

## MANAGED SERVICES TERMS AND CONDITIONS

### 1 INTERPRETATION

1.1 In these Terms, the following terms shall have the following meanings:

**Acumen** means Acumen Cyber Ltd, a company registered in Scotland with company number SC786217, and having its registered office is at 130 Cubie Street, Glasgow, Scotland, G40 2AF.

**Acumen Systems** means any and all data, software, documentation and hardware provided by Acumen either as Deliverables or used by Acumen to deliver the Managed Services including any Third-Party Software included in the software and hardware.

**Affiliate** means, in respect of a party, any entity that directly or indirectly controls or is controlled by, or is under common control with, another entity.

**Authorisation Form** has the meaning given to it in clause 5.4.

**Business Day** means a day, other than a Saturday, Sunday or public holiday in Scotland when the banks in Edinburgh are open for business.

**Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party or that party's Representatives in connection with these Terms and the Managed Services which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure (including, but not limited to, information concerning products, clients, financial or contractual arrangements).

**Contract** means a contract formed by these Terms, the Service Specific Schedule(s) and the relevant Order Form entered into by Acumen and the Customer, and reference to **the Contract** or **any Contract** under these Terms shall have the same meaning as a Contract, as specified under this definition.

**Customer** means the customer detailed in the relevant Order Form.

**Customer Data** means any information, software, connectivity and data that is provided by or on behalf of the Customer to Acumen which is required for the provision of the Managed Services and as may be further specified in Service Specific Schedules and Deliverables.

**Customer Site** means any site where Customer Systems covered by the Managed Services under a Contract may be located (whether the site is controlled by the Customer or not).

**Customer Systems** means the systems, network, data, processes, infrastructure, equipment hardware or software located on a Customer Site which are relevant to, and which the Customer requires to be monitored or investigated (as applicable) as part of, the Managed

Services, together with any software, systems, networks, premises, equipment, data structures, protocols, computers, hardware and firmware linked to the same, and data passing across or contained in any of the foregoing.

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (the **UK GDPR**); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; the General Data Protection Regulation ((EU) 2016/679) (the **EU GDPR**) (if applicable) and any other legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Deliverables** means all reports, documents, papers, designs, software, and all other materials in whatever form, including hard copy and electronic form, agreed to be prepared by Acumen as part of the Managed Services.

**Designated Representative** has the meaning given in clause 24.2.

**Dispute** has the meaning given in clause 24.1.

**Dispute Notice** has the meaning given in clause 24.1.

**Fees** means the fees payable to Acumen, as set out in the Order Form and calculated in accordance with the Service Specific Schedule(s).

**Force Majeure Event** has the meaning given in clause 14.

**IPR** means any patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other IPR, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of and rights to claim priority from such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Managed Services** means the managed security services offered by Acumen, as detailed in the relevant Order Form, and described in the service description contained in the relevant Service Specific Schedule(s).

**Order Form** means an order form which sets out the Managed Services that Acumen will provide to the Customer in accordance with these Terms and the relevant Service Specific Schedule(s).

**Permitted Purpose** has the meaning given in clause 11.2.1.

**Regulatory Requirement** has the meaning given in clause 13.4.

**Representatives** means the employees, consultants, officers, representatives, advisers, agents or sub-contractors involved in the provision or receipt of any element of the Managed Services.

**RPI** means the UK Retail Prices Index being a measure of inflation published monthly by the Office for National Statistics.

**Service Specific Schedule** means a relevant schedule attached to these Terms that sets out the specific terms and conditions for the category or categories of Managed Services which Acumen will provide to the Customer.

**Service Levels** means the service levels that shall apply to the Managed Services as referred to in the relevant Service Specific Schedule(s).

**Special Terms** means the terms (if any) agreed between the parties that deviate from or modify these Terms, as set out in the Order Form.

**Terms** means these terms and conditions, as amended or supplemented by an Order Form, and as otherwise varied in writing from time to time.

**Third-Party Software** means any software owned, or made available, by a third part and used by Acumen (or any of its Representatives) to provide the Managed Services to the Customer.

- 1.2 Headings shall not affect the interpretation of these Terms.
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established and a reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular include the plural and words in the plural include the singular and, a reference to one gender includes a reference to other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A reference to **writing** or **written** includes e-mail.

- 1.7 Any phrase introduced by the words **including, includes, or for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related words.
- 1.8 References to **Commissioner, Controller, Data Subject, Personal Data, Personal Data Breach, Processor, processing, Supervisory Authority, and appropriate technical and organisational measures** have the meanings set out in the Data Protection Legislation.

## 2 **BASIS OF AGREEMENT**

- 2.1 These Terms and the applicable Service Specific Schedule(s) shall govern the overall relationship of the parties in relation to the Managed Services. The parties will enter into separate Order Forms for the provision of the Managed Services, in accordance with the Terms and the applicable Service Specific Schedule(s). Each Order Form, taken together with these Terms and any relevant Service Specific Schedule(s), shall form a separate Contract between the parties.
- 2.2 By signing the relevant Order Form, the parties have agreed to be bound by these Terms and the relevant Service Specific Schedule(s).
- 2.3 Where the Customer instructs Acumen to proceed prior to providing a signed copy of an Order Form, Acumen will be entitled to assume that the Customer has accepted these Terms, the applicable Service Specific Schedule(s), and the terms of the relevant Order Form, in full.
- 2.4 The Service Specific Schedule(s) shall be read in conjunction with these Terms and capitalised terms in any Service Specific Schedule shall have the same meaning ascribed to them in the Terms, unless stated otherwise. In the event of any inconsistency between an Order Form, the Service Specific Schedule(s) and these Terms, the documentation shall prevail in that order.

## 3 **COMMENCEMENT AND SERVICE PROVISION**

- 3.1 The provision of the Managed Services shall commence on either:
- 3.1.1 the anticipated start date specified in an Order Form; or
  - 3.1.2 the date that the Managed Services go live if, for any reason (including, but not limited to, any delay caused by the onboarding process), Acumen is unable to provide the Managed Services on the anticipated start date.
- 3.2 Each Order Form shall continue for the duration of the term specified in the Order Form, unless terminated earlier in accordance with clause 13.

