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1. DEFINITIONS AND INTERPRETATION

- 1.1 WORDS AND PHRASES WITH CAPITAL LETTERS USED IN THIS AGREEMENT AND NOT OTHERWISE DEFINED SHALL HAVE THE MEANINGS SET OUT IN **SCHEDULE 1 (DEFINITIONS)** OR **ANNEX 1** OF THE APPLICABLE **SERVICE SCHEDULE**.
- 1.2 IN THIS AGREEMENT, HEADINGS AND BOLD TYPE ARE FOR CONVENIENCE OF REFERENCE ONLY AND ARE NOT INTENDED TO BE PART OF OR TO AFFECT THE MEANING OR INTERPRETATION OF THIS AGREEMENT, UNLESS THE CONTEXT OTHERWISE REQUIRES.
- 1.3 WORDS DENOTING THE SINGULAR SHALL INCLUDE THE PLURAL AND VICE VERSA AND WORDS DENOTING ANY GENDER SHALL INCLUDE ALL GENDERS, AND THE TERM '**INCLUDE(S)**', '**INCLUDING**' OR '**IN PARTICULAR**' ARE DEEMED TO HAVE THE WORDS '**WITHOUT LIMITATION**' FOLLOWING THEM.
- 1.4 IN THE CASE OF CONFLICT OR AMBIGUITY, THE ORDER OF PRECEDENCE FOR THIS AGREEMENT AND ANY DOCUMENTS ATTACHED TO OR REFERRED TO IN IT WILL BE AS FOLLOWS, IN DESCENDING ORDER OF IMPORTANCE:
- 1.4.1 THE **CONTRACT ("ORDER")**;
- 1.4.2 THE **SOW** (WHERE APPLICABLE);
- 1.4.3 ANY **SERVICE SCHEDULE(S)** (WHERE APPLICABLE);
- 1.4.4 ANY ADDITIONAL AND/OR THIRD PARTY OR LICENSE TERMS AND CONDITIONS RELATING TO SPECIFIC SERVICES (WHERE APPLICABLE AS PER THE **SCHEDULE**);
- 1.4.5 THESE **GENERAL CONDITIONS**;
- 1.4.6 THE **TARIFFS** (WHERE APPLICABLE); AND
- TOGETHER, THESE DOCUMENTS SET FORTH THE AGREEMENT BETWEEN THE CUSTOMER AND THE SUPPLIER. ALL TERMS AND CONDITIONS ARE AVAILABLE AT https://app.cyberlab.co.uk/terms_conditions/.
- THE SUPPLIER AGREES TO FULFIL THE ORDER IN ACCORDANCE WITH ITS TERMS AND CONDITIONS REFERRED TO ABOVE TO THE EXCLUSION OF ALL OTHER TERMS AND CONDITIONS, INCLUDING ANY TERMS COMMUNICATED TO THE SUPPLIER AT ANY TIME PRIOR TO, WITH OR AFTER ACCEPTANCE OF THE ORDER. WHERE THE CUSTOMER PROVIDES THE SUPPLIER WITH A PURCHASE ORDER IN RESPECT OF THE SERVICES STATED ON THE ORDER, THE CUSTOMER WILL BE DEEMED TO HAVE ACCEPTED THE ORDER AND THE APPLICABLE TERMS AND CONDITIONS OF THE SUPPLIER TO THE EXCLUSION OF ALL OTHERS IN THE SAME WAY IT WOULD HAD THE CUSTOMER SIGNED THE ORDER.

2. COMMENCEMENT

- 2.1 Subject to the terms of the applicable **Service Schedule**, site survey and credit check by the Supplier, the Agreement shall become effective on the date the **Order** is accepted by the Customer, whether by e-signature or otherwise.

3. HARDWARE

- 3.1 The quantity, quality and description of and any specification for the Hardware shall be those as further described in the Order or Third-Party Suppliers and/or manufacturers technical and operational instructions as may be amended from time to time.
- 3.2 The Supplier shall use commercially reasonable endeavours to deliver the Hardware to the Customer on the date and to the address specified in the Order, if no date is specified, within a

reasonable period from the date of this Agreement. However, time shall not be of essence in respect of any delivery of Hardware.

- 3.3 Risk in and liability for the Hardware shall pass to the Customer on delivery of each item thereof, however title to the Hardware shall not pass to the Customer until the Customer has paid the Supplier in full for the Hardware.
- 3.4 The Supplier shall warrant that upon delivery and for a period of twelve (12) months from the date of delivery "**Warranty Period**" the Hardware shall:
- 3.4.1 conform in all material respects with the description
- 3.4.2 be free from material defects in design, material and workmanship; and
- 3.4.3 be of satisfactory quality
- where additional warranties are provided by Third-Party Suppliers and/or manufacturers of the Hardware, the Supplier shall use reasonable endeavours to notify the Customer as soon as reasonably practicable.
- 3.5 The Customer shall be responsible for installing and supporting the Hardware, unless otherwise specified in the Order or where installation and support is provided by way of Professional Services or Support Services being provided by the Supplier and the Supplier shall not be liable for any loss or damage caused by or repairs required because of, installation or misuse of, or damage to any Hardware.
- 3.6 The Customer hereby agrees that it shall maintain the Hardware in good operating condition, subject to normal wear and tear and shall undertake repairs and preventative maintenance on the Hardware in accordance with the manufacturer's instructions, including warranty terms and conditions, to maintain the Hardware to its published specifications, unless otherwise included in **Service Schedules** which are being provided by the Supplier.

4. SERVICES

- 4.1 The Supplier shall with effect from the **Commencement Date** provide to the Customer the **Services** set out in the **Order** as further detailed in the **Service Schedules** for the duration of any applicable **Minimum Term** and any **Successive Term**. Use of the Services or payment of the **Services** is deemed as acceptance of the terms of this Agreement.

5. THE PARTIES OBLIGATIONS

- 5.1 The Supplier shall provide the Services in accordance with the terms of this Agreement and the Services will be performed:
- 5.1.1 with all due skill, care and diligence;
- 5.1.2 in compliance with the Service Levels and Good Industry Practice; and
- 5.1.3 so as to conform with all Applicable Law relating to the provision of the Services.
- 5.2 The Supplier will not be liable under this clause 5 or be required to remedy any problem arising from or caused by the Customer's use of the Services in a manner other than in accordance with this Agreement or as directed by the Supplier.
- 5.3 The Supplier does not warrant, guarantee, or represent that the Services will be continuously available or free from errors and interruptions and the Supplier may be dependent upon Third-Party Suppliers when providing the Service.
- 5.4 Notwithstanding any other provisions of this Agreement but subject to clause 10.2, the Supplier shall not be liable to the Customer in contract, tort (including negligence) or otherwise

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for the actions of any Third-Party Supplier that affect or otherwise impact upon the provision of the Services.

5.5 The Customer shall be responsible for the safe keeping and proper use of the Services and Equipment and the Customer undertakes in particular:

5.5.1 to use the Services in accordance with the terms of this Agreement, manufacturers recommendations and any reasonable operating instructions as may be notified to the Customer by the Supplier from time to time;

5.5.2 to comply with Applicable Law and Good Industry Practice;

5.5.3 not to use the Services fraudulently or in connection with a criminal offence or in any way that is unlawful;

5.5.4 at its own expense, obtain all relevant licences, permissions, authorisations, registrations and approvals required in connection with or necessary for the use of the Services from the appropriate legislative, regulatory or advisory body and shall provide copies of the same upon reasonable request.

5.6 The Customer acknowledges and agrees that it is the sole responsibility of the Customer to set up and maintain appropriate security measures for use of the Services and/or Equipment, including but not limited to:

5.6.1 protecting all passwords and mitigating exposure to any suspected or known security breach by resetting passwords, requesting that accounts are disabled and reporting incidents to the Supplier;

5.6.2 maintaining security and confidentiality of authentication details for online service portals and other services;

5.6.3 employing security devices, including virus checking software;

5.6.4 adequate resilience to protect against loss or connectivity of Services, such as backing up all data, disaster recovery procedures and appropriate power supply; and

5.6.5 secure implementation and management of the Customer's systems including any Customer Equipment to identify and mitigate exposure to theft, fraud and/or deception.

5.7 Where the Customer is or becomes aware of any matters which it knows or ought reasonably to be expected to know constitutes a threat or breach of security, theft, fraud and/or deception (whether actual or attempted) in relation to the use of the Services and/or Equipment, the Customer will immediately advise the Supplier of such matters and where necessary shall report such incidents to the Police.

6 SERVICE LIMITATIONS

6.1 If any element of the Services is provided over MyPortal or any Third-Party Supplier portal or contact platform the following terms shall apply:

6.1.1 the Customer acknowledges that neither the internet nor the server through which the Supplier and/or Third-Party Suppliers provide the internet enables elements of the Services are secure;

6.1.2 the Supplier shall use reasonable endeavours to keep the internet enabled elements of the Services secure, however the Supplier cannot guarantee the security or privacy of the information available through such elements; and

6.1.3 any Software or Documentation provided by the Supplier in connection with the provision of the Services shall be subject to the provisions these General Conditions and any applicable **Service Schedule** and terms and conditions referenced within the **Service Schedule**.

6.2 The Supplier and/or a Third-Party Supplier shall be entitled to modify MyPortal or any other portal or contact platform element of the Services from time to time if the Supplier considers such modification and/or replacement is reasonably necessary for the continued provision of the Services.

6.3 THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT:

6.3.1 THE SUPPLIER CANNOT GUARANTEE AND DOES NOT WARRANT THAT THE SERVICES WILL BE FREE FROM INTERRUPTIONS OR WILL BE FREE FROM SERVICE FAULTS;

6.3.2 THERE MAY BE DEGRADATIONS OF THE QUALITY OF THE SERVICE DUE TO MATTERS BEYOND THE REASONABLE CONTROL OF THE SUPPLIER; AND

6.3.3 THE SUPPLIER MAY CHANGE THE TECHNICAL SPECIFICATION OF THE SERVICES OR INTERRUPT THE SERVICES TO MAINTAIN THE QUALITY OF THE SERVICES, FOR OPERATIONAL OR HEALTH AND SAFETY REASONS, OR WHERE THERE IS AN EMERGENCY.

6.4 THE SUPPLIER SHALL USE REASONABLE ENDEAVOURS TO KEEP SUCH RESTRICTIONS AND/OR LIMITATIONS TO A MINIMUM AND SHALL USE COMMERCIALY REASONABLE ENDEAVOURS TO NOTIFY THE CUSTOMER IN ADVANCE OF SUCH RESTRICTIONS AND/OR LIMITATIONS, HOWEVER THE SUPPLIER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE INCURRED BY THE CUSTOMER SHOULD THE SERVICES BE INTERRUPTED OR RESTRICTED FROM TIME TO TIME.

7 CHARGES AND PAYMENT

7.1 **Reseller Purchases.** If Customer purchases the Services through one of the Supplier's preferred partner resellers ("**Reseller**"), all payment-related terms (including, but not limited to, pricing, invoicing, billing, payment methods, and late payment charges) ("**Payment Provisions**") will be set forth in Customer's agreement directly with such Reseller and such payment-related terms will supersede any conflicting terms set-out in this Agreement. The Supplier may suspend or terminate Customer's access to the Services in the event of non-payment of the applicable fees to the Supplier by the Reseller due to Customer's non-payment. Notwithstanding anything to the contrary, the agreement between Customer and a Reseller: (i) shall not modify any of the terms of this Agreement other than the Payment Provisions and (ii) is not binding on the Supplier.

