIAL MEETING ON AUGUST 11, 2022 WAS POSTED ON August 9, 2022 AT 5:30 PM IN BELLEFONTAINE

NEIGHBORS CITY HALL (FRONT DOOR) AND ON THE CITY'S WEBPAGE AT www.cityofbn.com.
FOR A COPY, CONTACT THE CITY CLERK'SS OFFICE.

COPIES OF THIS NOTICE MAY BE OBTAINED BY CONTACTING: SEMMIE RUFFIN-HALL, CITY
CLERK CITY OF BELLEFONTAINE NEIGHBORS-9641 BELLEFONTAINE ROAD-ST. LOUIS, MO
63137-(314) 867-0076.

INTRODUCED BY ALDER _____

BILL NO. 2638

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A PURCHASE ORDER WITH PARAGON MICRO INC. AND RELATED AGREEMENT AND ADDENDUM WITH SONICWALL

BE IT ORDAINED BY THE BOARD OF ALDERPERSONS OF THE CITY OF BELLEFONTAINE NEIGHBORS, MISSOURI, AS FOLLOWS:

Section 1.

The Mayor and other appropriate city officials are hereby authorized to execute and enter into a Purchase Order with Paragon Micro Inc. in substantial accord with the terms and conditions set forth in Exhibit A, and an agreement (the "Agreement") and addendum (the "Addendum") with SonicWall for anti-spam and security products for the City, which Agreement shall be in substantial accord with the terms and conditions set forth in Exhibit B, attached hereto and incorporated herein by this reference, and the Addendum set forth in Exhibit C, which Addendum shall be in substantial accord with the terms and conditions set forth in Exhibit C, attached hereto and incorporated herein by this reference, together with such amendments or revisions thereto in form and substance as may be approved by the City Attorney.

Section 2.

This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

PASSED BY THE BOARD OF ALDERPERSONS FOR THE CITY OF BELLEFONTAINE NEIGHBORS THIS _____ DAY OF _____, 2022.

Attest:

SEMMIE RUFFIN-HALL, City Clerk

APPROVED THIS _____ DAY OF _____, 2022.

TOMMIE PIERSON, SR., Mayor

Attest:

SEMMIE RUFFIN-HALL, City Clerk

Paragon Micro Inc.

PO Box 775695
Chicago IL 60677-5695

DUNS: 800436714
TIN: 20-0144408
CAGE CODE: 4ZHT8



Quote Q3386618

Date: 7/27/2022 **Expires:** 8/26/2022

Sales Rep
Russo, Jeff
847-719-8417
jrusso@paragonmicro.com

Bill To:
City of Bellefontaine Neighbors
Accounts Payable
9641 Bellefontaine Road
St. Louis MO 63137

Ship To:
City of Bellefontaine Neighbors
Angie Wojtkowski
9641 Bellefontaine Road
St. Louis MO 63137

Customer Contact
Contact: Wojtkowski, Angie
Account: CO14250
PO#:
Phone: 314-867-0080
Email: awojtkowski@cityofbn.com

Quote Name
Sonicwall TZ 470 Ess Upg 2Yr w/ 1Yr Antispam / Rackmount

Terms Net 30 **Cost Center**

External Notes

Qty	MPN	Description	Notes	Unit Price	Total
1	02-SSC-6796	SonicWall TZ470 - Essential Edition - security appliance - GigE, 2.5 GigE - SonicWALL Secure Upgrade Plus Program (2 years option) - desktop		1,524.99	1,524.99
1	02-SSC-6405	SonicWall Comprehensive Anti-Spam Service - Subscription license (1 year)		352.99	352.99
1	02-SSC-3113	SonicWall - Rack mounting kit - for SonicWall TZ270, TZ370, TZ470		146.99	146.99

	Subtotal	2,024.97
Shipping Cost (FedEx Ground® (2-5 Business Days))		0.00
	Total	\$2,024.97

We value your business and will continue to provide you with excellent service in addition to our comprehensive product line.

SALES TAXES ARE ESTIMATED and may change depending on the rates levied by the destination's tax jurisdiction at the time of invoicing. Finalized invoice will be sent by Paragon Micro's Accounting Department. Pricing and products subject to terms of SonicWall General Product Agreement attached hereto and incorporated herein by reference as Attachment A, and Addendum to Attachment A attached hereto and incorporated herein as Attachment B by reference. PRICING AND INFORMATION DISCLAIMER: All pricing is subject to change without notice. For all prices, products and offers, Paragon Micro, Inc. reserves the right to make adjustments due to changing market conditions, product discontinuation, manufacturer price changes, errors in advertisements and other extenuating circumstances. While Paragon Micro, Inc. uses reasonable efforts to include accurate and up-to-date information on the Site, Paragon Micro, Inc. makes no warranties or representations as to the Site's accuracy. Paragon Micro, Inc. assumes no liability or responsibility for any errors or omissions in the content on the Site.

Accepted By: Printed Name

Purchase Order #

Authorized Signature

Date

SONICWALL GENERAL PRODUCT AGREEMENT

BY DOWNLOADING, INSTALLING OR USING THIS PRODUCT, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT DOWNLOAD, INSTALL, ACCESS OR USE THE PRODUCT.

This SonicWall Product Agreement (the “*Agreement*”) is made between you (“*Customer*” or “*You*”) and SonicWall, as defined below.

1. **Definitions.** Capitalized terms not defined in context shall have the meanings assigned to them below:

(a) “*Affiliate*” means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.

(b) “*Appliance*” means a SonicWall branded computer hardware product.

(c) “*Documentation*” means the user manuals and documentation that SonicWall makes available for the Products and Maintenance Services, and all copies of the foregoing.

(d) “*Maintenance Services*” means SonicWall’s maintenance and support offering(s) for the Products as further described in Section 10 *Maintenance Services*.

(e) “*Order*” means the Customer’s order for Product that is accepted by SonicWall from Customer including without limitation requests provided online, via email, or other method.

(f) “*Partner*” means a reseller or distributor.

(g) “*SonicWall*” means (i) for Customers located and transacting in the United States, Canada and Latin America, SonicWall Inc., with its principal place of business located at 1033 McCarthy Blvd., Milpitas, CA 95035, USA and (ii) for Customers located and transacting outside the United States (excluding Canada and Latin America), SonicWall International Ltd. located at City Gate Park Mahon, Cork, Ireland.