## 4 **ACUMEN'S OBLIGATIONS**

- 4.1 Acumen shall use commercial reasonable endeavours to:
- 4.1.1 deliver the Managed Services to meet the Service Levels; and

- 4.1.2 meet any timescales and/or completion dates as set out in the Service Specific Schedule (however, time shall not be of the essence of a Contract).
- 4.2 The undertaking in clause 4.1 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to Acumen's instructions, and the Service Levels will not apply to any service disruptions or issues caused by a Force Majeure Event.
- 4.3 If Acumen performs the Managed Services at Customer Sites, Acumen shall use reasonable endeavours to comply with such reasonable site rules and procedures as are notified in advance to Acumen by the Customer (or other relevant parties owning or controlling the Customer Site).
- 4.4 Acumen reserves the right to:
  - 4.4.1 modify Acumen Systems or modify or replace any hardware or software in Acumen's network or in equipment used to deliver any Managed Services if this has no material effect on Acumen's obligations under a Contract and the provision of the Managed Services. If such changes will have a material adverse effect, Acumen shall notify the Customer and the parties shall follow the process set out in clause 9;
  - 4.4.2 carry out maintenance that may result in interruption to the Managed Services, provided that Acumen shall use all reasonable endeavours to minimise any such interruption and will, where feasible, provide prior notice to the Customer; and
  - 4.4.3 retain information or data resulting from the Managed Services to the extent that it reasonably requires it to improve its managed security services generally.
- 4.5 Nothing in any Contract shall prevent Acumen from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under any Contract.
- 4.6 Acumen shall notify the Customer if any threat or malicious activity is detected through the Managed Services in accordance with the reporting mechanisms and principles agreed with the Customer during the onboarding process and in line with the Service Specific Schedule(s).
- 4.7 Acumen may temporarily provide hardware to the Customer to assist with in the delivery of the Managed Services (**Acumen Hardware**). The Customer shall use Acumen Hardware solely in relation to the Managed Services, for such a period as may be agreed between the parties or for as long as Acumen stipulates. The Acumen Hardware shall remain Acumen's exclusive property and shall be held by the Customer in safe custody and kept in good condition until returned to Acumen. The Acumen Hardware shall not be disposed of or used other than in accordance with Acumen's written instructions. Upon Acumen's request, the Customer shall return the Acumen Hardware to Acumen within 10 Business Days and any return delivery costs shall be at the Customer's expense.

- 4.8 Subject to Acumen's obligation to perform the Managed Services with reasonable skill and care, and in accordance with the terms of a Contract, the Customer accepts and acknowledges that (a) all Managed Services performed by Acumen reflect the state of the Customer's systems (including the Customer Systems), software, data, processes, infrastructure, equipment and any other materials (as relevant to the Managed Services concerned) as at the date that the Managed Services are provided, and that the nature of the Managed Services means that any results provided may not be exhaustive; (b) the Managed Services reflect the level of information reasonably available to Acumen when performing the Managed Services; and (c) Acumen gives no warranty, representation or guarantee (i) that the Managed Services will detect or prevent all cyber incidents, (ii) in respect of any cyber incident that has been caused by or relates to any part of the Customer Systems or any Customer Site equipment that has not been identified to Acumen or where any cyber incident occurs due to the fault or negligence of the Customer, its employees, workers, agents or contractors, (iii) in respect of the accuracy of the Managed Services beyond the date that they were performed and (iv) that any finding and conclusions contained in the Deliverables are exhaustive. The Customer's attention is also drawn to the limitations and exclusions of liability in clause 12 in this regard.

## **5 CUSTOMER'S OBLIGATIONS**

### **5.1 The Customer shall, at its own cost:**

- 5.1.1 comply with its duties and responsibilities contained in a Contract, including all duties and responsibilities contained in the applicable Service Specific Schedule(s);
- 5.1.2 if relevant, and prior to the commencement of the Managed Services, notify the relevant employees that the Managed Services have been scheduled and that the employees may be monitored;
- 5.1.3 appoint an experienced employee to act as a liaison between the Customer and Acumen and ensure that the employee will promptly assist Acumen with any queries;
- 5.1.4 provide all relevant information and assistance to Acumen to facilitate the onboarding and installation processes;
- 5.1.5 obtain, prior to the commencement of the Managed Services, the consent of any relevant third parties to enable the Managed Services to be performed, which may include its internet service provider(s) and any third-party suppliers of the Customer Systems, and, when requested by Acumen, provide written evidence of such consent upon Acumen's request;
- 5.1.6 provide Acumen with all necessary co-operation (including any assistance with the tuning process requested by Acumen), information and access to the Customer Systems (including remote access) in order to provide the Managed Services;