7.2 The Charges for the Services and/or Hardware will be invoiced in accordance with the **Order** and **Services Schedules**, and as varied pursuant to the terms of this Agreement. Where Charges are not stated within the Order, the Supplier will invoice Charges for the Services in accordance with the **Tariff** applicable from time to time.

7.3 Unless otherwise stated in the **Order**, **SOW** or **Service Schedule**, the Customer shall pay, by direct debit, each undisputed invoice (or such undisputed part thereof) within seven (7) days of the date of the invoice without any set-off or deduction.

7.4 All amounts payable by the Customer under this Agreement are exclusive of value added tax, which the Customer shall be additionally liable to pay the Supplier.

7.5 The Customer acknowledges and agrees that where the Services (or any part thereof, including each Site) are being

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upgraded or replaced with a different Service, the Supplier shall reserve the right to invoices for both the existing Services, where they remain Connected as well as the new Services from their Commencement Date.

- 7.6 Subject to clause 7.18, the Customer agrees to pay the Supplier in full, without any set-off, counterclaim or deduction, all sums due to the Supplier under this Agreement.
- 7.7 The Customer may request a paper invoice or an alternative payment method to direct debit, subject to payment of a reasonable administration fee. Invoices paid by credit card shall incur an additional charge of 1.8% of the payment value.
- 7.8 The Customer acknowledges and agrees that the Supplier can vary the amount, frequency, and time of any direct debit to such level as the Supplier deems reasonably appropriate to:
- 7.8.1 take account of either an increase or decrease in the provision of the Services;
 - 7.8.2 to reduce such indebtedness of the Customer to the Supplier, and/or;
 - 7.8.3 such other operational matter effecting the Service as the Supplier shall in its discretion deem reasonable.
- 7.9 The Supplier shall notify the Customer of such variation by giving not less than five (5) Working Days written notice, such notice to be given either on the invoice or on <https://cyberlab.co.uk> and continued use of the Service is deemed acceptance of the variation.
- 7.10 THE SUPPLIER MAY VARY THE CHARGES AT ANY TIME BY NOTIFYING THE CUSTOMER BY POST, EMAIL, ON THE CUSTOMER PORTAL, ON THE CUSTOMER'S INVOICE OR ON WWW.CYBERLAB.CO.UK AND THE REVISED CHARGES WILL APPLY TO ALL SERVICES PROVIDED THIRTY (30) DAYS AFTER THE EFFECTIVE DATE OF THE NOTICE.
- 7.11 The Supplier may invoice the Customer for any Services used under this Agreement at any time following the date on which the Services were used.
- 7.12 The Charges payable shall be calculated by reference to data recorded by the Supplier or its Third-Party Supplier and not by reference to any data recorded by the Customer. The Supplier shall be entitled to estimate the Charges where relevant data is not available to the Supplier in a timely manner and such estimated Charges will be reconciled on a subsequent invoice.

CREDIT LIMIT/SECURITY

- 7.13 The Supplier may carry out a credit check on the Customer at any time, prior to the Customer and Supplier entering into this Agreement, and throughout the term of this Agreement where there is:
- 7.13.1 a material adverse change in the financial position of the Customer; or
 - 7.13.2 recent or subsequent non-payment or partial non-payment.
- 7.14 The Supplier may impose a Credit Limit on a Customer's account proportionate to the amount of Charges payable under this Agreement and/or require the Customer to pay a deposit or other form of security as a condition in providing the Services and/or Equipment.
- 7.15 The Supplier may amend any Credit Limit imposed without prior notice to the Customer and if the Customer exceeds such Credit Limit the Supplier may demand immediate payment of all unpaid Charges, whether invoiced or not. The Customer shall remain responsible for all Charges incurred including those exceeding the Credit Limit.
- 7.16 The Customer acknowledges and accepts that the Supplier may share payment history information with third party credit agencies and by entering into this Agreement hereby provides

the authorisation necessary for the Supplier to use payment history information for this purpose.

DISPUTES

- 7.17 If the Customer in good faith disputes the Charges, the Customer shall give written notice to the Supplier of the amount in dispute and the reason for the dispute within seven (7) days from receipt of the invoice, prior to the Customer not paying any amount to the Supplier. Notwithstanding any dispute raised, the Customer must make payment of the undisputed part of the invoice in accordance with this clause 7.
- 7.18 Any rectification or amendment of such disputed Charges already paid are limited to six (6) months prior to the written notice being received and remains at Supplier's sole discretion not to be unreasonably withheld.
- 7.19 Notice under clause 7.18 must be received prior to the Customer not paying any amounts due to the Supplier, failure of which shall be deemed a material breach of this Agreement and clause 9.1.1 shall apply, together with clause 7.21 in respect of the entire balance.

REMEDY FOR NON-PAYMENT

- 7.20 Without limiting any other right or remedy of the Supplier:
- 7.20.1 if the Customer fails to make any payment due to the Supplier by the due date, the Supplier has the right to charge the Customer (i) an administration fee, late payment fee and/or statutory compensation at the prevailing rates and (ii) interest (both before and after judgement) on the overdue amount at the rate of 8% per annum above Barclays Bank base rate from time to time, until payment in full is made;
 - 7.20.2 if a direct debit is dishonoured or cancelled, the Supplier has the right to charge the Customer a reasonable administration fee; and
 - 7.20.3 Supplier may set off any amount owing to it or its Affiliates by the Customer against any amount payable by the Supplier to the Customer.
- 7.21 Time for payment is of the essence of this Agreement and a failure to pay on time, a returned or cancelled direct debit, and failure to pay all amounts not in dispute in accordance with clause 7.18 shall be a material breach and the Supplier may terminate this Agreement immediately.

8 SUSPENSION OF SERVICES

- 8.1 The Supplier may at its sole discretion, without prejudice to any other right under this Agreement and upon giving the Customer written notice electronically, suspend the provision of one or more of the Services under this Agreement, without compensation, until further notice in the following circumstances:
- 8.1.1 the Customer is in material breach of this Agreement;
 - 8.1.2 the Supplier, its subcontractors and/or Third-Party Supplier in providing the Services to the Customer is obliged to comply with any Applicable Legislation, including but not limited to an order, instruction or request of government, regulatory authority, emergency services organisation or other competent authority;
 - 8.1.3 the Customer exceeds the Credit Limit, fails to give any deposit or other form of security under clause 7.14, or in the reasonable opinion of the Supplier is deemed a debt risk; or
 - 8.1.4 the Supplier has reasonable grounds to believe that the Customer is in breach of its obligations under clause 3.6.

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- 8.2 Where the Supplier exercises its rights under clause 8.1 as a consequence of the breach, fault, act or omission of the Customer, the Charges will continue to be payable to the Supplier and the Customer shall pay to the Supplier all reasonable costs and expenses (including any Third-Party Supplier costs and expenses) incurred by the implementation of such suspension and recommencement of the provision of Services.
- 8.3 The Supplier reserves the right to suspend, replace or withdraw the Services or any part thereof at any time for business, operational or technical reasons, where the Supplier is no longer able to provide the Service, including but not limited to:
- 8.3.1 the suspension, termination or expiry of the agreement in place with its Third-Party Supplier, which the Supplier requires to provide the Services under this Agreement to the Customer;
 - 8.3.2 the withdrawal or significant changes to the technology used to provide the Services; or
 - 8.3.3 as the Charges to the Customer are not, in the reasonable opinion of the Supplier, sufficient to ensure that the provision of Services continue to be commercially viable for the Supplier;
- and for which the Supplier is unable to find a replacement Third-Party Supplier having used its reasonable commercial endeavours, the Supplier may terminate this Agreement in accordance with clause 9.3.

9 TERMINATION

- 9.1 Either party shall be entitled to terminate this Agreement immediately by giving written notice to the other party if:
- 9.1.1 the other party commits a continuing or material breach of this Agreement and, if the breach is capable of remedy, fails to remedy such breach within fourteen (14) days after written notice giving full particulars of the breach and requiring it to be remedied;
 - 9.1.2 an event under clause 10.9 prevents the performance of the whole or a substantial part of the other party's obligations in relation to that Service for a continuous period of ninety (90) days after the date on which it should have been performed;
 - 9.1.3 an administrator takes possession, or a receiver is appointed over any of the property or assets of the other party, the other party makes a voluntary arrangement with its creditors or becomes subject to an administration order, the other party becomes bankrupt or goes into liquidation (except for the purposes of a solvent amalgamation, reconstruction or other reorganisation and where the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations of the other party under this Agreement); or
 - 9.1.4 the other party ceases, or threatens to cease, to carry on business.
- 9.2 For the purposes of clause 9.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 9.3 The Supplier may terminate this Agreement immediately by giving notice in writing to the Customer if:
- 9.3.1 any licence, approval, agreement or any approval under which the Supplier has the right to provide the

- Services under this Agreement is revoked, amended or otherwise ceases to be valid;
- 9.3.2 where the Supplier has exercised its rights in accordance with clause 8.3 and has not been able to appoint a replacement Third-Party Supplier;
 - 9.3.3 where the Supplier is instructed by any competent legal or regulatory authority to cease provision of the Services to the Supplier;
 - 9.3.4 in the reasonable opinion of the Supplier, the Customer is suspected of involvement with fraud or attempted fraud in connection with the use of the Services and/or Equipment or this Agreement;
 - 9.3.5 if the Customer is in breach of this Agreement in such a way that the Supplier may be in breach of any Applicable Law and/or in breach of any agreements with its third-party providers required to provide the Services;
 - 9.3.6 where the Customer commits persistent non-material breaches (which in aggregate amount to a material breach);
 - 9.3.7 the Customer fails to pay the Supplier, or the Supplier reasonably suspects that the Customer is unable to pay or is refusing to pay the Charges in accordance with this Agreement; and
 - 9.3.8 a Change of Control takes place or is proposed.
- 9.4 A waiver by either party of a breach of a provision of this Agreement shall not be considered as a waiver of a subsequent breach of the same or another provision.
- 9.5 Unless otherwise stated in the applicable **Service Schedule**, the Customer may terminate this Agreement for convenience before the end of the Minimum Term or Successive Term by giving the Supplier not more than ninety (90) days but not less than thirty (30) days written notice.
- 9.6 WHERE THE CUSTOMER HAS PROVIDED NOTICE TO TERMINATE FOR CONVENIENCE UNDER CLAUSE 2.1.1 (OR AS OTHERWISE EXPRESSLY PROVIDED FOR IN THE APPLICABLE SERVICE SCHEDULE OR OTHERWISE STATED IN THE AGREEMENT), BUT FAILS TO TRANSFER THE SERVICES AWAY FROM THE SUPPLIER WITHIN 30 DAYS FROM EXPIRY OF THE MINIMUM TERM OR SUCCESSIVE TERM, OR PROVIDE WRITTEN CONFIRMATION THAT SERVICES ARE TO BE CEASED UPON EXPIRY OF SUCH NOTICE, THE CUSTOMER'S CONDUCT SHALL BE DEEMED ACCEPTANCE BY THE CUSTOMER OF A CONTINUING AGREEMENT WITH THE SUPPLIER FOR A SUCCESSIVE TERM OR SUBSEQUENT SUCCESSIVE TERM AND CONSTITUTE WITHDRAWAL OF THE NOTICE OF TERMINATION.
- 9.7 IF THIS AGREEMENT IS TERMINATED PRIOR TO THE EXPIRY OF THE **MINIMUM TERM** OR **SUCCESSIVE TERM** OTHER THAN WHERE THE CUSTOMER TERMINATES UNDER CLAUSE 9.1, AND WHERE THE SUPPLIER TERMINATES UNDER CLAUSES 9.3.1 TO 9.3.3, THE SUPPLIER MAY INVOICE THE CUSTOMER **TERMINATION CHARGES**.
- 9.8 THE CUSTOMER AGREES THAT THE **TERMINATION CHARGES** ARE A FAIR ASSESSMENT OF THE LOSSES AND DAMAGE THAT THE SUPPLIER WILL SUFFER AS A RESULT OF THE TERMINATION.
- 9.9 Where the Customer has terminated the Agreement in whole or in part or has cancelled Services but continues to use the Service(s) or part thereof pending the Customer being transferred to a new Supplier or otherwise, the Supplier shall be entitled to amend the Charges payable by the Customer to its standard published Tariffs for Services provided after the date of termination.