(h) “*Product(s)*” means the Software, Appliance(s), Maintenance Services and Documentation.

(i) “*Software*” means the object code version of the software and as well as any big fixes, updates, new versions and releases to such software that are made available to Customer pursuant to this Agreement and derivatives thereof, and all copies of the foregoing.

2. **Software License.**

(a) **General.** The provisions of this Section 2(a) are applicable to all Software licenses. Subject to the provisions this Agreement, SonicWall grants to Customer, and Customer accepts from SonicWall, a non-exclusive, non-transferable, non-assignable and non-sublicensable license (except as provided herein) to access and use the Software in the quantities purchased from SonicWall or a Partner within the parameters of the applicable license type described below (“*License Type*”). Except for MSSP Licenses (as defined below), Customer shall only use the Software to support the internal business operations of itself and its worldwide Affiliates. The licenses granted under this Agreement may be perpetual or a subscription license. If the license is a “*Perpetual License*”, the license

continues indefinitely unless terminated in accordance with this Agreement. If the license is a "Subscription License", the license continues only for a limited term or period. Except as expressly provided by this Agreement, the initial term of any Subscription License or service offering is stated in the Order, or if no term is stated is one (1) month. On expiration of the initial term of a Subscription License or Order, the Subscription License or Order terminates (as well as associated rights and licenses) unless Customer has placed an Order or otherwise set up an account or registration for renewal. Except for termination of this Agreement for Customer's breach, a Perpetual License will survive expiration or termination of this Agreement. The licenses described in this Agreement are only granted to the extent Customer has purchased such license. Customer agrees it will promptly install any updates to Software as may be provided by SonicWall. This Agreement and the licenses granted under this Agreement may be subject to additional terms and conditions posted on or that may be accessed through www.sonicwall.com and other sites owned or controlled by SonicWall.

(b) **License Types.** The License Type for the Software delivered on an Appliance is "per Appliance". Software licensed per Appliance may be used only on the Appliance on which it is delivered. Software that is purchased on a subscription, or periodic basis is licensed by User or by Managed Node. A "User" is each person with a unique login identity to the Software. A "Managed Node" is any object managed by the Software including, but not limited to firewalls, devices, and other items sold by SonicWall.

(c) **Software as a Service License.** Customer may purchase a Subscription License to access and use Software installed on equipment operated by SonicWall or its suppliers (the "*SaaS Software License*"). If any item of Software to be installed on Customer's equipment is provided in connection with SaaS Software License, the duration for such item of Software shall be for the remaining corresponding Subscription License term.

(d) **MSSP License.** "*Management Services*" includes, without limitation, the application, operating system, and database implementation, performance tuning, and maintenance services provided by Customer to its customers (each such customer being a "*Client*") where Customer installs copies of the Software on its Clients' equipment or provides its Clients access to the Products ("MSSP"). Subject to the provisions of this Agreement, MSSP may purchase a license to use the Software and the associated Documentation to provide Management Services (the "*MSSP License*"). As allowed by applicable law, SonicWall may restrict the MSSP's distribution of Product within a particular territory.. MSSP must include a statement in its agreement with the Client that Client has no recourse or claim whatsoever against SonicWall with respect to the Product as well as associated Orders and Client shall look solely to the MSSP. MSSP may install the Software on equipment owned and operated by the Client provided that MSSP retains administrative control of the Software. MSSP shall interact with the Client regarding all Support and shall not refer the Client to SonicWall for Support. If SonicWall receives calls from Clients for Support, SonicWall reserves the right and Customer agrees to pay SonicWall any additional fees invoiced by SonicWall related to its receipts of such calls. MSSP shall ensure that (i) it makes no representations or warranties related to the Products in excess of SonicWall's representations or warranties contained in this Agreement, (ii) each Client only uses the Products as part of the Management Services provided to it by MSSP, (iii) such use is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Export* Section of this Agreement, and (iv) each Client cooperates

with SonicWall during any compliance review that may be conducted by SonicWall or its designated agent. At the conclusion of any Management Services engagement with a Client, MSSP shall promptly remove any Product installed on its Client's computer equipment or require the Client to do the same. MSSP agrees that it shall be jointly and severally liable to SonicWall for the acts and omissions of its Clients in connection with use of the Product and shall, at its expense, defend SonicWall against any action, suit, or claim brought against SonicWall by a Client in connection with or related to MSSP's Management Services and pay any final judgments or settlements as well as SonicWall's expenses in connection with such action, suit, or claim.

(e) **Evaluation License.** If Product that is commercially available or in beta form is obtained from SonicWall for evaluation purposes, Customer's license to use the Product is only for Customer's own non-production, internal evaluation purposes (an "*Evaluation License*"). Each Evaluation License shall be granted for an evaluation period of up to thirty (30) days beginning (i) five (5) days after the Product is shipped or (ii) from the date that access is granted to the Product, plus any extensions granted by SonicWall in writing (the "*Evaluation Period*"). Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with an Evaluation License and usage beyond the scope of an Evaluation License. Product in beta or pre-release form may include features and capabilities which may not be available in SonicWall's generally available commercial versions of the Product. SonicWall retains the right during the term of the Evaluation License to modify, revise, or remove Product from Customer's premises and SonicWall has no obligation to make beta or pre-release Product generally available. Customer acknowledges that SonicWall owns all modifications, derivative works, changes, expansions or improvements to Product, as well as all reports, testing data or results, feedback, benchmarking or other analysis completed in whole or in part in conjunction with usage of the Product. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OTHERWISE, CUSTOMER UNDERSTANDS AND AGREES THAT PRODUCT PROVIDED UNDER AN EVALUATION LICENSE IS PROVIDED "AS IS", WITH ALL FAULTS AND THAT SONICWALL DOES NOT PROVIDE ANY WARRANTY, SUPPORT, OR MAINTENANCE SERVICES FOR PRODUCT PROVIDED UNDER AN EVALUATION LICENSE. SONICWALL BEARS NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE PRODUCT THROUGH AND AFTER THE EVALUATION PERIOD. PRODUCT PROVIDED UNDER AN EVALUATION LICENSE MAY CONTAIN DEFECTS. CUSTOMER IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE PRODUCT AND/OR ACCOMPANYING MATERIALS.