- 5.1.7 notify Acumen of any material change to Customer Systems (including any network or infrastructure change) or where any changes may reasonably be expected to have a material impact of the performance of the Managed Services;
  - 5.1.8 use reasonable endeavours to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by Acumen. This includes informing Acumen promptly in the case of a denial-of-service attack. In the event of any such incident, Acumen shall work with the Customer to alleviate the situation as quickly as possible;
  - 5.1.9 comply with any additional acceptable use policy or other terms of use which may be set out in any applicable Service Specific Schedule;
  - 5.1.10 provide feedback to Acumen from any investigation carried out when an incident reported via the Managed Services is found to have been reported in error; and
  - 5.1.11 comply with all applicable laws and regulations with respect to its activities under a Contract.
- 5.2 The Customer shall indemnify Acumen and its Affiliates in full and on demand from any and all third party claims, losses, damages, demands, costs, expenses, fees (including, but not limited to, court and legal fees) and liabilities (in each case whether direct, indirect or consequential) of whatever nature suffered, incurred or sustained by Acumen (or its Affiliates) directly or indirectly as a result of the failure by the Customer to comply with its obligations under clause 5.1.
- 5.3 The Customer acknowledges that if there are any delays in providing the Managed Services due to the acts or omissions of the Customer, Acumen shall be entitled to invoice the Customer for the Fees (and any additional charges incurred as a result of any such delays) even if the Managed Services are not complete, or have not fully commenced.
- 5.4 If the Managed Services provided involve penetration testing, Acumen or its outsourced sub-contractors or providers may require the Customer to sign an authorisation form (**Authorisation Form**) to ensure compliance with the Computer Misuse Act 1990 and/or similar legislation. Authorisation Forms shall be signed and completed fully and accurately by the Customer. Acumen shall not be required to provide any Managed Services until the Customer has signed the Authorisation Form(s).
- 5.5 Where the Managed Services are to take place on Customer Sites, the Customer shall ensure that a suitable working space is provided for assigned Acumen personnel, which shall include a desk and network access where appropriate. Further, the Customer shall indemnify Acumen and its Affiliates in full and on demand against all claims, losses, damages, proceedings, costs, expenses and fees (including, but not limited to, court and legal fees) and liabilities (in each case whether direct, indirect or consequential) which Acumen or its Affiliates incur or suffer in any way whatsoever arising out of or in connection with any claim against Acumen or its

Affiliates for death and/or personal injury arising out of the Customer's failure to provide safe premises.

- 5.6 The Customer shall not provide the Managed Services directly or indirectly to third parties.
- 5.7 For the duration of the Managed Services and for the period of 6 months following expiry or termination of a Contract, the Customer shall not solicit or offer any inducement to work for the Customer to any employee of Acumen with whom the Customer had contact with during the delivery of the Managed Services.
- 5.8 Clause 5.7 shall not apply to restrict the Customer from employing (or offering to employ) any of Acumen's employees who have responded (without solicitation by the Customer) to general recruitment advertising.

## 6 **WARRANTIES**

- 6.1 By entering into a Contract with Acumen, the Customer warrants and represents that:
  - 6.1.1 it has the full capacity and authority to enter into and perform its obligations under the Contract;
  - 6.1.2 it shall supply Acumen with all relevant specific instructions that it may require in relation to data protection compliance;
  - 6.1.3 the instructions given by the Customer in respect of any Personal Data disclosed to Acumen shall at all times be in accordance with applicable laws;
  - 6.1.4 it is legally entitled to allow Acumen to process the Personal Data subject to, and in accordance with the terms of the Contract;
  - 6.1.5 Acumen's possession of any Customer Data and any third-party materials supplied by the Customer to Acumen shall not cause Acumen to infringe the rights, including any IPR, of any third party; and
  - 6.1.6 all information given by it is complete and accurate. The Customer shall notify Acumen as soon as reasonably possible in the event of any change to information provided by it.
- 6.2 By entering into a Contract with the Customer, Acumen warrants and represents that:
  - 6.2.1 it has the full capacity and authority to enter into and perform its obligations under the Contract;
  - 6.2.2 it owns, or has obtained valid licences, consents, permissions and rights to enable Acumen to comply with the Contract and to grant the licence in clause 10.3, and that no third-party has or is entitled to claim or would have been entitled to claim any



infringement of IPR against the Customer for the use of any of the IPR licensed in clause 10.3; and

6.2.3 it shall comply with all applicable laws and regulations in the United Kingdom in performing its obligations under the Contract.

## **7 CHARGES AND PAYMENT**

7.1 The Customer shall pay the Fees in accordance with the Contract.

7.2 Details of the Fees and pricing shall be set out in the Service Specific Schedule(s) and the Order Form(s).

7.3 All amounts and Fees stated or referred to in these Terms, the applicable Service Specific Schedule(s) and/or in Order Forms are exclusive of value added tax, which shall be added and payable at the appropriate rate.

7.4 Acumen shall invoice the Customer in advance and all sums due are payable within 30 (thirty) days from the invoice date. Additionally, Acumen shall be entitled to invoice the Customer for any overages in arrears. Invoices shall be paid by direct debit on the day of invoicing and the Customer shall complete and return to Acumen appropriate direct debit forms. The Customer acknowledges that payments made by alternative methods may result in additional charges including bank and administrative fees.

7.5 If the Customer fails to make any payment due to Acumen under a Contract by the due date for payment, then, without limiting Acumen's remedies under clause 13, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a compound basis daily from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.6 Unless fixed Fees have been agreed in any Order Form, Acumen shall be entitled to increase the Fees for one or more of the following reasons:

7.6.1 to reflect changes in RPI (no more frequently than once per annum);

7.6.2 to reflect unforeseen increases in supplier or third-party costs; and/or

7.6.3 to account for any regulatory change that results in unforeseen costs to Acumen.

7.7 Acumen shall notify the Customer of such increase by giving the Customer not less than 30 days' written notice.

7.8 All amounts due under a Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 8 DATA PROTECTION

- 8.1 Both parties will comply with all requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace a party's obligations or rights under the applicable Data Protection Legislation.
- 8.2 Neither party shall perform its obligations under a Contract in such a way as to cause the other party to breach any of its applicable obligations under the applicable Data Protection Legislation.
- 8.3 The parties hereby acknowledge and agree that the type of Managed Services delivered will determine who is the Controller and who is the Processor.
- 8.4 Where the Customer is a Controller and Acumen is a Processor of any Personal Data disclosed by the Customer to Acumen for the purposes of a Contract and/or the Managed Services, then, without prejudice to clause 8.1:
- 8.4.1 Acumen shall use the Personal Data only for the purposes of fulfilling its obligations under the Contract and shall:
- (a) process that Personal Data only on the documented instructions of the Customer, including with regard to transfers of personal data to a third country or to an international organisation, unless Acumen is required by any applicable laws to otherwise process that Personal Data. Where Acumen is relying on any applicable laws as the basis for processing Personal Data, Acumen shall promptly notify the Customer of this before performing the processing required by the applicable laws unless those applicable laws prohibit Acumen from so notifying the Customer on important grounds of public interest. Acumen shall immediately inform the Customer if, in the opinion of Acumen, the instructions of the Customer infringe any Data Protection Legislation;
  - (b) implement and maintain appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Personal Data and against its accidental loss, damage or destruction. In assessing the appropriate level of security, Acumen shall take into account the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data transmitted, stored or otherwise processed;
  - (c) ensure, and procure that that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (d) promptly assist the Customer in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach

notifications, impact assessments and consultations with the Commissioner, Supervisory Authorities or other regulators and, in particular, Acumen shall promptly notify the Customer if it receives any complaint, notice or communication (whether from the Commissioner, any Data Subject, Supervisory Authority or other third party) which relates to processing of the Personal Data;