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9.10 Any Services used by the Customer during any notice period in accordance with clause 2 and 9 will be chargeable, and any Third-Party Supplier costs (including termination fees) incurred by the Supplier within this notice period if the Service is terminated outside of the prescribed timescales set forth in these General Condition or the applicable **Service Schedule**.

CONSEQUENCES OF TERMINATION

9.11 In the event of termination by either party for any reason, the Supplier shall be entitled to recover from the Customer:

9.11.1 any outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

9.11.2 all liabilities, claims, costs, losses and expenses incurred and/or accrued by the Supplier;

9.11.3 any committed costs or losses payable to a Third-Party Supplier incurred as a result of such termination, which the Supplier cannot reasonably mitigate; and

continued use of the Service following termination will result in the Supplier levying its standard published Tariffs for all Services used, which shall be payable immediately upon demand by the Supplier.

9.12 In the event of termination by either party for any reason, the Customer shall not be entitled to reimbursement of any aspect of the Charges as shall have been paid in advance and relate to the Services;

9.13 Termination of this Agreement 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 this Agreement which existed at or before the date of termination or expiry.

9.14 Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

9.15 The termination of one or more element of the Services shall not affect the continuing in effect of the remaining Services, including but not limited to the Supplier's obligation to perform the remaining Services and the Customer's obligation to perform its responsibilities and make payment of the Charges in accordance with the applicable **Service Schedule**.

10 LIMITATION AND EXCLUSION OF LIABILITY

10.1 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALL WARRANTIES AND CONDITIONS WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE ARE HEREBY EXCLUDED TO THE EXTENT PERMITTED BY LAW.

10.2 NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR RESTRICT IN ANY WAY THE LIABILITY OF EITHER PARTY ARISING FROM OR IN CONNECTION WITH:

10.2.1 DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR THAT OF ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (AS APPLICABLE); OR

10.2.2 FRAUD, FRAUDULENT ACTIVITY OR FRAUDULENT MISREPRESENTATION BY IT OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (AS APPLICABLE); OR

10.2.3 ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW.

10.3 SUBJECT TO CLAUSE 10.2, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONTRACT, TORT OR OTHERWISE FOR ANY:

10.3.1 LOSS OF SALES OR BUSINESS;

10.3.2 LOSS OF REVENUE;

10.3.3 LOSS OF PROFIT;

10.3.4 LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION;

10.3.5 LOSS OF CONTRACTS;

10.3.6 WASTED EXPENDITURE;

10.3.7 LOSS OF ANTICIPATED SAVINGS;

10.3.8 INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL, INCIDENTAL LOSS OR DAMAGE; OR

10.3.9 LOSS ARISING FROM THE LOSS OR DEGRADATION OF DATA.

10.4 EACH PARTY'S LIABILITY IN TORT, CONTRACT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED IN AGGREGATE TO A SUM EQUAL TO THE CHARGES PAYABLE UNDER THIS AGREEMENT DURING THE CALENDAR YEAR WHICH THE RELEVANT CLAIM ARISES OR TWO MILLION POUNDS (£2,000,000) WHICHEVER IS THE LOWER.

10.5 THE SUPPLIER'S LIABILITY TO PAY OR CREDIT ANY SERVICE CREDITS TO THE CUSTOMER WILL BE COUNTED AND CALCULATED FOR THE PURPOSE OF THE SUPPLIER'S MAXIMUM LIABILITY UNDER CLAUSE 10.4 AND SHALL BE THE CUSTOMER'S SOLE REMEDY FOR THE SUPPLIER'S FAILURE TO MEET THE SERVICE LEVELS.

10.6 THE CUSTOMER SHALL INDEMNIFY THE SUPPLIER AND KEEP THE SUPPLIER FULLY AND EFFECTIVELY INDEMNIFIED IN FULL ON DEMAND AGAINST ALL COSTS, CHARGES, DAMAGES AND OR ANY LOSSES SUSTAINED OR INCURRED BY IT ARISING DIRECTLY OR INDIRECTLY FROM THE CUSTOMER'S FAILURE TO PERFORM OR DELAY IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS SCHEDULE OR FROM ANY FRAUDULENT OR NEGLIGENT ACT OR OMISSION OR WILFUL MISCONDUCT OF THE CUSTOMER, ITS END USERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS.

10.7 THE SUPPLIER SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY LOSS ARISING OUT OF ANY FAILURE BY THE CUSTOMER TO KEEP FULL AND UP TO DATE SECURITY COPIES OF THE COMPUTER PROGRAMS AND DATA IT USES IN ACCORDANCE WITH GOOD INDUSTRY PRACTICE.

10.8 THE SUPPLIER SHALL HAVE NO LIABILITY FOR ANY DEGRADED, INCOMPLETE, OR FAILED SERVICE DELIVERY WHICH MAY RESULT FROM CUSTOMER'S FAILURE TO COMPLY WITH ITS OBLIGATIONS AS DETAILED IN THIS AGREEMENT.

FORCE MAJEURE

10.9 NEITHER PARTY SHALL BE LIABLE FOR ANY FAILURE OR DELAY IN PERFORMANCE OF THIS AGREEMENT WHICH IS CAUSED BY CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF A PARTY, INCLUDING WITHOUT LIMITATION, ANY ACT OF GOD, LIGHTENING, FLOOD, EXCEPTIONALLY SEVERE WEATHER, SUBSIDENCE, FIRE, EXPLOSION, WAR, CIVIL DISORDER, ACTS OF TERRORISM, NUCLEAR, BIOLOGICAL OR CHEMICAL INCIDENT, NATIONAL OR LOCAL EMERGENCY, STATUTORY OBLIGATION, FAILURE OR SHORTAGE OF POWER SUPPLIES, TRADE DISPUTE, ANY ACT OR OMISSION OF ANY COMPETENT LEGAL OR REGULATORY AUTHORITY, OR SUPPLY OF SERVICES BY THIRD PARTIES.

10.10 IN THE EVENT THAT ANY OF THE CIRCUMSTANCES UNDER CLAUSE 10.9 CONTINUES FOR A PERIOD OF NINETY (90) DAYS, THE OTHER PARTY WILL HAVE THE RIGHT TO TERMINATE IN ACCORDANCE WITH CLAUSE 9.1.2.

11 DATA PROTECTION

COMPLIANCE WITH DATA PROTECTION LEGISLATION

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- 11.1 The parties acknowledge and agree that the Customer is the Controller, the Supplier is the Processor for the purposes of Processing Personal Data pursuant to this Agreement.
- 11.2 The Customer shall at all times comply with all Data Protection Legislation in connection with the Processing of Personal Data and shall ensure that all instructions given to by the Supplier in respect of Personal Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Legislation.
- 11.3 The Supplier shall process Personal Data in compliance with the obligations placed on it under Data Protection Legislation and the terms of this Agreement.

INSTRUCTIONS

- 11.4 The Supplier shall:
- 11.4.1 use Personal Data where needed for the purposes, duration and in accordance with the terms, of this Agreement, or where the Processing is in the Supplier's legitimate interest as further detailed within its Privacy Policy;
- 11.4.2 only process (and shall ensure Supplier personnel only process) the Personal Data as a Processor for the purposes described in this Agreement, in accordance with the Supplier's Privacy Policy or as otherwise provided by the Data Protection Legislation, in which case the Supplier will inform the Customer of that legal requirement before Processing (unless Applicable Law prohibits the Supplier from doing so on important grounds of public interest);
- 11.4.3 ensure that all Supplier personnel Processing Personal Data are bound by duties of confidentiality, and shall only Process the same as is necessary for the purposes of this Agreement;

TECHNICAL AND ORGANISATIONAL MEASURES

- 11.5 The Supplier shall, taking into account the state of technical development and the nature of Processing, implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing, destruction or accidental loss, alteration, or unauthorised disclosure of the Personal Data.

SUB - PROCESSING

- 11.6 The Supplier shall:
- 11.6.1 not permit, except where necessary by a Third-Party Supplier for the provision of Services, any Processing of Personal Data by any agent, sub-contractor or other third party (except its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Personal Data) except as stated in the Privacy Policy;
- 11.6.2 in the event the Customer consents to the use of a Sub-Processor pursuant to sub-clause 11.6.1 above, prior to the relevant Sub-Processor carrying out any Processing activities in respect of the Personal Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 11 that is enforceable by the Supplier and ensure that each Sub-Processor complies with all such obligations; and
- 11.6.3 remain liable to the Customer under this Agreement for all the acts or omissions of each Sub-Processor as if they were its own;
- 11.6.4 ensure that all persons authorised by the Supplier or any Sub-Processor to process Personal Data are

subject to a binding written contractual obligation to keep the Personal Data confidential.

CO-OPERATION

- 11.7 The Supplier shall (at the Customer's cost):
- 11.7.1 assist the Customer with the Customer's obligations pursuant to Articles 32 and 36 of the GDPR (and any similar obligations under applicable Data Protection Legislation) taking into account the nature of the Processing and the information available to the Supplier; and
- 11.7.2 taking into account the nature of the Processing, assist the Customer (by appropriate technical and organisational measures), in so far as is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the Data Protection Legislation in respect of any Personal Data.

NOTIFICATION OF BREACHES

- 11.8 The Supplier shall where required by law:
- 11.8.1 notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Personal Data; and
- 11.8.2 co-operate with the Customer and provide assistance as may be reasonably required in the investigation, remediation and mitigation of the Personal Data Breach.

AUDIT

- 11.9 The Supplier shall, in accordance with Data Protection Legislation, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 10 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one (1) audit request in any 12 month period under this clause 11.9).

CONSEQUENCES OF TERMINATION

- 11.10 Upon termination or expiry of this Agreement, at the Customers' cost and the Customers' option, the Supplier shall either return all the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any Applicable Law requires the Supplier to store such Protected Data. This clause 11.10 shall survive termination and expiry of the Agreement.