(f) **Use by Third Parties.** Customer may allow its service vendors and contractors (each, a "*Third Party User*") to access and use the Products provided to Customer solely for purposes of providing services to Customer, provided that Customer ensures that (i) the Third Party User's access to or use of the Products is subject to the provisions in this Agreement, including, but not limited to those in the *Export* Section, (ii) the Third Party User cooperates with SonicWall during any compliance review that may be conducted by SonicWall or its designated agent, and (iii) the Third Party Users promptly removes any Software installed on its computer equipment upon the completion of the Third Party's need to access or use the Products as permitted by this Section. Customer agrees that it

shall be liable to SonicWall for those acts and omissions of its Third Party Users which, if done or not done by Customer, would be a breach of this Agreement.

3. Restrictions, Reporting & Registration. Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Software, or any part thereof unless and to the extent (a) such restrictions are prohibited by applicable law and (b) Customer has requested interoperability information in writing from SonicWall and SonicWall has not provided such information in a timely manner. In addition, Customer may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Products, or any part thereof, (ii) resell, sublicense or distribute the Products, (iii) provide, make available to, or permit use of the Products, in whole or in part, by any third party (except as expressly set forth herein), (iv) use the Products to create or enhance a competitive offering or for any other purpose which is competitive to SonicWall, (v) remove Software that was delivered on an Appliance from the Appliance on which it was delivered and load such Software onto a different appliance without SonicWall's prior written consent, or (vi) perform or fail to perform any other act which would result in a misappropriation or infringement of SonicWall's intellectual property rights in the Products. Each permitted copy of the Software and Documentation made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Products may come bundled or otherwise distributed with or work in conjunction with open source or other third party products ("3rd Party Products"). Customer agrees that it may be subject to additional terms and conditions other than those of this Agreement and it is responsible for ensuring that it is properly licensed or authorized to use such 3rd Party Products. Notwithstanding anything otherwise set forth in this Agreement, nothing in this Agreement prevents or restricts Customer from exercising additional or different rights to any open source software that may be contained in or provided with the Products in accordance with the applicable open source software licenses which shall be either included with the Products or made available to Customer upon request. 3rd PARTY PRODUCTS IS PROVIDED BY SONICWALL "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH 3RD PARTY PRODUCTS, SONICWALL SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF 3RD PARTY PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer may not use any license keys or other license access devices not provided by SonicWall, including but not limited to "pirate keys", to install or access the Software. SonicWall may require the provision of information from or about Customer and/or Partner, including but not limited the information regarding the use, access, control, and location of the Product, identify of users and any other information requested by SonicWall. All such information shall be provided and transmitted in a form and within a time period determined by SonicWall. SonicWall may also require the registration of Product, establishment of an account (online or otherwise) and/or use of an

online portal on a before (without limitation) activating licenses and/or functionality of Product, allowing access to firmware or software, to obtain Maintenance Services or any type of warranty service or support, or to receive any promotion, discount, rebate or other incentive.

4. **Proprietary Rights.** Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) SonicWall, its Affiliates and/or its licensors own the copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, (iv) this Agreement does not grant Customer any rights to SonicWall's trademarks or service marks, and (v) SonicWall reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

5. **Title.** SonicWall, its Affiliates and/or its licensors own all rights, title and interest in and to the Software.

6. **Payment.** If credit or credit terms are extended to Customer, Customer may be required to issue a purchase order within a specific period specified after a report or other event occurs. Customer will provide 1 purchase order per MSSP per month and per report required by SonicWall unless specified otherwise by SonicWall. Any reports and any associated billings or invoices must be disputed within 30 days after SonicWall provides the report or invoice, whichever occurs first. Customer agrees to pay to SonicWall (or, if applicable, the Partner) the fees specified in each Order, including any applicable shipping fees or other amounts assessed by SonicWall. All payments must be made in US currency unless specified otherwise by SonicWall. SonicWall reserves the right to require Customer to issue a purchase order to SonicWall prior to accepting an Order. SonicWall is not obligated to offer credit or credit terms. If credit and/or credit terms are not extended to Customer, SonicWall may require payment of all amounts due and payable prior to the provision of Product by SonicWall or such other time as determined by SonicWall. If credit or credit terms are extended to Customer, Customer may be invoiced prior to, upon or following delivery of the Products or before or after the commencement of any Renewal Maintenance Period. Customer shall make all payments due to SonicWall in full within thirty (30) days from the date of each invoice from SonicWall or such other period (if any) stated in an Order. Orders may be terminated, cancelled, or suspended in SonicWall's sole discretion. Availability of Products may be limited or change without notice, including without limitation pricing. SonicWall is not responsible for typographical or other errors. Amounts due and payable may be associated with use of a license key, password, or other mechanisms provided by SonicWall to access or use the Product. Customer will be responsible for its use or distribution of Product as well as for the security, use, and administration of all such license keys, passwords, or other mechanisms (including without limitation all activations and deactivations). SonicWall is not obligated to issue refunds or credits for Customer's failure to maintain the security, use and administration of such information. SonicWall's calculation of fees or other amounts due and payable based on license keys, passwords, or other mechanisms provided by SonicWall shall be at SonicWall's sole discretion and Customer agrees to pay all fees based on such calculations. Licenses may be noncancelable and nonrefundable in SonicWall's sole discretion. SonicWall recommends that Customer immediately contact SonicWall if any such information changes, or is lost, stolen, misplaced, or otherwise compromised. If Customer continues using the Product after termination or expiration of the term of the

License or this Agreement, it will be a material breach of this Agreement. SonicWall reserves the right to charge Customer a late penalty of 1.5% per month (or the maximum rate permitted by law, whichever is the lesser) for any amounts payable to SonicWall by Customer that are not subject to a good faith dispute and that remain unpaid after the due date until such amount is paid. Amounts due or payable to SonicWall may not be offset against any other amount due and payable to SonicWall.

7. **Taxes.** The fees stated in an Order may not include taxes. If SonicWall is required to pay sales, use, property, value-added or other taxes based on the Products provided under this Agreement or on Customer's use of Products, then such taxes shall be billed to and paid by Customer. This Section does not apply to taxes based on SonicWall's or a Partner's income.