- (e) notify the Customer without undue delay (and no later than 48 hours) after becoming aware of a Personal Data Breach. Acumen will investigate any such Personal Data Breach and provide a report to the Customer setting out the results of such investigation as soon as reasonably practicable;
- (f) only transfer Personal Data to a third country or international organisation if a finding of adequacy has been made in respect of the relevant country or if Acumen has entered into contractual clauses which ensure a level of protection for personal data which is equivalent to the legal regime within the UK;
- (g) only appoint any sub-Processors to process the Personal Data after obtaining prior authorisation (such authorisation not to be unreasonably withheld or delayed) from the Customer. Acumen shall ensure such processing is governed by a contract or other legal act with obligations materially equivalent to those set out in the Contract and shall remain liable to the Customer for the performance of any sub-Processors;
- (h) at the written direction of the Customer, delete or return to the Customer all Personal Data on termination or expiry of the Contract, and certify to the Customer in writing it has done so, unless Acumen is required by any applicable law to continue to process that Personal Data, in which case Acumen shall promptly notify the Customer, in writing, of what that applicable law is and shall only be permitted to process that Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 8 shall continue to apply to such Personal Data notwithstanding the termination or expiry of the Contract for as long as such Personal Data is processed by Acumen; and
- (i) maintain complete and accurate records, and, on the Customer's reasonable request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor, to demonstrate its compliance with the Data Protection Legislation and this clause 8 no more frequently than once a year (unless such audit is being carried out as a result of an actual or suspected breach by Acumen of the Data Protection Legislation in which case there shall be no limit on the number of audits the Customer is entitled to conduct).

- 8.4.2 the Customer accepts and acknowledges that, in order to deliver the Managed Services effectively and/or to meet the requirements of a Contract, Acumen may, from time to time, need to transfer Personal Data to a third country or to an international organisation. Unless the Customer has informed Acumen otherwise in writing, the Customer hereby consents to any such transfers; and
- 8.4.3 the Customer warrants to Acumen that in order to disclose any Personal Data to Acumen and otherwise to allow Acumen to carry out its obligations under and incidental to a Contract, the Customer:
- (a) has all requisite authority and has obtained and will maintain (including by way of incorporating into all materials and processes through which Personal Data is captured) all necessary consents required, or otherwise has a valid lawful basis for such disclosure under the Data Protection Legislation;
  - (b) will immediately notify Acumen should any such consents be revoked, including where any Data Subjects exercise their right to object to the processing of their Personal Data by Acumen or its sub-Processors;
  - (c) has fully complied with all of its obligations under the Data Protection Legislation; and
  - (d) shall not do or omit to do anything that would place Acumen in breach of the Data Protection Legislation, the Computer Misuse Act 1990, the Regulation of Investigatory Powers Act 2000 or any other relevant laws.
- 8.5 Where the parties are each a Controller of any Personal Data disclosed by one party to the other party for the purposes of a Contract and/or the Managed Services, then, without prejudice to clause 8.1, each party shall:
- 8.5.1 process all Personal Data strictly in accordance with its privacy policy in the form it appears as at the commencement of the Managed Services, and shall notify the other party of any updates that are made to said privacy policy from time to time;
  - 8.5.2 ensure that the processing of Personal Data complies with all applicable laws, including the Data Protection Legislation, and in particular that all required fair processing information is provided to the relevant Data Subjects;
  - 8.5.3 ensure that it has all necessary notices and legal bases in place to enable lawful transfer and processing of the Personal Data;
  - 8.5.4 implement and ensure that it has in place appropriate technical and organisational measures to protect against unlawful or unauthorised processing of Personal Data and against its accidental loss, damage or destruction;

- 8.5.5 promptly inform the other party about the receipt of any Data Subject access request;
- 8.5.6 provide the other with reasonable assistance in complying with any Data Subject access request; and
- 8.5.7 provide reasonable assistance to the other party, at the cost of the other party, when responding to appropriate requests from a data subject and in ensuring compliance with its respective obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with Supervisory Authorities or regulators.

## 9 **CHANGE CONTROL**

- 9.1 If either party wishes to change the scope of the Managed Services (including Customer requests for additional services), it shall submit details of the requested change to the other party in writing.
- 9.2 The parties shall discuss the proposed change and such discussion shall result in either an agreement not to proceed, a written request for change from the Customer, or a recommendation for change by Acumen.
- 9.3 Following submission of a written request for change, Acumen shall, within a reasonable time, provide a written estimate to the Customer of:
  - 9.3.1 the likely time required to implement the change;
  - 9.3.2 any variations to the Fees arising from the change; and
  - 9.3.3 any other impact of the change on the terms and conditions of these Terms.
- 9.4 If Acumen requests a change to the scope of the Managed Services, the Customer shall not unreasonably withhold or delay consent to it.
- 9.5 For the avoidance of doubt, the process described in this clause shall not apply to changes made in accordance with 4.4.1 and 4.4.2.