INTERNATIONAL TRANSFERS

- 11.11 The Supplier shall not transfer or otherwise process Personal Data outside the UK or EEA unless:
- 11.11.1 the Supplier is processing Personal Data in a territory which is subject to a current finding by the UK under Data Protection Legislation that the territory provides adequate protection for the privacy of individuals; or
- 11.11.2 the Supplier transfers Personal Data under the UK's Standard Contractual Clauses or the ICO International Data Transfer Agreement approved for the transfer of Personal Data outside the EEA and the UK; or

GENERAL CONDITIONS

- 11.11.3 the transfer otherwise complies with Data Protection Legislation.

12 INTELLECTUAL PROPERTY

SUPPLIER IPR

- 12.1 Unless otherwise expressly agreed in this Agreement or as set out below, no Intellectual Property Rights of either Party are transferred or licensed as a result of this Agreement.
- 12.2 Subject to any other terms expressly agreed by the Parties, each Party grants the other a licence of such Intellectual Property Rights as are necessary to enable the other Party to fulfil its obligations under this Agreement and provide or make use of the Services supplied under this Agreement (as the case may be) but not otherwise.
- 12.3 The Supplier hereby grants to the Customer a non-exclusive, non-transferable royalty free licence to use the Supplier's Intellectual Property Rights within the United Kingdom, subject to the Customer's compliance with the terms of this Agreement, solely as necessary for the use of the Services and/or Documentation.
- 12.4 The Customer shall not at any time have the right under this Agreement to sub-license, assign or otherwise transfer the rights granted in clause 12.2.
- 12.5 Unless otherwise agreed, all Intellectual Property Rights arising from or relating to Tools, Deliverables, Documentation and Bespoke Software shall remain the exclusive property of the Supplier.
- 12.6 If this Agreement is terminated for whatever reason, this licence will automatically terminate.
- 12.7 If any part of the Services provided by the Supplier to the Customer, infringes or is alleged to have infringed the Intellectual Property Rights of any third party, the Supplier will at its own expense, as soon as it is reasonably practicable:
- 12.7.1 procure for the Customer the right to continue using and possessing the Deliverables; or
- 12.7.2 modify or replace the infringing part of the Deliverables, to avoid the infringement or alleged infringement
- unless such infringement or alleged infringement is from the use of Customer Materials.

CUSTOMER IPR

- 12.8 The Customer shall indemnify and keep indemnified and hold harmless the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result or in connection with any action, demand or claim that the proper use or possession of any Customer Materials, infringes the Intellectual Property Rights of any third party.

THIRD PARTY IPR

- 12.9 Where the Customer has procured third party products or services for use with the Services, the Customer warrants as follows:
- 12.9.1 it has entered into and has fully complied (and shall at all times fully comply) with the terms of the applicable Licence Agreement for any third party software;
- 12.9.2 the Supplier and its subcontractors are permitted to use, modify, adapt, install and alter the Third-Party

Software for the purpose of providing the Services, and;

- 12.9.3 it has consent to such use, modification, adaptation, installation and alteration by the Supplier has been obtained by the relevant Third-Party Licensor.

13 CONFIDENTIALITY

- 13.1 Neither party will disclose the other party's Confidential Information to any person, except such of its employees, officers, representatives or advisers who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, except as permitted by clause 13.2.
- 13.2 Nothing in clause 13.1 shall prevent the use or disclosure of any information which:
- 13.2.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 13.2;
- 13.2.2 is acquired from a third party who owes no obligation of confidence in respect of the information;
- 13.2.3 is or has been independently developed by the recipient without use of the other party's Confidential Information; or
- 13.2.4 is required by any court, governmental or regulatory authority, relevant stock exchange or where there is a legal duty or requirement to disclose such Confidential Information.
- 13.3 This clause 13 will bind the parties during the term of this Agreement and for a period of two (2) years following termination of this Agreement.

14 DISPUTE RESOLUTION

- 14.1 The parties shall use all reasonable endeavours to resolve any dispute or claim in accordance with the Customer Complaints Code and in good faith.
- 14.2 Where a dispute or claim arises between the parties that cannot be resolved between the parties as set forth in the Customer Complaints Code, either party may;
- 14.2.1 escalate the dispute to the Director's Office; and
- 14.2.2 if the dispute is not resolved under clause 14.2.1, either party may refer the dispute to an alternative dispute resolution method, which is agreed as appropriate.
- 13.3 Where the Customer is a Microenterprise or Small Enterprise Customer or a Non-for-Profit Customer, the Customer shall have the right to take unresolved complaints to an approved alternative dispute resolution agency eight (8) weeks after the complaint was made. CISAS is an independent approved alternative dispute resolution agency which provides this service free of charge.

15 NOTICES

- 15.1 Unless provided for elsewhere in this Agreement, all formal written notices or instructions given under this Agreement shall be in writing and shall be sent by:
- 15.1.1 the Supplier to the Customer by post to its principal place of business or such other address as may at the relevant time have been notified pursuant to this clause 15 to the Supplier, and shall be deemed as served on the second day after the same has been posted, on the Customer's invoice, by email, on the Customer Portal or on its website www.cyberlab.co.uk; or

GENERAL CONDITIONS

15.1.2 the Customer to the Supplier by recorded delivery to its principal place of business or such other address as may at the relevant time have been notified pursuant to this clause 15.5 to the Customer and shall be deemed as served at the time of delivery.

16 ASSIGNMENT AND SUBCONTRACTING

16.1 The Customer shall not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the Supplier's prior written consent (such consent not to be unreasonably withheld or delayed).

16.2 The Supplier may at any time:

16.2.1 assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, and/or

16.2.2 provide the Services to the Customer directly and/or through its Affiliates, suppliers, subcontractors and agents,

without prior written notice of such dealing to the Customer, provided that the Supplier remains primarily liable for the acts and omissions of its Affiliates, suppliers, subcontractors and agents.

17 AMENDMENTS

17.1 NOTWITHSTANDING CLAUSE 7.9, THE SUPPLIER RESERVES THE RIGHT AT ITS SOLE DISCRETION TO CHANGE THE SERVICE, ANY FEATURES OF THE SERVICE, EQUIPMENT, CHARGES AND/OR THE TERMS AND CONDITIONS OF THIS AGREEMENT BY GIVING THE CUSTOMER NOT LESS THAN THIRTY (30) DAYS' NOTICE, BY POST, EMAIL, BY PUBLISHING A NOTICE ON THE CUSTOMER'S INVOICE, THE CUSTOMER PORTAL AND/OR ON ITS WEBSITE AT https://app.cyberlab.co.uk/terms_conditions.

18 SUPPLIER PERSONNEL

18.1 The Customer shall not, without the prior written consent of the Supplier, at any time during the Minimum Term of this Schedule nor for a period of six (6) months following its expiry or termination for any reason, solicit or entice away from the Supplier or employ any person who is, or has been, engaged as an employee of the Supplier at any time during such period. Any consent given by the Supplier shall be subject to the Customer paying the Supplier a sum equivalent to one hundred per cent (100%) of the then current annual remuneration of the Supplier's employee.

18.2 The Customer acknowledges and agrees that TUPE shall not apply to the Services and prior to the Commencement Date, all considerations, claims, actions or otherwise have been provided to the Supplier in relation to the effects, actions or claims of any TUPE and that the Customer indemnifies in full and holds the Supplier harmless of any such actions or claims of TUPE against the Supplier for business transfers or service provision changes for the Term of this Schedule and for a period of six (6) months following expiry or termination of this Schedule.

19 THIRD PARTIES

19.1 Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

20 WAIVER

20.1 A waiver by either Party of a breach of a provision of this Agreement shall not be considered as a waiver of a subsequent breach of the same or another provision of this Agreement.

20.2 No failure, delay or omission by either party in exercising any right, power or remedy provided under this Agreement or by law shall operate as a waiver of that or any other right or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy.

20.3 The Customer must bring any legal proceedings against the Supplier in connection with this Agreement within twelve (12) months from the date which the Customer first became aware or ought reasonably to have become aware of the facts giving rise to the liability or potential liability of the Supplier or within the statutory limitation period, whichever is the earlier.

21 SEVERANCE

21.1 If any provision of this Agreement (or part of any provision) is held by a court or other competent authority to be invalid or unenforceable in whole or in part, the validity and enforceability of any other provision of this Agreement and the remainder of the provision shall not be affected.

22 ENTIRE AGREEMENT

22.1 The terms and conditions of this Agreement, together with any terms set out in the Order and/or Schedules constitute the entire agreement between the parties, supersede any previous agreement or understanding and, subject to clause 7.10 and clause 17, may not be varied except in writing and signed by the Supplier.

22.2 All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

22.3 In entering into this Agreement, the Customer acknowledges and agrees that it does not rely on any representations which are not confirmed in the terms and conditions of this Agreement, but nothing in this Agreement affects the liability of either party for fraudulent representation.

23 GOVERNING LAW AND JURISDICTION

23.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales, and the Customer agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1 - DEFINITIONS

Affiliate means, in relation to either Party, a company which is a subsidiary or holding company of it, or any company which is in same Group of companies, "holding company" and "subsidiary" having the meanings ascribed to them in section 1159 Companies Act 2006;

Agreement means the agreement between the Customer and Supplier, as described at clause 1.4 of these **General Conditions**;

Applicable Law means any legislation, authorisations, permissions, rules, regulations, codes of practice, orders and guidelines relating to the provision and/or use of the Services, including any directives or other requirements issued by any regulator from time to time;

Change of Control means in relation to the Customer where there is a material change in the exercise, control or holding of the voting shares (unless this is due to an internal group reorganisation)

Bespoke Software means any computer software, applications or programmes which have been developed by the Supplier for the Customer;

Charges means the fees payable for the Services, Support Services and/or Equipment as set out in the Order, the applicable **Service Schedules**, or as published on the Supplier's website at www.cyberlab.co.uk;

Confidential Information means any information of a confidential nature whether disclosed in writing or orally, is expressly stated to be confidential or can reasonably be expected to have been considered confidential, including without limitation, information in relation to a Party's affairs or business or method of carrying on business and the terms of this Agreement;

Commencement Date means either;

- (a) the date the Customer is notified by the Supplier that the Service (or any part of the Service, including each Site) will be ready to use, or;
- (b) where Service comprises of multiple Connections, a Connection will be Connected to the Network, or;
- (c) if earlier, the date upon which the Customer first uses the Service (or any part of the Service, including each Site) or Connection;

Connection means the connection of the Services (or any part thereof, including each Site) to the Network and "Connected" shall be construed accordingly;

Controller, Data Subject, Personal Data, Processor and Processing shall have the respective meanings given to them in applicable Data Protection Legislation from time to time (and related expressions, including process, processed, processing and processes shall be construed accordingly) and international organisation and Personal Data Breach shall have the respective meanings given to them in the GDPR;

Customer Complaints Code shall mean the Supplier's complaints code available at www.cyberlab.co.uk as may be amended from time to time;

Data Protection Legislation means, as binding on either party or the Services:

- (i) the UK General Data Protection Regulation ("GDPR"), the Data Protection Act 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (ii) any laws which implement such laws; and
- (iii) any laws or regulations which replace, extend, re-enact, consolidate or amend any of the foregoing.