8. **Termination.**

(a) Except as otherwise provided by this Agreement, this Agreement or the licenses granted hereunder may be terminated (i) by mutual written agreement of SonicWall and Customer or (ii) by either party for a breach of this Agreement by the other party (or a Third Party User) that the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach. Customer understands and agrees that SonicWall may immediately terminate or suspend access to Product (in addition to any other rights or remedies I may have) if it has not received payment for amounts due and payable to SonicWall by Customer or a Partner from whom Customer has purchased or if Customer and/or Partner has otherwise breached any of the provisions of this Agreement or any other agreement with SonicWall. Customer will have no recourse or other action against SonicWall as a result of any such termination or suspension whatsoever.

(b) Upon termination of this Agreement or expiration or termination of a license for any reason, all rights granted to Customer for the applicable Product shall immediately cease and Customer shall immediately: (i) cease using the applicable Product, (ii) remove all copies, installations, and instances of the applicable Software from all Appliances, Customer computers and any other devices on which the Software was installed, and ensure that all applicable Third Party Users and Clients do the same, (iii) return the Software to SonicWall together with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items, (iv) cease using the Maintenance Services associated with the Product, (v) pay SonicWall or the applicable Partner all amounts due and payable up to the date of termination, and (vi) give SonicWall a written certification, within ten (10) days, that Customer, Third Party Users, and Clients, as applicable, have complied with all of the foregoing obligations.

(c) Any provision of this Agreement that requires or contemplates execution after (i) termination of this Agreement, (ii) a termination or expiration of a license, or (iii) the expiration of a Subscription Term, is enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration, including, without limitation, the *Restrictions, Payment, Taxes, Termination, Survival, Warranty Disclaimer, Infringement Indemnity, Limitation of Liability, Confidential Information, Compliance Verification, and General Sections* of this Agreement. Termination of this Agreement or a license shall be without prejudice to any other remedies that the

terminating party or a Partner may have under law, subject to the limitations and exclusions set forth in this Agreement.

9. **Export.** Customer acknowledges that the Products are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "*Export Controls*") and agrees to abide by the Export Controls. Customer hereby agrees to use the Products in accordance with the Export Controls, and shall not export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations. Customer hereby (i) represents that Customer, and if Customer is providing services under the MSSP License herein each of its Clients, is not an entity or person to which shipment of Products is prohibited by the Export Controls; and (ii) agrees that it shall not export, re-export or otherwise transfer the Products to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Products is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons. Customer shall, at its expense, defend SonicWall and its Affiliates from any third party claim or action arising out of any inaccurate representation made by Customer regarding the existence of an export license, Customer's failure to provide information to SonicWall to obtain an export license, or any allegation made against SonicWall due to Customer's violation or alleged violation of the Export Controls (an "*Export Claim*") and shall pay any judgments or settlements reached in connection with the Export Claim as well as SonicWall's costs of responding to the Export Claim.

10. Maintenance Services.

(a) **Description.** If Maintenance Services are purchased and notwithstanding anything in the Agreement to the contrary, SonicWall will provide Support in accordance with applicable support policies at www.sonicwall.com/support/support-services/. These Maintenance Services may include, during any Maintenance Period:

(i) Making available to Customer new versions and releases of the Software (if any are made generally available), without additional charge as part of Maintenance Services.

(ii) Responding to communications from Customer that report Software failures not previously reported to SonicWall by Customer.

(iii) Responding to requests from Customer's technical coordinators for assistance with the operational/technical aspects of the Software unrelated to a Software failure. SonicWall shall have the right to limit such responses if SonicWall reasonably determines that the volume of such non-error related requests for assistance is excessive or overly repetitive in nature.

(iv) Providing access to SonicWall's software support web site at www.sonicwall.com/support (the "*Support Site*").

(v) For Customers that have purchased Maintenance Services continuously since the purchase of such license, providing the repair and return program described on the Support Site for the Appliance on which the Software is delivered.

(b) **Availability.** Maintenance Services are generally available during regional business support hours ("*Business Hours*") as indicated on the Support Site, unless Customer has purchased 24x7 Support. The list of Software for which 24x7 Support is available and/or required is listed in the Global Support Guide on the Support Site. Maintenance Services for Software that SonicWall has obtained through an acquisition or merger may, for a period of time following the effective date of the acquisition or merger, be governed by terms other than those in this Section. The applicable different terms, if any, shall be stated on the Support Site. Availability of Maintenance Services and other offers may vary by Product and/or location.

(c) **Maintenance Period.** The first period for which Customer is entitled to receive Maintenance Services begins on the date of the registration of the Product at SonicWall's registration portal (the "*Registration*") and ends within the period of time specified in the Order thereafter (the "*Initial Maintenance Period*"). Following the Initial Maintenance Period, Maintenance Services for the Product(s) (if available) may then be renewed for additional periods (each, a "*Renewal Maintenance Period*"). For purposes of this Agreement, the Initial Maintenance Period and each Renewal Maintenance Period shall be considered a "*Maintenance Period*." For the avoidance of doubt, the provisions of this Agreement shall apply to each Renewal Maintenance Period. Maintenance fees shall be due in advance of each Renewal Maintenance Period. The procedure for reinstating Maintenance Services for the Appliance and/or Software after it has lapsed is posted at www.sonicwall.com/support/support-services/#toggle-id-7.

(d) Customer must provide SonicWall with all information that SonicWall reasonably requests in connection with Customer's Maintenance Service request, including information needed to reproduce the error or other issue Customer experiences. If Customer purchases a Maintenance Service offering that limits the number of individuals who may request Maintenance Services on Customer's behalf, Customer must identify Customer's designated individuals in writing to SonicWall on request. Customer's personnel who request Support must be reasonably proficient in the use of information technologies, and knowledgeable about Customer's systems. SonicWall is not obligated to provide Maintenance Services where the request is the result of any of the following (the "*Support Exclusions*"), but may do so, at its option: (i) use of the Maintenance Services other than in accordance with the applicable provisions of the Agreement, the Documentation or reasonable instructions provided by SonicWall, or (ii) excessive or repetitive requests for Maintenance Services. SonicWall may charge additional fees and Customer agrees to pay for any work related to a Support Exclusion. Any Maintenance Services provided in connection with a Support Exclusion is provided AS IS. Maintenance Services do not include planning, design, deployment or other professional or consulting services. SonicWall partners may offer professional services as further described on the SonicWall website (www.sonicwall.com/partners/partner-enabled-services/) under separate legal terms and conditions. Notwithstanding anything in this Agreement to the contrary, MSSP will be responsible for providing first and second level of support to Clients

and Clients will not be referred to SonicWall for any support or service. If SonicWall receives calls from Clients for support, such support will be deemed a Support Exclusion.