## 10 **PROPRIETARY RIGHTS**

- 10.1 The Customer acknowledges and agrees that, as between the parties, and subject to clause 10.2 below, Acumen and/or its licensors own all IPR subsisting in and created from the provision of the Managed Services, including but not limited to that in the Deliverables and in all other materials connected with the Managed Services and/or developed or produced in connection with a Contract by Acumen, its officers, employees, sub-contractors or agents.
- 10.2 Acumen acknowledges and agrees that any IPR in the Customer Data, Customer Systems and the Third-Party Software shall remain vested in the owner of such IPR.

- 10.3 Acumen grants to the Customer non-transferable, non-exclusive, royalty-free, worldwide licence to such Acumen IPR as is incorporated by Acumen into the Managed Services and Deliverables solely for the purpose of enabling the Customer (and its permitted sub-licensees') to use the Managed Services and Deliverables in accordance with the Terms.
- 10.4 The Customer grants to Acumen a non-exclusive, non-transferable, royalty-free, worldwide licence to use the Customer Data, Customer IPR and any licence to access any third-party systems or data that form part of the Customer Data and are necessary for Acumen to deliver the Managed Services or otherwise fulfil Acumen's obligations under a Contract. Such licences shall terminate upon termination or expiry of the Contract.

## 11 **CONFIDENTIALITY**

- 11.1 Each party recognises that it may have access to or receive Confidential Information of the other.
- 11.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- 11.2.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under a Contract (**Permitted Purpose**); or
  - 11.2.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.
- 11.3 The provisions of this clause 11 shall not apply to any Confidential Information that:
- 11.3.1 is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
  - 11.3.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - 11.3.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - 11.3.4 was known to the receiving party before the information was disclosed to it by the disclosing party;
  - 11.3.5 the parties agree in writing is not confidential or may be disclosed; or
  - 11.3.6 the receiving party proves to the reasonable satisfaction of the disclosing party was developed by or for the receiving party independently of the information disclosed by the disclosing party.

- 11.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of these Terms.
- 11.5 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 11.5.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- 11.5.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 11.
- 11.6 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchange) or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Terms are granted to the other party or to be implied from these Terms.
- 11.8 Without the other's prior consent, neither the Customer nor Acumen shall make any public announcement that the Managed Services are being provided.
- 11.9 The provisions of this clause 11 shall continue to apply after expiry or termination of any Contract for any reason.

## 12 **LIMITATION OF LIABILITY**

- 12.1 If Acumen fails to comply with any of its obligations under any Contract, the Customer shall give Acumen a reasonably opportunity to comply with its obligations.
- 12.2 Nothing in these Terms excludes or limits either party's liability for:
- 12.2.1 death or personal injury caused by its negligence;
- 12.2.2 fraud or fraudulent misrepresentation; or
- 12.2.3 any other liability which cannot lawfully be excluded or limited.
- 12.3 Except as provided in clause 12.2, Acumen shall not be liable to the Customer for any:

- 12.3.1 losses, claims, demands, actions, costs, expenses or liabilities arising from, or in connection with, any materials and/or instructions supplied by, or on behalf of, the Customer which are incomplete, incorrect, inaccurate, illegible or defective in any other way;
- 12.3.2 loss of actual or anticipated profits, or revenue;
- 12.3.3 loss of business or contracts;
- 12.3.4 loss, deletion, corruption or damage to data and/or undertaking the restoration and/or recovery of data or software restoration;
- 12.3.5 loss or depletion of goodwill, or damage to reputation; or
- 12.3.6 special, indirect or consequential damages,

and each such liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, clauses 12.3.1 to 12.3.6 apply whether such damage is direct, indirect, consequential or otherwise.

- 12.4 Except as provided in clause 12.2, but subject to clause 12.3 and any exclusions contained in the Service Specific Schedule(s), Acumen's total aggregate liability to the Customer arising in connection with the performance or contemplated performance of the Managed Services (including without prejudice in contract, delict/tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise) shall be limited to the Fees paid by the Customer for the relevant Managed Services during the 12 months preceding the date on which the claim arose.
- 12.5 For the avoidance of doubt, the liability limitation detailed at clause 12.4 shall apply to any and all liabilities that may arise pursuant to any Contract and any Order Form entered into by the parties.
- 12.6 Acumen shall not be liable for failure of any software (including Third Party Software), Customer Site equipment, or the existing Customer Systems.

## 13 **TERM AND TERMINATION**

- 13.1 Acumen reserves the right to immediately suspend, delay or withdraw from the Managed Services without notice if, in its opinion (acting reasonably), information required for satisfactory completion of the Managed Services and requested by Acumen in writing is either not promptly provided or is inaccurate or inadequate, provided that the Customer has been given (where reasonably possible) not less than 10 Business Days' notice of Acumen's intention to suspend, delay or withdraw and the Customer has failed to remedy the failure within such period.
- 13.2 A Contract may be terminated immediately by notice in writing:



- 13.2.1 by Acumen if the Customer fails to pay any sums due under the Contract before the expiry of a period of 20 Business Days from receipt by the Customer of a notice from Acumen advising that such sums are overdue, without prejudice to any other provisions relating to late payment in these Terms;
  - 13.2.2 by either party if the other party is in material or continuing breach of any of its obligations under the Contract and fails to remedy the breach (if capable of remedy) for a period of 20 Business Days after written notice of such breach;
  - 13.2.3 by either party if the other party ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily or shall suffer any analogous event under any jurisdiction which it is subject to;
  - 13.2.4 by either party if the other party breaches any of the terms of clause 11; and
  - 13.2.5 by either party in accordance with clause 14.
- 13.3 On expiry or termination of a Contract for any reason:
- 13.3.1 Acumen shall immediately cease provision of the relevant Managed Services but may agree to provide transitional services at Acumen's entire discretion at its then current rates;
  - 13.3.2 the Customer shall pay to Acumen a reasonable sum in respect of any work undertaken prior to expiry or termination but for which Fees have not yet become due; and
  - 13.3.3 if Acumen receives, no later than 10 Business Days after the effective date of the expiry or termination of the relevant Managed Services for any reason, a written request for the delivery to the Customer of the most recent backup of the Customer Data and such request is, where relevant, in accordance with any data processing agreement entered into by the parties, Acumen shall use reasonable endeavours to deliver the backup to the Customer within 20 Business Days of its receipt of such a written request in the format stored or in a format as otherwise reasonably requested by the Customer, provided that the Customer has at that time paid all Fees and charges outstanding at (and including any resulting from) expiry or termination (whether or not due at the date of expiry or termination). Once such period has expired or Acumen has, at the Customer's request, delivered to the Customer the most recent backup of the Customer Data (as applicable), Acumen shall promptly expunge from Acumen's systems and otherwise destroy or dispose of the Customer

Data relating to the relevant Managed Services in its possession or control. The Customer shall pay all costs and expenses incurred by Acumen in returning and disposing of Customer Data and expunging it from Acumen's systems.