Documentation means the documentation made available to the Customer by the Supplier or by its suppliers or licensors via MyPortal or such other website address notified to the Customer by the Supplier from time to time, which sets out a technical description of the Services together with manufacturers recommendations and instructions for use of the Services;

Equipment means the Customer Equipment or Hardware, as listed in the **Order**, (as applicable);

General Conditions means these terms and conditions;

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of skill and care which could be reasonably expected of a highly skilled and experienced professional;

Hardware means physical equipment purchased or provided free of charge by the Customer from the Supplier;

Industry Regulations means rules and regulations set by relevant industry governing bodies which control and/or govern specific business activities;

Intellectual Property Rights means any copyright, patent, registered design, design rights, utility models, trademarks, trade secrets, know how, database rights, Confidential Information or any other registered or unregistered intellectual property rights of whatever nature subsisting anywhere in the world;

"License Agreement" shall mean any license or terms under which the Customer is permitted to use the Products;

Minimum Term means the initial period of this Agreement as specified in the Order and if not specified shall be the period calculated in accordance with clause 2.1;

MyPortal means the Customer's online access to the provision of the Services available through the Supplier's website at <https://cyberlab.co.uk>;

Normal Working Hours means 09:00hrs to 17:30hrs on a Working Day;

Privacy Policy shall mean the Supplier's privacy policy available at www.cyberlab.co.uk as may be amended by the Supplier from time to time;

Professional Services, as specified in the Order and further detailed in **Schedule 3 (Professional Services)**;

Quality Standards shall mean a series of documents that provide requirements, specifications, guidelines or characteristics that are used consistently to ensure that materials, products, processes and services meet good quality, such as ISO 9001 Quality Management Systems;

Recurring Charges means the Charges for the Services which are invoiced repeatedly in every billing period, either as set out in the **Order** or the **SOW** and as varied under the Agreement from time to time;

Schedule 1 Definitions means this Schedule 1.

Schedule 2 Software Services means a series of sub-schedules (including any annex thereto) describing the relevant Services provided under this Agreement;

Schedule 3 Professional Services means a series of sub-schedules (including any annex thereto) describing the relevant Professional Services provided under this Agreement;

Schedule 4 Managed Support Services means a series of sub-schedules (including any annex thereto) describing the relevant Managed Support Services provided under this Agreement;

Services means the provision of services and products provided by Supplier to the Customer and as set forth in the Service Schedules;

Service Credits means the amount payable (if any) by the Supplier to the Customer in accordance with the applicable Services as set forth in Service Schedules;

Service Levels mean the standard of performance (if any) in relation to the Service in accordance with the applicable Services as set forth in Service Schedules;

Service Schedules means the numbered **Schedules 2 to 4** which detail the Service specific terms and conditions and which are incorporated into the Agreement pursuant to clause 1.4 of these General Conditions;

SCHEDULE 1 - DEFINITIONS

Site(s) means (where applicable) a physical location as specified in the Order and where the Equipment shall be located and/or to which the Service will be provided;

Supplied Software means the software to be licensed to the Customer as specified in an Order or Schedule together with any imbedded software, which is necessary for the provision of Services and/or use of the Equipment and may also include Third-Party Software;

Software means the Supplied Software, Bespoke Software and the Products;

Supplier means Cyberlab Consulting Limited, whose registered office is at Bridgford House, Heyes Lane, Alderley Edge, Cheshire SK9 7JP, company registration number 12392586, unless otherwise specified on the Order as an Affiliate of Cyberlab Consulting Limited.

Support Services means the provision of support services, provided by Supplier to the Customer as specified in the Order and further detailed in Schedule 3 (Support Services);

Tariffs means the applicable tariffs as referred to in this Agreement and the Order for the provision of the Services available on the Supplier's website www.cyberlab.co.uk and as periodically updated from time to time or amended under clause 7.10 above;

Termination Charges mean any compensatory charges payable by the Customer to the Supplier upon termination of this Agreement, in whole or part, in accordance with clause 9.7 of the General Conditions and as set out in the applicable Order, or if not specified then an amount equal to 100% of the Recurring Charges for all remaining months for the Minimum Term or Successive Term, together with any waived one off charges or Installation Charges;

Third-Party Supplier means a third-party supplier, provider or supplier of services over which the Supplier may utilise for provision of the Services under this Agreement;

Third-Party Software means any Software, the licence terms of which are governed by a separate agreement with the licensor of such software, typically by means of a 'click wrap' or 'shrink wrap' licence agreement;

Third-Party Licensor means any third party with which the Customer has entered into a Licence Agreement in the terms of which the Customer uses software

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Working Day means Normal Working Hours any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom.

SCHEDULE 2 – SOFTWARE SCHEDULE

1. THIRD-PARTY LICENSOR PRODUCTS

- 1.1 The Supplier is authorised by several Third-Party Licensors to sub-license the Products.
- 1.2 The Products can be licensed by Customer:
- 1.2.1 purchasing the applicable Product licences in advance for the Minimum Term (an “**Advanced Licence Subscription**”); or
 - 1.2.2 by paying monthly arrears for the Minimum Term based on usage (“**Pay-Monthly Subscription**”).
- 1.3 Where stated on the Order, the Supplier shall provide the Customer with a license to use the Products, subject to the terms of the Agreement and the Third-Party Licensor’s End User Terms. By placing an Order with the Supplier, the Customer shall be deemed to have read, understood, and accepted the terms of this Schedule, the General Conditions, and the applicable Third-Party Licensor’s End User Terms.
- 1.4 Upon receipt of an Order for a Product on an Advanced License Subscription, the Supplier will arrange delivery of a subscription key to the Customer for the applicable Products. Delivery dates quoted are estimates only and the Supplier shall not be responsible for any delays due outside of its control. The Supplier reserves the right to make delivery in instalments.
- 1.5 Notwithstanding anything to the contrary in this Schedule, the Customer acknowledges and agrees that:
- 1.5.1 Third-Party Licensors may vary, Update or discontinue Products, Product versions, Product features, Support and support for a Product (including without limitation operating systems and platforms) from time to time for reasons including but not limited to changes in demand, security and technology;
 - 1.5.2 the Supplier may modify or update this Schedule at any time to accurately reflect the provision of the Products by giving notice in accordance with clause 16.1 of the General Conditions; and
 - 1.5.3 nothing in the General Conditions will amend the Third-Party Licensor’s End User Terms. To the extent there is a conflict between the General Conditions and the applicable Third-Party Licensor’s End User Terms, the latter will take precedence.

2. COMMENCEMENT AND DURATION

- 2.1 This paragraph 2 shall supersede clause 2.1 of the General Conditions.
- 2.2 Where the Customer purchases a license to a Product, this Agreement shall become effective on the date of the Order. It shall continue for 12 months or other minimum period stated on the Order from the Commencement Date (“**Minimum Term**”) unless terminated in accordance with clause 8 of the General Conditions.
- 2.3 Upon expiry of the Minimum Term:
- 2.3.1 an Advanced Licence Subscription and this Agreement shall automatically expire and not renew; and
 - 2.3.2 a Pay-Monthly Subscription shall continue for rolling 30 day periods, unless terminated in accordance with clause 8 of the General Conditions or by the Customer sending the

Supplier a cancellation email (to cancellations@cyberlab.co.uk), which will start the Supplier’s offboarding process.

- 2.4 The Customer acknowledges that on cancellation of Pay-Monthly Subscription in accordance with paragraph 2.3, the subscription will continue, and the Customer will continue to be invoiced, until the end of the first full calendar month after completion of the offboarding process.
- 2.5 Except as stated in the Order or this Agreement, all Orders are non-cancellable and non-refundable and fees shall be payable in accordance with this Agreement.

3. USE OF PRODUCTS AND RESTRICTIONS

RIGHTS

- 3.1 Subject to the Customer’s compliance with the terms of the Agreement, the Supplier hereby grants the Customer a limited, non-exclusive sub-license to use the Products solely for its Internal Business Purposes in accordance with and as expressly permitted in the Third-Party Licensor’s End User Terms.
- 3.2 The Customer may permit its Affiliates and End Users to use the Products in accordance with this Schedule, provided that the Customer remains fully responsible and liable for each Affiliate’s and each End User’s use of the Product, and compliance with the terms and conditions of this Schedule.
- 3.3 Where the Customer is in breach of its obligations under this Schedule, the Supplier and the Third-Party Licensor reserve the right to suspend Service delivery until such time as Customer has remedied such breach.

CHANGES

- 3.4 To request changes to any Product subscription, or to the level of support during a Pay-Monthly Subscription, Customer must contact a representative of the Supplier.

TRIAL PRODUCTS

- 3.5 If permitted by a Third-Party Licensor, the Supplier may conduct a free trial or evaluation of a Product (each a “**Trial Product**”), and the Customer may use the Trial Product in a test environment only and for the duration specified by the Supplier in writing.
- 3.6 The Trial Products are provided solely for internal testing and evaluation by Customers and are provided “AS IS” without any support, indemnity, liability or remedy of any kind. To the extent permitted by Applicable Law, the Supplier expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, fitness for a particular purpose or non-infringement of Trial Products.
- 3.7 The terms of paragraphs 3.6 and 3.7 above apply, and prevail over any conflicting terms in this Schedule, with respect to access and use of Trial Products.

4. DISCLAIMER OF WARRANTIES

- 4.1 EXCEPT FOR THE EXPRESS WARRANTIES FOR THE PRODUCTS PROVIDED BY THE THIRD-PARTY LICENSOR UNDER **THE THIRD-PARTY LICENSOR’S END USER TERMS** THE PRODUCTS ARE PROVIDED “AS IS”, THE SUPPLIER, ITS THIRD-PARTY LICENSORS, AND ITS SUPPLIERS MAKE NO WARRANTIES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RELATION TO THE PRODUCTS INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, UNINTERRUPTED USE, FITNESS FOR A PARTICULAR PURPOSE,

SCHEDULE 2 – SOFTWARE SCHEDULE

NON-INFRINGEMENT OR ARISING FROM COURSE OF DEALING, USAGE OR TRADE.

5. LIMITATION OF LIABILITY

5.1 THIS PARAGRAPH 5 IS SUPPLEMENTAL TO CLAUSE 10 OF THE GENERAL CONDITIONS. IT SHALL NOT SUPERSEDE IT EXCEPT WHERE EXPRESSLY STATED AND IN SUCH CASES THIS PARAGRAPH 5 SHALL TAKE PRECEDENCE.

5.2 THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SUPPLIER'S LIABILITY SHALL BE LIMITED IN ACCORDANCE WITH THE GENERAL CONDITIONS. CUSTOMER FURTHER ACKNOWLEDGES THAT THE THIRD-PARTY LICENSOR'S LIABILITY SHALL BE LIMITED IN ACCORDANCE WITH THE THIRD-PARTY LICENSOR END USER TERMS.

6. PRODUCT SUPPORT

6.1 Standalone support products may be purchased by Customer, as detailed in the Documentation.

6.2 Where the Customer purchases an Advanced Licence Subscription, the Customer must contact Third-Party Licensor directly for support with the Products. The Supplier does not provide support for Advanced Licence Subscriptions.

6.3 Where the Customer purchases a Pay-Monthly Subscription, the Supplier (for first line support only) and/or the Third-Party Licensor will provide support services, as applicable to the Customer's chosen tier of Pay Monthly Subscription and the relevant Product, and as further detailed in the Documentation.