11. Warranties and Remedies.

(a) **Software Warranties.** Except as otherwise provided herein, SonicWall warrants that during the applicable Warranty Period (as defined in subsection (c) below),

(i) the operation of the Software, as provided by SonicWall, will substantially conform to its Documentation (the "*Operational Warranty*");

(ii) SonicWall has used reasonable efforts to ensure the Software, as provided by SonicWall, will not contain any viruses, worms, Trojan Horses, or other malicious or destructive code designed by SonicWall to allow unauthorized intrusion upon, disabling of, or erasure of the Software, except that the Software may contain a key limiting its use to the scope of the license granted, and license keys issued by SonicWall for temporary use are time-sensitive (the "*Virus Warranty*");

(b) **Appliance Warranties.** Unless the Documentation provides otherwise, SonicWall warrants that, during the applicable Warranty Period, the Appliance will operate in a manner which allows it to be used in substantial conformance with the Documentation (the "*Appliance Warranty*").

(c) **Warranty Periods.** The "*Warranty Period*" for each of the above warranties (except for monthly subscription licenses and other Products designated by SonicWall which do not include a Software warranty), shall be as follows: (i) for the Operational Warranty as it applies to Software and the Virus Warranty, up to ninety (90) days following the initial registration of the Software; (ii) the SaaS Availability Warranty, the duration of the SaaS Software License term; and (iv) for the Appliance Warranty, one (1) year following the date the Appliance is registered with SonicWall.

(d) **Remedies.** Any breach of the foregoing warranties must be reported by Customer to SonicWall during the applicable Warranty Period. Customer's sole and exclusive remedy and SonicWall's sole obligation for any such breach shall be as follows:

(i) For a breach of the *Operational Warranty* that materially impacts the use of Software, SonicWall will use reasonable efforts correct or provide a workaround for reproducible errors in the Software within a reasonable time considering the severity of the error and its effect on Customer or, at SonicWall's option, refund the license fees paid for the nonconforming Software upon return of such Software to SonicWall and termination of the related license(s).

(ii) For a breach of the *Operational Warranty* that materially impacts the use of a SaaS Software License, SonicWall will use reasonable efforts to correct or provide a workaround for reproducible errors in the Software within a reasonable time considering the severity of the error and its effect on Customer or terminate the license and provide a credit or refund of the fees allocable to the period of the Subscription License remaining when the license was terminated.

(iii) For a breach of the *Virus Warranty*, SonicWall will use reasonable efforts to replace the Software with a copy that is in conformance with the Virus Warranty.

(e) **Warranty Exclusions.** The warranties set forth in this Section shall not apply to any non-conformance (i) that SonicWall cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the applicable Product or by using the Product in a manner that is inconsistent with this Agreement; or (iii) arising from the modification of the Product by anyone other than SonicWall.

(f) **Third Party Products.** Certain Software may contain features designed to interoperate with third-party products. If the third-party product is no longer made available by the applicable SonicWall, SonicWall may discontinue the related product feature. SonicWall shall notify Customer of any such discontinuation, however Customer will not be entitled to any refund, credit or other compensation as a result of the discontinuation.

(g) **Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY SONICWALL HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. SONICWALL DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS.

(h) **High-Risk Disclaimer.** Customer understands and agrees that the Products are not fault-tolerant and are not designed or intended for use in any high-risk or hazardous environment, including without limitation, the operation of nuclear facilities, aircraft navigation, air traffic control, life support machines, weapons systems, or any other application where the failure or malfunction of any Product can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm (A “*High Risk Environment*”). Accordingly, (i) Customer should not use the Products in a High Risk Environment, (ii) any use of the Products by customer in a high risk environment is at Customer’s own risk, (iii) SonicWall, its affiliates and suppliers shall not be liable to Customer in any way for use of the Products in a High risk Environment, and (iv) SonicWall makes no warranties or assurances, express or implied, regarding use of the Products in a High Risk Environment. Further, Customer acknowledges that Product provided under this Agreement is not designed with security and access management for the processing and/or storage of the following categories of data and software: (A) classified data and software; (B) data and software controlled under the International Traffic in Arms Regulations (“ITAR”); and (C) personally identifiable information that is subject to heightened security requirements as a result of your internal policies or practices or by law (collectively referred to as “Excluded Data”). Customer hereby agrees that it is solely responsible for reviewing data that the Product will provide to SonicWall (or to which SonicWall will have access) to ensure that it does not contain Excluded Data.

12. Indemnity.

(a) SonicWall shall indemnify Customer from and against any claim, suit, action, or proceeding brought against Customer by a third party to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the United States or misappropriates a trade secret (a “*Claim*”). Indemnification for a Claim shall consist of the following: SonicWall shall (a) defend or settle the Claim at its own expense, (b) pay any judgments finally awarded against Customer under a Claim or any amounts assessed against Customer in any settlements of a Claim, and (c) reimburse Customer for the reasonable administrative costs or expenses, including without limitation reasonable attorneys’ fees, it necessarily incurs in responding to the Claim. SonicWall’s obligations under this *Infringement Indemnity* Section are conditioned upon Customer (i) giving prompt written notice of the Claim to SonicWall,

(ii) permitting SonicWall to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing SonicWall with cooperation and assistance as SonicWall may reasonably request in connection with the Claim. SonicWall shall have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Software other than as authorized by this Agreement, (b) resulting from a modification of the Software other than by SonicWall, (c) based on Customer's use of any release of the Software other than the current release of the Software, or (d) to the extent the Claim arises from or is based on the use of the Software with other products, services, or data not supplied by SonicWall if the infringement would not have occurred but for such use. If, as a result of a Claim or an injunction, Customer must stop using any Software ("*Infringing Software*"), SonicWall shall at its expense and option either (1) obtain for Customer the right to continue using the Infringing Software, (2) replace the Infringing Software with a functionally equivalent non-infringing product, (3) modify the Infringing Software so that it is non-infringing, or (4) terminate the license for the Infringing Software and (A) excluding SaaS Software License, accept the return of the Infringing Software and refund the license fee paid for the Infringing Software, pro-rated over a sixty (60) month period from the date of initial delivery of such Software, or (B) for a SaaS Software License, discontinue Customer's right to access and use the Infringing Software and refund the unused pro-rated portion of any license fees pre-paid by Customer for such SaaS Software License. This Section states SonicWall's entire liability and its sole and exclusive indemnification obligations with respect to a Claim and Infringing Software.