13.4 If a party is required by any law, regulation, or government or regulatory body (**Regulatory Requirement**) to retain any documents or materials which it would otherwise be obliged to return or destroy under clause 13.3.3, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 11 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.

13.5 Acumen shall be considered to have satisfied its obligation to "expunge" or "destroy" or "dispose" of any electronic data, for the purposes of clause 13.3.3, where it puts such electronic data beyond use.

#### 14 **SURVIVAL**

14.1 Termination of any Order Form shall not affect any other Order Forms.

14.2 Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination of a Contract shall remain in full force and effect.

14.3 Termination of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of a Contract which existed at or before the date of termination or expiry.

#### 15 **FORCE MAJEURE**

Neither party shall have any liability to the other under these Terms if it is prevented from, or delayed in, performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, or otherwise exercising the level of diligence that could reasonably have been expected of it, including strikes, lock-outs or other industrial disputes (including any industrial disputes involving the workforce of Acumen), act of God, pandemic or epidemic, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a Force Majeure Event), provided that the other party is notified of such an event and its expected duration; and it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned and that if the period of delay or non-performance continues for 12 weeks or more, the party not affected may terminate these Terms by giving not less than 20 Business Days' written notice to the other party.

#### 16 **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or

restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **17 SEVERANCE**

17.1 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms.

17.2 If any provision or part-provision of these Terms is deemed deleted under clause 17.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **18 ENTIRE AGREEMENT AND VARIATION**

18.1 The Terms together with all Order Forms and all Service Specific Schedules constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

18.2 All other terms and conditions express or implied by statute or otherwise are excluded to the fullest extent permitted by law.

18.3 Each party acknowledges that in agreeing to these Terms, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms, any Order Form or any Service Specific Schedules.

18.4 No variation of a Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **19 ASSIGNATION**

19.1 Acumen may at any time assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under a Contract without the consent of the Customer.

19.2 The Customer shall not, without the prior written consent of Acumen, assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights or obligations under a Contract.

## 20 **NO PARTNERSHIP OR AGENCY**

20.1 Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party nor authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 21 **THIRD PARTY RIGHTS**

Unless it expressly states otherwise, a Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise involve any Terms.

## 22 **RIGHTS AND REMEDIES**

Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

## 23 **NOTICES**

23.1 Any notice or other communication required to be given to a party under or in connection with a Contract shall be in writing and shall be:

23.1.1 delivered by hand or by pre-paid first class post or other next Business Day delivery service at its registered office; or

23.1.2 sent by e-mail to the e-mail address of a party specified for such purposes.

23.2 Any notice or communication shall be deemed to have been received, if:

23.2.1 delivered by hand, on signature of a delivery receipt;

23.2.2 sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the third Business Day after posting;

23.2.3 sent by email, at 9.00 am on the next Business Day after transmission.

23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 24 **DISPUTE RESOLUTION**

24.1 If a dispute arises under or in connection with a Contract (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such

Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 24.

24.2 If the parties are unable to resolve the Dispute within 20 Business Days of delivery of the Dispute Notice, each party shall promptly (and in any event within 5 Business Days):

24.2.1 appoint a representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of the Contract (**Designated Representative**); and

24.2.2 notify the other party of the name and contact information of its Designated Representative.

24.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).

24.4 If the parties are unable to resolve the Dispute within 20 Business Days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.

24.5 Notwithstanding any other provision of these Terms, a party may commence court proceedings where damages would be an inadequate remedy.

## 25 **GOVERNING LAW AND JURISDICTION**

25.1 A Contract and any Dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.

25.2 Subject to clause 24, each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any Dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).

## SERVICE SPECIFIC SCHEDULE

### MXDR SaaS, Cloud and Infrastructure Services

#### 1 Service description

The continuous monitoring of Customer SaaS, cloud and infrastructure platforms and the subsequent investigation of security alerts by Acumen Security Analysts, with the intent to prevent or contain malicious activity on the Customer's digital assets (the "**SCI Services**").

The key service elements of the SCI Services are as follows:

- The correlation of events and activities across Customer Systems, providing complete end to end visibility of a cyber-attack.
- 24/7 monitoring, and investigation of alerts generated by the Acumen SIEM.
- Persistent forensic data retention, allowing for extended digital forensic and incident response capabilities and the support of compliance reporting.
- The configuration and management of the underlying SIEM platform.
- Provision of incident reports to the Customer, detailing the findings, conclusions, recommendations, and actions taken by Acumen Security Analysts to protect the Customer Systems.
- The Acumen SIEM Platform uses a combination of vendor provided threat intelligence, machine learning, artificial intelligence and behavioural analysis to identify malicious activity in the Customer's environment and generate subsequent alerts for the attention of Acumen Security Analysts.

#### 2 Fees and pricing

The pricing will be calculated by one of the following pricing models, as specified in the Order Form:

Charged per user at a fixed fee.

Charged per asset at a fixed fee.

Charged per events per second based on the 95<sup>th</sup> percentile calculation.

Charged per Gigabytes per day (GB/Day) based on the 95<sup>th</sup> percentile calculation.