6.4 Any custom or sample code, files or scripts ("Fixes") provided by the Supplier as part of the provision of support services do not form part of the Supplier's standard commercial offering and may only be used in conjunction with the Products for which such Fixes were developed.

7. CHARGES AND PAYMENT

7.1 This paragraph 7 is supplemental to clause 7 of the General Conditions and in the event of express conflict this clause shall take precedence.

7.2 The Charges for subscriptions to the Products are detailed in the Order and/or the Documentation.

7.3 Customer acknowledges that for the Pay-Monthly Subscription, the actual Charges may vary depending on the Product subscription tier, usage, date of purchase, currency, and inflation, and may include an onboarding fee set out in the Order. Any work provided by the Supplier that is not included within the scope of the relevant Product subscription tie will be chargeable by the Supplier as professional services at its standard rates. outside the service tiers will be chargeable professional services. Chargeable usage includes any use by the Customer of other products in the same Product suite that it has ordered. The Supplier shall be entitled to increase the Charges to reflect its standard charges for the relevant Product subscription tier, as at the date it is delivered to the Customer. No quotation, proposal or estimate shall be deemed to be an offer from the Supplier unless expressly stated otherwise therein.

7.4 For Advance Licence Subscriptions:

7.4.1 the Supplier shall invoice the Charges for the full term in advance;

7.4.2 Customer's use or consumption of the Product shall not exceed the fair usage or other use limitations detailed in the Third-Party Licensor's End User Terms applicable to the Advanced Licence Subscription ("Fair Usage");

7.4.3 if Customer wishes to increase any such Fair Usage, it shall Customer contact a representative of the Supplier, and the existing Fair Usage will apply until the parties enter into a new Order; and

7.4.4 Customer acknowledges that if it exceeds its Fair Usage, it will pay any invoice for the applicable charges for such excess use issued by the Supplier in accordance with clause 7 of the General Conditions.

7.5 For Pay-Monthly Subscriptions, the Supplier shall invoice the Customer monthly in arrears in relation to actual usage of Products by the Customer and its End Users in the preceding month. Actual usage may vary from month to month and will not be charged on a pro-rata basis.

7.6 Where the Supplier identifies that the Customer has underpaid the Charges, the Customer shall be invoiced for and shall pay the Supplier within seven (7) days of the date of invoice an amount equal to the shortfall between the fees due and those paid.

8. TERMINATION

8.1 This paragraph 8 is supplemental to clause 9 of the General Conditions and in the event of express conflict shall supersede it.

8.2 Subject to the terms of clause 9 of the General Conditions:

8.2.1 Advanced License Subscriptions cannot be terminated or cancelled during the Minimum Term; and

8.2.2 Pay-Monthly Subscriptions that are cancelled prior to the end of the Minimum Term are subject to paragraph 8.3.

8.3 Where the Agreement relates to a Pay-Monthly Subscription and such Agreement is terminated by the Customer within its Minimum Term, the Supplier shall be entitled to invoice the Customer for Termination Charges in accordance with clause 9.7 of the General Conditions.

CONSEQUENCES OF TERMINATION

8.4 Termination of this Schedule shall not relieve the Customer of its obligations to pay all Charges that have accrued or are otherwise owed by the Customer to the Supplier.

8.5 All Charges paid are non-refundable to the maximum extent allowed by Applicable Law.

8.6 Except as otherwise set forth in the Agreement, within one (1) month after the date of termination of the Agreement, the Customer shall provide written certification to the Supplier confirming:

8.6.1 the destruction by the Customer of all partial and complete copies of the Products, and;

8.6.2 the Customer's termination of all End Users ability to access and use the services.

8.7 All rights of the Customer and its End Users to access and use the Products will automatically cease upon termination of the Agreement.

8.8 The following clauses, together with any terms necessary for the interpretation of the Agreement, will survive termination or expiry of the Agreement: **Annex 1** and paragraphs 4, 5, 8, 9 and 10 of this Schedule.

9. IPR

9.1 Where the Supplier has provided Software and/or Documentation necessary for the Customer to make reasonable use of the Services and/or Equipment, the Customer acknowledges and agrees that:

SCHEDULE 2 – SOFTWARE SCHEDULE

- 9.1.1 the ownership of and all Intellectual Property Rights in the Software and Documentation remains with the Supplier or its Third-Party Licensor;
- 9.1.2 the Supplier grants a non-exclusive, non-transferable limited right to use the Software and/or Documentation to the Customer, solely as necessary for the provision of the Service in accordance with the terms of this Agreement. The Customer hereby agrees to comply with the provisions of any Third-Party Software licence, which will automatically terminate on expiry or termination of this Agreement;
- 9.1.3 it will not make any modifications to the Software or Documentation;
- 9.1.4 it will not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify or make error corrections to the Software in whole or part except as permitted by law;
- 9.1.5 it will not rent, lease, lend, make available or distribute the Software or Documentation, assign the benefit or subcontract the burden of this Agreement in whole or part or allow the Software to become the subject of any charge, lien or encumbrance;
- 9.1.6 it shall not (and shall not permit any third party to) export the Software, Documentation or any hardware upon which the Software is embedded, out of the UK without the prior written consent of the Supplier or any licensor;
- 9.1.7 it will not modify, obscure or remove any copyright or proprietary notices on the Software or Documentation;
- 9.1.8 it permits the Supplier or the Software licensor, upon reasonable notice to enter during Normal Working Hours any premises owned or controlled by the Customer in order to review the Customer's use of the Software and/or the Documentation and ensure that the Customer is using the same in accordance with this Agreement;
- 9.1.9 it shall not resell the Services or sub-licence any Software to any third party, without the Supplier's express consent. Such consent shall be at the Supplier's sole discretion and subject to the Customer entering into a separate licence;
- 9.1.10 the Supplier does not warrant that the Software or Documentation is error free and the Customer hereby agrees to make proper back-ups of all data, and;
- 9.1.11 it shall be responsible, unless otherwise included in Service Schedules for applying patches, fixes or other temporary repairs and preventative maintenance to the Software to maintain the Software to the licensor's published specifications or as otherwise applicable to the provision of the Services.
- 9.2 The Customer will not, and will procure that none of its employees, subcontractors, agents or any third party authorised to use the Service and/or Software, infringe any Intellectual Property Rights owned by the Supplier, its Affiliates or third-party licensors.
- 9.3 The Customer shall, at all times during and after termination or expiry of this Agreement, indemnify and keep indemnified the Supplier, its Affiliates or third-party licensors against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Supplier, its Affiliate or third-party licensors arising from any claim made against the Supplier, its Affiliate or third-party licensors due to:
- 9.3.1 the Customer amending or in any way altering the Software or Documentation;
- 9.3.2 using it for a purpose not permitted by this Agreement, and;
- 9.3.3 for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the use of the Services.
- 9.4 If the Customer becomes aware of any breach of third-party rights, as a consequence of the Customer's use or possession of the Software and/or the Documentation in accordance with the terms of the Agreement, the Customer agrees that it shall:
- 9.4.1 give the Supplier notice of any such claim within fourteen (14) days of the date on which the Customer is first given notice that the claim has been made;
- 9.4.2 allow the Supplier or its Software licensors to have sole conduct of the defence or settlement of any such claim, and;
- 9.4.3 provide the Supplier with all reasonable assistance in conducting the defence or settlement of any such claim and shall make no prejudicial statement or admission of liability.
- 9.5 For the avoidance of doubt, the Supplier shall have the right at our sole option and expense where there has been a breach as referred to in clause 9.4, to:
- 9.5.1 procure the right for the Customer to continue using the Software and/or the Documentation so that it such use is no longer infringing;
- 9.5.2 modify the Services, Software and/or the Documentation so that they become non-infringing without material diminution in their performance or specification so that the provision of the Services is not materially adversely affected.
- 9.6 Upon termination of this Agreement, the Customer's right to use the Software and/or Documentation shall cease and the Customer shall, at the Supplier's absolute discretion, promptly return, or if requested, destroy all copies of the Software and/or Documentation held by the Customer that is in a tangible form, including Software and/or Documentation stored on electronic or optical devices, whether in digital format or otherwise.
- 9.7 The Customer grants the Supplier a non-exclusive, non-transferable limited licence to use the Customer Content solely as necessary for the provision of the Service in accordance with the terms of this Agreement.
- 10. CONFIDENTIALITY AND DATA PROTECTION**
- 10.1 This paragraph 10 supplemental to clauses 11 and 13 of the General Conditions, in the event of express conflict only it shall supersede the General Conditions.
- 10.2 The Customer agrees that the Supplier or Third-Party Licensor may send promotional emails to the Customer to provide information about other goods and services which may be of interest. The Customer may notify the Supplier that you wish to withdraw permission for such promotional emails at any time by sending an email to marketing@cyberlab.co.uk.

SCHEDULE 2 – SOFTWARE SCHEDULE

- 10.3 The Customer acknowledges and agrees that the Supplier may directly and remotely communicate with the Products, to collect the following types of information:
- 10.3.1 Products, Product versions, Product features and operating systems being used;
 - 10.3.2 processing times taken by the Product;
 - 10.3.3 customer identification code and company name;
 - 10.3.4 IP address and/or ID of the machine which returns the above listed information; and
 - 10.3.5 Information required to provide Managed Support Services (if applicable).
- 10.4 The Supplier may collect, access, use, process, transmit, or store Usage Data and information collected under paragraph 10.3, which together may be used for the purposes of:
- 10.4.1 providing the Managed Support Services (if applicable), performing this Schedule 2 and the Agreement;
 - 10.4.2 verifying Customer compliance with this Agreement and Schedule 2 where applicable;
 - 10.4.3 evaluating and improving the performance of the Products and Managed Support Services (if applicable);
 - 10.4.4 preparing statistical analysis (such as malware infection rates and the usage of Products) that is aggregated, anonymised, de-identified or otherwise rendered not reasonably associated or linked to identifiable individual and using such analysis for the purposes of raising awareness of security risk and security threat research; and
 - 10.4.5 issuing alerts and notices about incidents and product lifecycle changes which affect the Products being used.
- 10.5 The Supplier requires, and the Customer agrees to provide, complete and accurate identification information and (where applicable) payment information for the purposes of:
- 10.5.1 billing;
 - 10.5.2 verifying Credentials;
 - 10.5.3 issuing license expiry and renewal notices, and
 - 10.5.4 providing account management.
- 10.6 In the case of personal data processed on behalf of the Customer, the Supplier acts as a Data Processor. In the case of personal data used for the Supplier or Third-Party Licensors for their own business purposes under paragraphs 10.3 and 10.4, the Supplier or the Third-Party Licensor is the Data Controller, as applicable.
- 10.7 The terms “Processor” and “Controller” shall have the meanings defined in the General Data Protection Regulation (“GDPR”). The Supplier will process any personal data in accordance with the provisions of GDPR and its Privacy Notice. As a global organization, the group companies, subcontractors, suppliers and third-party licensors of Third-Party Licensor’s may be located anywhere in the world.
- 10.8 The Customer expressly confirms its consent to the use of data and information as set forth herein and in the Third-Party Licensors End User Terms, and further warrant that the Customer has obtained all necessary consents and provided all necessary notifications to share such data and information with the Supplier and Third-Party Licensor for the purposes described above.
- 10.9 The Customer agrees to indemnify and hold the Supplier harmless from and against any liability that arises in relation to the Customer’s failure to comply with this paragraph 10.