(b) Customer shall defend and indemnify SonicWall, its affiliates and subsidiaries, employees, personnel, agents, and subcontractors against any threaten or actual claim or action arising from or relating to Customer's acts or omissions including without limitation (a) Customer's misuse or modification of any Products; (b) Customer's combination, operation or use of any of the Products with any third party product, where such combination, operation or use infringes or misappropriates any intellectual property right or trade secret of a third party; (c) Customer's fraud, misrepresentation, gross negligence, willful misconduct or breach of any provision of this Agreement; (d) the provision of Customer's own products, software, or services; (e) Customer's breach of or noncompliance with the provisions of this Agreement; (f) any false or inaccurate representation by Customer, (g) infringement any patent, copyright, trademark, or other proprietary right by Customer, or (h) any violation or alleged violation of any applicable customs, export control, or other laws, policies or regulations (except to the extent that such violation, or alleged violation, is a direct result of SonicWall's violation of applicable laws or regulations).

13. Limitation of Liability.

(a) IN NO EVENT SHALL CUSTOMER OR ITS AFFILIATES, OR SONICWALL, ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR (X) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR (Y) LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF ANTICIPATED SAVINGS, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, HOWSOEVER ARISING, WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES AND WHETHER ARISING IN

OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE.

(b) THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF CUSTOMER AND ITS AFFILIATES, AND SONICWALL, ITS AFFILIATES AND SUPPLIERS, FOR DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE AN AMOUNT EQUAL TO (Y) THE GREATER OF THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER OR ITS AFFILIATES FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE BREACH OR FIVE HUNDRED DOLLARS (\$500.00), EXCEPT FOR (Z) A PRODUCT SUBJECT TO RECURRING FEES, FOR WHICH THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY SHALL BE THE GREATER OF THE AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH PRODUCT DURING THE TWELVE (12) MONTHS PRECEDING THE BREACH OR FIVE HUNDRED DOLLARS (\$500.00). THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SONICWALL PROVIDING PRODUCTS TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

(c) THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO EXCEPT FOR (A) ANY BREACH OF THE LICENSE(S), RESTRICTIONS, OR CONFIDENTIAL INFORMATION PROVISIONS OF THIS AGREEMENT, OR ANY OTHER VIOLATION OF SONICWALL'S INTELLECTUAL PROPERTY RIGHTS; (B) EACH PARTY'S EXPRESS OBLIGATIONS UNDER THE INFRINGEMENT INDEMNITY SECTION OF THIS AGREEMENT AND (C) CUSTOMER'S EXPRESS OBLIGATIONS UNDER THIS AGREEMENT REGARDING THE CONDUCT, EXPORT, AND USE BY THIRD PARTIES, (C) SONICWALL'S COSTS OF COLLECTING DELINQUENT AMOUNTS WHICH ARE NOT THE SUBJECT OF A GOOD FAITH DISPUTE; (D) A PREVAILING PARTY'S LEGAL FEES PURSUANT TO THE LEGAL FEES SECTION OF THIS AGREEMENT; OR (E) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW.

14. Confidential Information.

(a) Definition. "*Confidential Information*" means information or materials disclosed by one party (the "*Disclosing Party*") to the other party (the "*Receiving Party*") that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer, and the terms and conditions of this Agreement. Reporting and registration information provided by Customer to SonicWall under this Agreement shall be deemed SonicWall Confidential Information. Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the date that Customer accepts the Agreement (the "*Effective Date*"); (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing

Party; (iii) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; (iv) are protected by SonicWall in accordance with its obligations under the *Protected Data* Section below, or (v) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information.

(b) **Obligations.** The Receiving Party shall (i) not disclose the Disclosing Party's Confidential Information to any third party, except as permitted in subsection (c) below and (ii) protect the Disclosing Party's Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party's Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this Section shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether or not specifically arising from a party's performance under this Agreement.

(c) **Permitted Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the "*Representatives*"), but only to those Representatives that (i) have a "need to know" in order to carry out the purposes of this Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section. The Receiving Party shall be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would be a breach of this Agreement. Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

15. Protected Data. For purposes of this Section, "*Protected Data*" means any information or data that is provided by Customer to SonicWall during this Agreement that alone or together with any other information relates to an identified or identifiable natural person or data considered to be personal data as defined under Privacy Laws, and "*Privacy Laws*" means any applicable law, statute, directive or regulation regarding privacy, data protection, information security obligations and/or the processing of Protected Data. Except as permitted herein or to the extent required by Privacy Laws or legal process, SonicWall shall implement reasonable technical and organizational measures to prevent unauthorized disclosure of or access to Protected Data by third parties and shall only store and process Protected Data as may be required to fulfill its obligations under this Agreement. If SonicWall complies with Customer's written instructions with respect to the Protected Data, SonicWall shall have no liability to Customer for any breach of this Section

resulting from such compliance. SonicWall shall promptly notify Customer of any disclosure of or access to the Protected Data by a third party in material breach of this Section and shall cooperate with Customer to reasonably remediate the effects of such disclosure or access. SonicWall further affirms to Customer that it has adequate agreements in place incorporating the EU standard contractual clauses for the transfer of Protected Data from the European Union (“EU”) to a country outside the EU. Customer hereby (i) represents that it has the right to send the Protected Data to SonicWall, (ii) consents for SonicWall to store and use the Protected Data worldwide for the sole purpose of performing its obligations under this Agreement, (iii) agrees that the Protected Data may be accessed and used by SonicWall and its Representatives worldwide as may be needed to support SonicWall’s standard business operations, and (iv) agrees that Protected Data consisting of Customer contact information (e.g., email addresses, names) provided as part of Maintenance Services may be sent to SonicWall’s third party service providers as part of SonicWall’s services improvement processes.