This 95<sup>th</sup> *percentile* is the highest value left when the top 5% of a numerically sorted set of collected data is discarded

### **Fair Usage Policy**

[Fees are calculated on the assumption that the events per second (**EPS**) shall be capped at 2 per user. Any additional “virtual” users will be billed in addition. An example below:

10 users at 1 EPS each = 10 users per month billed

10 users at 2 EPS each = 10 users per month billed

10 users at 3 EPS each = 15 users per month billed

### 3 Service Levels

<b>Severity level of default</b>	<b>Definition</b>	<b>Response time</b>
Critical	An event causing immediate, severe jeopardy to core operations or data, necessitating urgent remediation to avert substantial financial, reputational, or legal harm.	1 hour
High	An event significantly impairing operational capabilities or data security, demanding swift action to prevent major financial or legal consequences.	2 hours
Medium	An event with moderate adverse effects on operations or data security, requiring timely intervention to limit legal and financial exposure.	8 hours
Low	An event of minimal disruption, manageable through standard procedures without	24 hours

	immediate threat to financial or legal standing.	
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#### 4 Service-specific terms and conditions

##### 4.1 Definitions

4.1.1 “**SCI Services**” shall have the meaning set out in paragraph 1 of this Part 1 of the Schedule.

4.1.2 “**SCI Software**” means the intrusion detection software (whether (a) owned by Acumen or its Representatives, or (b) any Third-Party Software) installed and provided by Acumen to the Customer for the purposes of the SCI Services.

##### 4.2 SCI Software

4.2.1 Acumen shall, upon request, provide remote only support services in connection with the installation and configuration of the SCI Software, subject to the payment of additional charges where applicable.

4.2.2 Acumen may at its absolute discretion suspend the Customer’s access to the SCI Software at any time if the Customer uses the SCI Software in breach of this Agreement or the applicable acceptable use policy.

##### 4.3 Data

4.3.1 The Customer shall take such measures to ensure that the network traffic does not exceed such level as stated in paragraph [3] above. In the event that the network traffic does exceed such agreed levels, Acumen shall not be required to provide any Managed Services in respect of the excess network traffic nor be responsible for monitoring the same unless agreed otherwise in writing.

4.3.2 Acumen shall not be responsible for any loss, destruction or unlawful disclosure of any data captured and stored within the SCI Software (i) while it is at the Customer Site and (ii) during such period of transit from the Customer Site to Acumen.

4.3.3 Acumen shall return or permanently erase (as instructed by the Customer in writing) the data captured and stored within the SCI Software as part of the SCI Services as soon as is reasonably practicable upon expiry or termination of this Agreement and/or the SCI Services (as applicable). Acumen shall be permitted to permanently erase the data without any liability to the Customer (and the Customer shall grant Acumen remote access to the Customer Systems for the purposes of so doing) unless the Customer provides written notice to Acumen confirming that the data is to be



returned to the Customer within ten (10) Business Days of expiry or termination of the Agreement or the SCI Services (whichever is earlier).

## SERVICE SPECIFIC SCHEDULE – MXDR ENDPOINT SERVICES

### 1 Service description

The continuous monitoring of Endpoints (as defined below) and the subsequent investigation of security alerts by Acumen Security Analysts, with the intent to prevent or contain malicious activity on Endpoints. (the “**MXDR Endpoint Services**”).

The key elements of the MXDR Endpoint Services are as follows:

- 24/7 monitoring, and investigation of alerts generated by the Endpoint Detection and Response Platform (as defined below).
- The configuration and management of the underlying Endpoint Detection and Response platform.
- Provision of incident reports to the Customer, detailing the findings, conclusions, recommendations, and actions taken by Acumen Security Analysts to protect the Customer’s Endpoints.
- The Endpoint Detection and Response Platform uses a combination of vendor provided threat intelligence, machine learning and behavioural analysis to identify malicious activity on the Customer’s Endpoints and generate subsequent alerts for the attention of Acumen Security Analysts.

### 2 Fees and pricing

2.1 Pricing will be calculated per Asset (meaning a laptop, desktop or server)

2.2 Unless otherwise agreed in writing, billing for the MXDR Endpoint Services will commence either after ninety percent of the devices are onboarded, or after four weeks from the Commencement Date, whichever occurs earlier.

### 3 Service Levels

Severity level of default	Definition	Response time
Critical	An event causing immediate, severe jeopardy to core operations or data, necessitating urgent remediation to avert substantial financial,	1 hour

	reputational, or legal harm.	
High	An event significantly impairing operational capabilities or data security, demanding swift action to prevent major financial or legal consequences.	2 hours
Medium	An event with moderate adverse effects on operations or data security, requiring timely intervention to limit legal and financial exposure.	8 hours
Low	An event of minimal disruption, manageable through standard procedures without immediate threat to financial or legal standing.	24 hours

#### 4 Service-specific terms and conditions

##### 4.1 Definitions:

- 4.1.1 **“Endpoint Agents”** mean third party sensor software used to collect telemetry data from the Endpoints and to communicate such data to the Endpoint Detection and Response Platform;
- 4.1.2 **“Endpoint Software”** means third party end point detection technology, which comprises Endpoint Agents and the Endpoint Detection and Response Platform;
- 4.1.3 **“Endpoint Detection and Response Platform”** means a third party cloud based management platform used to collect telemetry data from the Endpoints in one central repository;
- 4.1.4 **“Endpoints”** means the computer devices on which the Endpoint Agents are installed, including but not limited to, laptops, desktops, tablets and servers;

- 4.1.5 “**MXDR Endpoint Services**” shall have the meaning set out in paragraph 1 of this Part 2 of the Schedule; and
- 4.1.6 “**Site(s)**” means the location(s) which the Customer has agreed with Acumen in writing that the Endpoint Agents will be installed.