ANNEX 1 – DEFINITIONS

“**Advanced License Subscription**” has the meaning given in paragraph 1.2.1;

“**Customer Content**” means all software, data (including Personal Data), non-Supplier or third-party applications, and any other content, communications or material, in any format; and any system, network, or infrastructure provided or made accessible by Customer or its End Users to the Supplier in connection with Customer’s access and use of the Products;

“**Credentials**” means a system to restrict access including usernames and passwords;

“**Delinea End User Terms**” means the below terms and conditions are applicable between the Customer and Egress and can be found at <https://delinea.com/msla>:

- i) Master Subscription and License Agreement; and
- ii) Privacy Policy.

“**Documentation**” means any online help content, user manuals, or similar materials pertaining to the implementation, operation, access, support, and use of the Products that are made available by the Supplier, as may be revised from time to time;

“**End User**” means an employee, consultant or other individual of the Customer or of an Affiliate of the Customer, who is authorised to use the Products that have been sub-licensed to the Customer;

“**Egress End User Terms**” means the below terms and conditions are applicable between the Customer and Egress and can be found at <https://www.egress.com/legal>:

- i) Master Subscription Agreement;
- ii) Online Subscriber Terms; and
- iii) Data Processing Addendum.

“**Forcepoint End User Terms**” means the below terms and conditions are applicable between the Customer and Forcepoint and can be found at <https://www.forcepoint.com/terms-and-conditions> and <https://www.forcepoint.com/legal/legal-information>:

- i) Subscription Agreement;
- ii) Network Security Products License Agreement;
- iii) Cloud Services Service Level Agreement;
- iv) Solution Rider;
- v) Data Processing and Data Protection Measures; and
- vi) Privacy Policy

“**Internal Business Purposes**” means the internal business purpose(s) relating specifically to the integrity of its systems, networks, documents, emails and other data;

“**Island End User Terms**” means the Island subscription terms, which are applicable between the Customer and Island, substantially in the form of the terms found at: [Microsoft Word - 01.26.24 - Island Subscription Terms - ISLAND DRAFT 01.26 - V@](#);

“**KnowBe4 End User Terms**” means the below terms and conditions are applicable between the Customer and KnowBe4 and can be found at <https://www.knowbe4.com/terms>

- i) Customer Terms of Service;
- ii) Product Privacy Notice;
- iii) Global Data Processing Addendum;
- iv) ICO UK SCC Addendum; and
- v) KnowBe4 Mobile Ap License Agreement;

“**LogPoint End User Terms**” means the below terms and conditions are applicable between the Customer and LogPoint and can be found at

SCHEDULE 2 – SOFTWARE SCHEDULE

<https://www.logpoint.com/en/eula/>,
<https://www.logpoint.com/en/terms-of-service/>,
<https://www.logpoint.com/en/privacy-policy/>.

- i) End User License Agreement (“EULA”);
- ii) General Terms of Service; and
- iii) Privacy Policy

“**Managed Security Support**” means the managed security support services as further detailed in **Schedule 4 Managed Security Support**;

“**Minimum Term**” has the meaning given in paragraph 2.

“**Mimecast End User Terms**” means the below terms and conditions, which are applicable between the Customer and Mimecast, substantially in the form of the terms found at <https://www.mimecast.com/contracts/>

- i) General Terms & Conditions;
- ii) Supplemental Terms & Conditions - Services Specific;
- iii) Evaluation Agreement; and
- iv) Data Processing Terms.

“**Pay-Monthly Subscription**” has the meaning given in paragraph 1.2.2;

“**Personal Data**” means any information relating to an identified or identifiable individual or that is otherwise defined as “personal data”, “personal information”, or “personally identifiable information” under applicable Data Protection Legislation;

“**Privacy Notice**” means the Supplier’s Privacy Notice which can be found on its website at <http://cyberlab.co.uk/> ;

“**Products**” means the Software subscriptions purchased by the Customer and licensed by the Third-Party Licensors in accordance with the Third-Party Licensor’s End User Terms;

“**Proofpoint End User Terms**” means the terms and conditions which are applicable between Customer and Proofpoint, Inc and can be found at <https://www.proofpoint.com/us/customer-agreement>. Unless Customer has a written license agreement in place with Proofpoint, Inc for the relevant products, Customer’s issuance of a purchase order (either directly to Proofpoint, Inc or through an authorized Proofpoint, Inc partner) constitutes Customer’s agreement that its use of the Proofpoint products is governed solely by the Proofpoint End User Terms, which contain terms regarding license and usage, data privacy obligations, disclaimers and limitations of liability, Proofpoint’s right to suspend or terminate Customer’s subscription for non-payment, and automatic renewal of the subscription;

“**Rapid7 End User Terms**” means the below terms and conditions which are applicable between the Customer and Rapid7 and can be found at <https://www.rapid7.com/legal/>:

- i) General Conditions and Schedules B and C; and
- ii) Privacy Policy.

“**Software**” means proprietary software applications, in object or binary code only, and not source code, made available by the Third-Party Licensor’

s;

“**Sophos End User Terms**” means the below terms and conditions are which applicable between the Customer and Sophos and can be found at <https://www.sophos.com/en-us/legal/>:

- i) End User Terms of Use;
- ii) Sophos Managed Security Services Service Description(s);
- iii) Licensing Guidelines;
- iv) Privacy Notice; and
- v) Data Processing Addendum.

“**Sophos Managed Security Services**” means MDR, MDR Complete, Rapid Response and Threat Adviser Sophos Managed Threat Response, Sophos Rapid Response;

“**Third-Party Licensor’s End User Terms**” means the end user terms for the applicable Product, each as may be amended from time to time by the Third-Party Licensor without notice to Customer, including:

- i) Egress End User Terms;
- ii) Delinea End User Terms;
- iii) Forcepoint End User Terms;
- iv) KnowBe4 End User Terms;
- v) LogPoint End User Terms;
- vi) Rapid 7 End User Terms;
- vii) Sophos End User Terms;
- viii) Vicarius End User Terms;
- ix) Island End User Terms;
- x) Mimecast End User Terms; and
- xi) Proofpoint End User Terms.

“**Update**” means an update of the library of rules and/or identities and/or other updates to the detection data, Products or software (excluding Upgrades) made available to the Supplier by Sophos at its sole discretion from time to time, but excluding any updates marketed and licensed by the Third-Party Licensor for a separate fee;

“**Upgrade**” means any enhancement or improvement to the functionality of the Products, versions or features made available to the Supplier by the Third-Party Supplier at its sole discretion from time to time, but excluding any software and/or upgrades marketed and licensed by the Third-Party Licensor for a separate fee, and;

“**Usage Data**” means any diagnostic and usage related information from the use, performance, and operation of the Products, including but not limited to, type of browser, Product features, and systems that are used and/or accessed, and system and Product performance data;

“**Vicarius End User Terms**” means the terms and conditions which are applicable between Customer and Vicarius, substantially in the form of the terms found at: [Privacy & Policy and Terms of Use 2024](#).

SCHEDULE 3 – PROFESSIONAL SERVICE SCHEDULE

1. SERVICE DESCRIPTION

1.1 The Supplier shall provide the Customer with one of more of the following professional and/or consultancy services as set forth in the applicable **Order** and/or Statement of Work ("**SOW**");

- 1.1.1 technology advice, design and development;
- 1.1.2 installation, deployment, configuration, testing and associated project management of Equipment and Software; and
- 1.1.3 system handover

herein after referred to as "**Professional Services**"

1.2 This Schedule consists of the terms and conditions in the body of this Schedule and, where applicable, the following supporting documents incorporated by reference into this Schedule once agreed by both parties in writing and signed by the Customer:

- 2.2.2 **SOW**; and
 - 2.2.3 Acceptance into Service.
- together defined as "**Working Documents**".

1.3 The **Working Documents** form part of this Schedule, and any additional documents agreed by the Parties in future which are not referred to in this Schedule shall not form part of this Schedule or the Agreement.

1.4 In the event of any conflict between this Schedule and any of the **Working Documents**, unless this Schedule expressly provides that it takes precedence over the terms in the **Working Documents**, the terms of the **Working Documents** will take precedence.

1.5 Subject to the above, later versions of the **Working Documents** once agreed between the parties in writing and signed by the Customer shall prevail over earlier ones if there is any conflict or inconsistency between them.

1.6 All Professional Services shall be provided on a time and material basis. Unless otherwise set forth in the **Order** or **SOW**, all Professional Services will be chargeable at the Supplier's current **Tariffs**.

1.7 The Customer shall be responsible for providing the Supplier with full and accurate details of the Customer's requirements in accordance with paragraph 1.17 below and such Customer requirements shall form the basis of the **SOW**.

1.8 For the avoidance of doubt the Supplier shall not be obliged to provide the Professional Services until the **SOW** has been signed by both the Customer and the Supplier and the Supplier has received a written **Order** from the Customer.

1.9 The Professional Services will be delivered during Service Hours unless otherwise agreed.

1.10 Where the **SOW** provides for deployment of Software or Equipment, the Customer acknowledges and accepts server reboots and/or downtime are to be expected.

1.11 Where the **SOW** does not include the supply of Software or Equipment as deliverables, it is the Customer's responsibility to provide all necessary Software and Equipment prior to the commencement of the Professional Services.

1.12 Where the **SOW** relates to Software installation only, it is the Customer's responsibility to ensure that the equipment the deployment will take on is compatible.

CUSTOMER OBLIGATIONS

1.13 The Customer shall:

- 1.13.1 provide the Supplier with all necessary information, facilities, support and services reasonably required by the Supplier for the performance of its obligations under this Schedule, including without limitation at no charge to the Supplier adequate office accommodation, a secure workspace, telephone services, access to the applicable computers, software, hardware and systems of the Customer at each relevant Site;

1.13.2 provide the Supplier's personnel with full access to the areas in which the Professional Services are to be performed at each relevant Site;

1.13.3 take all reasonable steps to ensure the health and safety of the Supplier's Consultants, employees, agents or subcontractors while they are at Site and maintain adequate insurance in respect of its potential liability to the personnel performing the Professional Services on behalf of the Supplier;

1.13.4 ensure that the Customer's Representatives cooperate fully with the Supplier and use only skilled and competent personnel in relation to the provision of the Professional Services;

1.13.5 make available all such facilities and timely and appropriate access to information and its personnel as the Supplier shall reasonably require, to provide the Professional Services;

1.13.6 where a Project Manager is appointed by the Supplier (as detailed in the **SOW**), ensure that the Customer's Representative, liaises and attends meetings with the Supplier's Project Manager where requested; .

1.13.7 ensure that any computer and operating system and any other hardware or software maintained by a third party on behalf of the Customer has been configured and is operating correctly without intervention of the Supplier, otherwise the Supplier will be entitled to recover any costs associated in such involvement, at the Suppliers standard **Tariffs**;

1.13.8 permit the Supplier access to the Customer's Site and the Equipment during Service Hours;

1.13.9 be fully responsible for all applications, data, interfaces, hardware and equipment within it control, including but not limited to, appropriate back-ups of all data, software, configuration and other information stored on any computer and operating system or any other hardware or software, and maintain an adequate disaster recovery plan, unless agreed otherwise;

1.13.10 ensure that all prerequisites set out in the **Working Documents** are completed prior to the Supplier attending the Customer's Site and/or performing the Professional Services;

1.13.11 ensure that all the requirements of health and safety legislation and procedures are and continue to be met with regard to any computer and operating system and any other hardware or software at the Site;

1.13.12 make available all passwords and/or digital certificates required for the Supplier to perform the Professional and Consultancy Services, or make personnel available with access to such information at the appropriate time; and

1.13.13 only dispose of packaging for Deliverables that are accepted as being in full working order.