16. Compliance Verification. Customer agrees to maintain and use systems and procedures to accurately track, document, and report its installations, acquisitions and usage of Software. Such systems and procedures shall be sufficient to determine if Customer’s deployment of the Software or, if applicable, use of the Software under a SaaS Software License is within the quantities, terms, and maintenance releases to which it is entitled. SonicWall or its designated auditing agent shall have the right to audit Customer’s deployment of the Software. Any such audits shall be scheduled at least ten (10) days in advance and shall be conducted during normal business hours remotely or at Customer’s facilities. Customer shall provide its full cooperation and assistance with such audit and provide access to the applicable records and computers. Without limiting the generality of the foregoing, as part of the audit, SonicWall may request, and Customer agrees to provide, a written report, signed by an authorized representative, listing Customer’s then current deployment of the Software and/or the number of individuals that have accessed and used Software as well as any other information as may be requested by SonicWall. If Customer’s deployment or use of the Software is found to be greater than its purchased entitlement to such Software, Customer will be invoiced for the over-deployed quantities at SonicWall’s then current list price without any deduction of discounts, rebates, incentives or other amounts plus the applicable Maintenance Services and applicable over-deployment fees. All such amounts shall be payable in accordance with this Agreement. Additionally, if the unpaid fees exceed five percent (5%) of the fees paid for the applicable Software, then Customer shall also pay SonicWall’s reasonable costs of conducting the audit. The requirements of this Section shall survive expiration or termination of this Agreement.

17. SaaS Provisions.

(a) **Data.** Customer may store data on the systems to which it is provided access in connection with its use of a SaaS Software License (the “*SaaS Environment*”). SonicWall may periodically make back-up copies of Customer data, however, such back-ups are not intended to replace Customer’s obligation to maintain regular data backups or redundant data archives. Customer is solely responsible for collecting, inputting and updating all Customer data stored in the SaaS Environment, and for ensuring that it does not (i) knowingly create and store data that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) use the SaaS Environment for purposes that would reasonably be seen as

obscene, defamatory, harassing, offensive or malicious. SonicWall shall have the right to delete all Customer data stored in connection with the use of the SaaS License following any termination or expiration of this Agreement or any license granted hereunder. Customer represents and warrants that it has obtained all rights, permissions and consents necessary to use and transfer all Customer and/or third party data within and outside of the country in which Customer or the applicable Customer Affiliate is located (including providing adequate disclosures and obtaining legally sufficient consents from Customer's employees, customers, agents, and contractors). If Customer transmits data to a third-party website or other provider that is linked to or made accessible by the SaaS Software License, Customer will be deemed to have given its consent to SonicWall enabling such transmission and SonicWall shall have no liability to Customer in connection with any claims by a third party in connection with such transmission.

(b) **Conduct.** In connection with the use of Software, Customer may not (i) attempt to use or gain unauthorized access to SonicWall's or to any third-party's networks or equipment; (ii) permit other individuals or entities to copy the Software; (iii) provide unauthorized access to or use of any Software or the associated access credentials; (iv) attempt to probe, scan or test the vulnerability of the Software, the SaaS Environment, or a system, account or network of SonicWall or any of SonicWall's customers or suppliers; (v) interfere or attempt to interfere with service to any user, host or network; (vi) engage in fraudulent, offensive or illegal activity of any nature or intentionally engage in any activity that infringes the intellectual property rights or privacy rights of any individual or third party; (vii) transmit unsolicited bulk or commercial messages; (viii) intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items; (ix) restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the SaaS Software (except for tools with safety and security functions); or (x) restrict, inhibit, interfere with or otherwise disrupt or cause a performance degradation to any SonicWall (or SonicWall supplier) facilities used to provide the SaaS Environment. Customer shall cooperate with SonicWall's reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this Section, and shall, at its expense, defend SonicWall and its Affiliates from any claim, suit, or action by a third party (a "*Third Party Claim*") alleging harm to such third party caused by Customer's breach of any of the provisions of this Section. Additionally, Customer shall pay any judgments or settlements reached in connection with the Third Party Claim as well as SonicWall's costs of responding to the Third Party Claim.

(c) **Suspension.** SonicWall may suspend Customer's use or access to Software (a) if so required by law enforcement or legal process, (b) in the event of an imminent security risk to SonicWall or its customers, or (c) if continued use would subject SonicWall to material liability. SonicWall shall make commercially reasonable efforts under the circumstances to provide prior notice to Customer of any such suspension.

18. General.

(a) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of laws principles that would require the application of laws of a different state. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in the Santa Clara County, California. Each party hereby agrees to submit to the jurisdiction of such courts. The parties agree that

neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated.

(b) **Assignment.** Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of this Agreement, the licenses granted under this Agreement or any other rights, interest or obligations hereunder, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise without the prior written consent of SonicWall. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

(c) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to affect the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d) **Use by U.S. Government.** The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government is prohibited except as expressly permitted by the terms of this Agreement. In addition, when Customer is a U.S. government entity, the language in Subsection (ii) of the *Infringement Indemnity* Section of this Agreement and the *Injunctive Relief* Section of this Agreement shall not be applicable.

(e) **Notices.** All notices provided hereunder shall be in writing and may be delivered by email, in the case of SonicWall to and in the case of Customer to the email address SonicWall has on file for Customer. All notices, requests, demands or communications shall be deemed effective upon delivery in accordance with this paragraph.

(f) **Disclosure of Customer Status.** SonicWall may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of SonicWall in its marketing communications.

(g) **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(h) **Injunctive Relief.** Customer acknowledges and agrees that money damages may be an inadequate remedy for SonicWall in the event of a breach or threaten breach of this Agreement, including but not limited to a breach of the *Software License, Restrictions* or *Confidential Information* Sections of this Agreement. Therefore, SonicWall shall be entitled to seek preliminary or immediate injunctive relief (including an order prohibiting Customer from taking actions in breach of such provisions), without limiting and in addition to its other rights and remedies and without the need for posting bond, and that specific performance as may be appropriate to preserve all of SonicWall's

rights. All rights and remedies afforded SonicWall by law shall be cumulative and not exclusive.