## 4.2 Customer’s Duties

- 4.2.1 The Customer shall correctly install and configure the Endpoint Agents to the Customer Systems at the Site(s) in accordance with Acumen’s instructions. Acumen shall provide reasonable remote assistance in respect of such installation and configuration.
- 4.2.2 Upon expiry or termination of the Agreement, the Customer shall immediately cease use of the Endpoint Agents and shall confirm in writing to Acumen that it has done so.
- 4.2.3 On an ongoing basis for the duration of the Agreement, the Customer shall provide Acumen with all relevant: (i) details of; and (ii) access credentials and user rights in connection with, the Endpoint Software, as requested by Acumen to enable it to perform the MXDR Endpoint Services.
- 4.2.4 The Customer shall procure and maintain appropriate licences to the Endpoint Software for the term of the Agreement to enable Acumen to perform the MXDR Endpoint Services. For the avoidance of doubt, where the Customer has procured, or will procure, the Endpoint Software directly (and not from or via Acumen), Acumen has no responsibility for the performance or operation of the same and shall not be liable for any breach of the Agreement to the extent that it was caused (directly or indirectly) by the Customer’s failure to comply with this paragraph 4.
- 4.2.5 The Customer confirms that it has obtained all necessary consents in respect of the Endpoint Software to enable Acumen to carry out the MXDR Endpoint Services including but not limited to the consent of any relevant third party service providers and/or third party software vendors.

This is the Service Specific Schedule referred to in the foregoing Terms between Acumen Cyber Ltd and [CUSTOMER] dated [DATE].

## SERVICE SPECIFIC SCHEDULE

### MANAGED CONTINUOUS VULNERABILITY MONITORING SERVICES

#### 1 Service description

The scheduled or continuous scanning, assessment, prioritisation and reporting of system vulnerabilities in a Customer Systems, with a view to reducing the Customer's risk exposure to cyber attacks (the "**CVM Services**").

The key elements of the CVM Services are:

- Continuous agent-based scanning: providing round the clock updates on high-risk devices.
- News bulletin: highlighting the latest high-risk vulnerabilities that may affect the Customer and recommended actions.
- The configuration and management of the underlying scanning platform.
- Provision of monthly and weekly Risk Reports (as defined below), providing a risk based, prioritised analysis of vulnerabilities within the Customer Systems.
- Provision of patching and workaround recommendations as and when required.

#### 2 Fees and pricing

##### 2.1 Pricing will be calculated per Asset (meaning a laptop, desktop or server).

#### 3 Service-specific terms and conditions

##### 3.1 Definitions:

- 3.1.1 "**CVM Services**" shall have the meaning set out in paragraph 1 of this Part 5 of the Schedule;
- 3.1.2 "**CVMS Data Feeds**" means those published databases of vulnerabilities specified in paragraph 1 above;
- 3.1.3 "**Good Industry Practice**" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in providing services of the same kind as the Managed Services; and

- 3.1.4     **“Risk Reports”** means the periodic reports produced by Acumen outlining the results of the network vulnerability infrastructure scans undertaken as part of the CVM Services.

## 3.2     Acumen Duties

- 3.2.1     Acumen will use reasonable efforts to ensure the CVM Services are provided at the agreed frequency without any interruptions and that the information provided is accurate and up to date. However, from time to time the Customer may experience disruptions or receive inaccurate information due to circumstances beyond Acumen’s control for which Acumen shall not be liable, for example a lack of availability of the backbone internet infrastructure in the UK or other locations or for data provided by third parties on a scheduled basis (such as zone files and newly registered domains provided by registrars) that is not yet accessible by Acumen. Acumen may also need to perform maintenance of its own hardware and software, which may interrupt provision of the Managed Services. Acumen will endeavour to execute such maintenance with the minimum of disruption to the CVM Services and will, where feasible, provide prior notice to the Customer.
- 3.2.2     Whilst Acumen will use reasonable endeavours to avoid disruption to the Customer’s network, disruption to the Customer Systems and/or possible loss of or corruption to data and/or software may occur.
- 3.2.3     The Customer acknowledges that there is a risk that the CVM Services may lead to the loss or corruption of the Customer’s data and/or Personal Data affected by such Managed Service(s) offering(s), and that the same is an inherent risk of CVM Services even when performed in accordance with Good Industry Practice. Subject to clause 12.3 of the Terms, Acumen will not be liable for any such loss of data.

## 3.3     Customer Duties

- 3.3.1     The Customer shall properly and fully back-up all data and copies of all computer programs and data which are held immediately prior to commencement of the CVM Services, and which may be affected by the provision of the CVM Services and, where appropriate, make back-ups not less than daily to enable straightforward recovery and/or reinstatement of any and all data and/or computer programs lost or damaged (whether in whole or part) through performance of the CVM Services.
- 3.3.2     The Customer shall notify Acumen in writing in advance or as soon as possible after becoming aware of any periods during which Acumen should not perform the CVM Services or should cease performing the CVM Services due to critical business processes (such as batch runs) or if any part of the Customer System is business critical to enable Acumen to modify its testing approach if necessary, with the Customer’s consent.

- 3.3.3 The Customer shall use any software and/or hardware which Acumen supplies to the Customer as part of the CVM Services for lawful purposes, solely to the extent necessary to receive the benefit of the CVM Services and in accordance with any applicable licence terms and Acumen's instructions provided from time to time.
- 3.3.4 The Customer consents to Acumen performing the CVM Services and confirms that it has procured, where necessary, the consent of all its third party service providers, relevant third party software vendors and equipment owners, employees, agents and sub-contractors to Acumen carrying out the CVM Services. Such consent includes authorisation for the purposes of Section 3 of the Computer Misuse Act 1990 that Acumen and its employees, agents and sub-contractors may perform CVM Services which may:
- (a) impair the operation of the Customer Systems;
  - (b) hinder access to the Customer Systems; and
  - (c) impair the operation of any program and/or the reliability of any data relating to the Customer Systems.
- 3.3.5 The Customer shall ensure there is sufficient bandwidth to enable Acumen to perform the CVM Services.