(i) **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. For added certainty, this Section shall not operate to change, delete, or modify any of the parties' obligations under this Agreement (e.g., payment), but rather only to excuse a delay in the performance of such obligations.

(j) **Equal Opportunity.** SonicWall is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

(k) **Headings.** Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."

(l) **Legal Fees.** If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and other collection expenses, in addition to any other relief it may be awarded.

(m) **Entire Agreement.** Each party acknowledges that in entering into the Agreement it has not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement. Unless Customer has entered into another written agreement with respect to the Product which has been signed by Customer and an authorized representative of SonicWall and which conflicts with the provisions of this Agreement, Customer agrees that this Agreement supersedes all prior written or oral agreements, warranties or representations with respect to use of the Product. If any provision (or part thereof) of this Agreement is found to be invalid or unenforceable, the remaining provisions (including other valid parts within the effected term) will remain effective. Customer understands and agrees that SonicWall may modify or amend this Agreement at any time without notice. Customer is responsible for ensuring it is aware of the most current terms and conditions that apply to the Products and use thereof. Customer acknowledges that it has read, understands and agrees to be bound by this Agreement and that this Agreement is the complete and exclusive statement of the agreement between Customer and SonicWall regarding the Product(s).

Effective November 20, 2019

Attachment B

ADDENDUM TO ATTACHMENT A SONICWALL GENERAL PRODUCT AGREEMENT BETWEEN SONICWALL AND THE CITY OF BELLEFONTAINE NEIGHBORS, MISSOURI

This Addendum dated August __, 2022 (the “Addendum”) to the SonicWall General Product Agreement dated November 19, 2021 (the “Agreement”) between SonicWall and the City of Bellefontaine Neighbors, Missouri (the “Customer”) shall amend the Agreement as follows:

I. SonicWall and the Customer agree that Section 12 of the Agreement shall be amended as follows:

12. Indemnity.

(a) SonicWall shall indemnify Customer from and against any claim, suit, action, or proceeding brought against Customer by a third party to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the United States or misappropriates a trade secret (a “*Claim*”). Indemnification for a Claim shall consist of the following: SonicWall shall (a) defend or settle the Claim at its own expense, (b) pay any judgments finally awarded against Customer under a Claim or any amounts assessed against Customer in any settlements of a Claim, and (c) reimburse Customer for the reasonable administrative costs or expenses, including without limitation reasonable attorneys’ fees, it necessarily incurs in responding to the Claim. SonicWall’s obligations under this *Infringement Indemnity* Section are conditioned upon Customer (i) giving prompt written notice of the Claim to SonicWall, (ii) permitting SonicWall to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing SonicWall with cooperation and assistance as SonicWall may reasonably request in connection with the Claim. SonicWall shall have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Software other than as authorized by this Agreement, (b) resulting from a modification of the Software other than by SonicWall, (c) based on Customer’s use of any release of the Software other than the current release of the Software, or (d) to the extent the Claim arises from or is based on the use of the Software with other products, services, or data not supplied by SonicWall if the infringement would not have occurred but for such use. If, as a result of a Claim or an injunction, Customer must stop using any Software (“*Infringing Software*”), SonicWall shall at its expense and option either (1) obtain for Customer the right to continue using the Infringing Software, (2) replace the Infringing Software with a functionally equivalent non-infringing product, (3) modify the Infringing Software so that it is non-infringing, or (4) terminate the license for the Infringing Software and (A) excluding SaaS Software License, accept the return of the Infringing Software and refund the license fee paid for the Infringing Software, pro-rated over a sixty (60) month period from the date of initial delivery of such Software, or (B) for a SaaS Software License, discontinue Customer’s right to access and use the Infringing Software and refund the unused pro-rated portion of any license fees pre-paid by Customer for such SaaS Software License. This Section states SonicWall’s entire liability and its sole and exclusive indemnification obligations with respect to a Claim and Infringing Software.

EXHIBIT C

Nothing in this Agreement shall constitute or be considered a waiver of the Customer's sovereign immunity under the law.

(b) Customer shall defend and indemnify SonicWall, its affiliates and subsidiaries, employees, personnel, agents, and subcontractors against any threaten or actual claim or action arising from or relating to Customer's acts or omissions including without limitation (a) Customer's misuse or modification of any Products; (b) Customer's combination, operation or use of any of the Products with any third party product, where such combination, operation or use infringes or misappropriates any intellectual property right or trade secret of a third party; (c) Customer's fraud, misrepresentation, gross negligence, willful misconduct or breach of any provision of this Agreement; (d) the provision of Customer's own products, software, or services; (e) Customer's breach of or noncompliance with the provisions of this Agreement; (f) any false or inaccurate representation by Customer, (g) infringement any patent, copyright, trademark, or other proprietary right by Customer, or (h) any violation or alleged violation of any applicable customs, export control, or other laws, policies or regulations (except to the extent that such violation, or alleged violation, is a direct result of SonicWall's violation of applicable laws or regulations). Nothing in this Agreement shall constitute or be considered a waiver of the Customer's sovereign immunity under the law.

II. Except as specifically set forth in this Addendum, all other terms of the Agreement shall remain in full force and effect.

[Remainder Of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth below.

SONICWALL

**CITY OF BELLEFONTAINE NEIGHBORS,
MISSOURI**

By: _____

By: _____

Name: _____

Name: Tommie Pierson, Sr.

Title: _____

Title: Mayor

Date: _____

Date: _____

REQUEST FOR A SPECIAL MEETING OF THE BOARD OF ALDERMEN

THE UNDERSIGNED HEREBY CALL FOR A SPECIAL BOARD MEETING ON
THURSDAY August 11, 2022 AT 6:30 PM

DISCUSSION AND APPROVAL OF APPOINTMENT OF ALDERMAN TO VACANT
SEAT WARD 2

1. Reg Harmer-Ward 08-08-22
Signature Date

2. James W Thomas Jr 8/8/22
Signature Date

3. Margaret A. Warnus 8/8/22
Signature Date

4. Alease Dales 8.8.2022
Signature Date