1.14 The Customer warrants that:

1.14.1 the computer and operating system and any other hardware or software has been and will be used entirely in accordance with manufacturer's instructions and recommendations and that no unauthorised use, alteration, adaptation, installation or modification has taken place or will take place in breach of any manufacturer warranty and/or Licence Agreement in place;

1.14.2 it has full authority and power to authorise all necessary works required to the Site to be carried out to enable any Equipment to be installed and cables laid.

SCHEDULE 3 – PROFESSIONAL SERVICE SCHEDULE

- 1.15 Where personnel are supplied by the Supplier on a contract basis and are required to work in accordance with instructions given from time to time by or on behalf of the Customer, the Customer shall:
- 1.15.1 ensure that such instructions are provided with sufficient notice and detail to enable completion to the Customer's required standards;
 - 1.15.2 approve personnel's leave of absence (which shall not be chargeable), which shall not be unreasonably refused;
 - 1.15.3 approve and sign off personnel weekly activity reports on a weekly basis.
- 1.16 Following commencement of Professional Service, the Customer agrees to provide full responses in the shortest timescales to requests for information and assistance and acknowledges and in any event the same Working Day. The Customer further acknowledges that the Supplier will not be responsible for any delays, failure to complete items of work or additional time spent in obtaining information and assistance sought.
- 1.17 The Customer guarantees the accuracy, correctness, completeness and reliability of the data, information and documents made available to the Supplier, including those which originate from third parties. Unless set out in the **Order** or **Working Documents**, the Supplier may rely on and use this data, information and documentation without further verification.
- 1.18 Where project management is undertaken by the Customer, the Customer shall ensure that time scales and targets (including performance related targets and milestones) it sets are reasonably achieved.
- 1.19 The Customer shall at all times perform its obligations hereunder with due skill and care in a timely professional and reliable manner, use its reasonable endeavours to comply with any agreed timescales.
- 1.20 The Customer shall promptly sign off the task sheet or Acceptance into Service upon completion of the detailed schedule of work or in the case of stage projects at intervals as detailed in the relevant documents.
- 1.21 The Customer is fully responsible for evaluating the adequacy of and accepting any Deliverables.
- 1.22 The Customer hereby warrants, represents and undertakes that in so far as the Customer is aware, use by the Supplier of any information, software, hardware, documentation, drawings, Specifications, data or other materials made available by the Customer to the Supplier for the purposes of providing the Professional Services will not infringe the Intellectual Property Rights of any third party.
- 1.23 The Customer shall indemnify and hold the Supplier harmless from any and all loss, costs, damages and expenses arising out of any breach of paragraph 1.22.
- 2. SERVICE CONDITIONS**
- 2.1 The Supplier shall perform the Professional Services:
- 2.1.1 using appropriately qualified and skilled personnel;
 - 2.1.2 in accordance with this Schedule and the **SOW**;
 - 2.1.3 with reasonable care and skill and in accordance with Good Industry Practice; and
 - 2.1.4 to conform with all statutory requirements and applicable regulations relating to the Professional Services.
- 2.2 Where a Project Manager is appointed by the Supplier (as detailed in the **SOW**), the Project Manager will be chargeable and shall be responsible for the management of all Professional Services under this Schedule and will organise and attend regular meetings with the Customer's Representative as required by the Parties from time to time.
- 2.3 The Supplier shall use reasonable endeavours to:
- 2.3.1 provide the Professional Services on the date or dates and to meet any milestones specified in the **SOW**;
 - 2.3.2 ensure that the Deliverables conform with the requirements set out in the **SOW**;
 - 2.3.3 ensure that it has sufficient, suitable, experienced and appropriately qualified personnel to perform the Professional Services;
 - 2.3.4 ensure that throughout the provision of the Professional Services, the Supplier's personnel remain the employees or subcontractors of the Supplier and will remain under the overall control of the Supplier, if not possible, use reasonable endeavours to provide a suitable replacement within a reasonable timescale;
 - 2.3.5 procure that its personnel shall, at all times while on the Customer's Site, comply with the Customer's regulations regarding health, safety, disciplinary and security matters as reasonably notified to the Supplier from time to time.
- 2.4 Without prejudice to the Customer's right to terminate this Agreement for material breach, the Customer's sole remedy against the Supplier for any failure on the part of the Professional Services and/or the Deliverables to meet the requirements set forth in the **SOW** will be to require the Supplier to use reasonable endeavours to correct such failure, free of additional charge and within a reasonable time.
- STATEMENT OF WORK**
- 2.5 The Supplier shall prior to the Services Start Date, confirm the scope of the Professional Services including the Deliverables, the Customer's obligations, data gathering tasks, project management processes and procedures and any special requirements or actions the Supplier may reasonably take in performing the Professional and Consultancy Services.
- 2.6 The Supplier will provide the Customer a draft of the **SOW** for discussion purposes and any drafts will be superseded by the final written **SOW**. The Supplier shall not be responsible if the Customer chooses to rely on, act or refrain from acting on the basis of the drafts or discussions between the Customer and the Supplier.
- 2.7 The Supplier agrees to provide the Professional Services in accordance with the **SOW**, where specific dates are agreed between the Parties and the Supplier fails to meet such dates, the Supplier will reschedule the dates within a reasonable time, however unless set out otherwise in the **Order** or the **SOW**, all time is indicative and shall not be of essence.
- 2.8 The Supplier shall undertake a systems handover to the Customer as set out in the applicable **Order** or **SOW** and recorded in the Acceptance into Service documentation. Any additional training required by the Customer thereafter shall be provided by the Supplier in accordance with the Supplier's current **Tariffs**.
- ACCEPTANCE OF SYSTEMS**
- 2.9 Acceptance of the Systems shall be deemed to have occurred on whichever is the earliest of:
- 2.9.1 the signing by the Customer of the Acceptance into Service documentation for the Systems following successful completion of the relevant Acceptance Tests; or
 - 2.9.2 the expiry of five (5) Working Days after a request from the Supplier to the Customer to perform Acceptance Tests unless the Customer has provided a written report detailing the basis upon which the Acceptance Tests had not been successfully completed with reference to the **SOW** or **Order**.
- 2.10 Acceptance of the Systems constitutes agreement by the Customer that the Services and Deliverables have been

SCHEDULE 3 – PROFESSIONAL SERVICE SCHEDULE

completed, delivered, and comply with any requirements specified within the **Order** and/or **SOW**.

2.11 The Services shall not be deemed to have failed the Acceptance Tests by reason of any failure to provide any criteria, function or requirement not specified in the **SOW**.

2.12 The Supplier shall use reasonable endeavours to remedy, free of charge, any error or non-conformity relating to the services delivered with reference to the **Order** and/or **SOW** where the Customer notifies the Supplier within 10 Working Days from the date Acceptance of the Systems has been deemed to have occurred in accordance with paragraph 4.9 above.

EXCLUSIONS

2.13 The Supplier will not be responsible for any delay in the provision of the Professional Services or failure to achieve targets set by the Customer arising out of

2.13.1 any breakdown in project management by the Customer; or

2.13.2 as a consequence of any breach by the Customer of its obligations under this Schedule;

2.13.3 any non-acceptance, delay or non-payment by the Customer of any charges due under this Schedule; or

2.13.4 as a result of an extension offered.

2.14 If the Supplier's performance of its obligations under this Schedule are prevented or delayed by any act or omission of the Customer, its employees, agents or subcontractors, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

2.15 The Supplier shall not be liable for any non-delivery of Equipment (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver within seven (7) days of the scheduled delivery date. Any liability of the Supplier for non-delivery of Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note against any invoice raised for such Equipment.

2.16 The Supplier's obligation to provide the Professional Services is subject to any applicable Licence Agreements being in force.

2.17 Where the Supplier has not provided the core, underlying licences or applications to the Customer, the Supplier will not be liable for any faults, bugs or incidents relating to such core software, and any time and resources that have to be applied by the Supplier to issues found to be or related to, such core software, will be out of the scope of the Professional Services being provided and subject to separate charges.

2.18 Where the Customer purchases Professional Services in advance and without reference to an agreed **SOW**, the Services must be used by the Customer within twelve (12) months from the Effective Date unless another period is specified in the **Order**. The Professional Services and Agreement will be deemed to have expired 12 months from the Effective Date or such other period stated within the **Order**.

3. CHARGES AND PAYMENT

3.1 Where the **Order** or **SOW** provides for payment milestones upon completion of work, the Supplier will use reasonable endeavours to invoice the Customer for the Charges relating to the Professional Services which have been delivered within 5 Working Days of the date Acceptance of the Systems has been deemed to have occurred in accordance with paragraph 2.9. In all other cases the Supplier shall be entitled to invoice the Customer monthly in arrears for Charges as detailed in the **Order** and/or **SOW** relating to Professional Services delivered.

3.2 In consideration for providing the Professional Services, the Customer shall pay the Supplier the Charges as set forth in the applicable **Order** or **SOW**, together with any of the following:

3.2.1 all reasonable and properly incurred expenses, including but not limited to travel and other out of pocket expenses;

3.2.2 reasonable time spent by the Consultant(s) in travelling, where the distance travelled is further than 35 miles from the Supplier Office closest to the geographical location of the Customer Site;

3.2.3 the requisite deposit;

3.2.4 any work completed by the Supplier at the Customer's request outside the scope set out in the **SOW** and if no fee is agreed for this work the Supplier shall be paid on a time and materials basis at the Supplier's **Tariffs** applicable at the time, unless the Parties otherwise agree in writing; and

3.2.5 cancellation or additional fees and/or expenses that might arise due to breach of this Schedule by the Customer.

3.3 The Charges are based upon the Supplier's assessment of work involved, taking into account any assumptions set out in the **Order** or **SOW** and where necessary the Supplier will agree any adjustment to the Charges with the Customer.

3.4 The Supplier may invoice the Customer for any of the following Charges in addition to those set out above;

3.4.1 Cancellation Charges, Rescheduling Charges and/or Termination Charges in accordance with paragraphs 6 and 7;

3.4.2 charges for expediting provision of the Professional Services at the Customer's request; or

3.4.3 any change to the scope of the Professional Services in accordance with paragraph 4.

3.5 This paragraph 3 is supplemental to clause 7 of the **General Conditions** and if this paragraph 3 conflicts with clause 7 of the **General Conditions**, this paragraph shall take precedence.

4. CHANGE CONTROL PROCEDURE

4.1 The Customer may, by giving written notice to the Supplier at any time during the term of this Agreement, request a change in the scope of a **SOW**.

4.2 Within seven (7) Working Days of receipt of such notice, subject to the change being viable and receipt of all information reasonably requested by the Supplier, the Supplier shall prepare for the Customer a written quote for any increase or decrease in the Charges payable by the Customer under this Schedule, and any effect that the requested change would have on the scope of the **Order** and/or **SOW**. The Supplier also reserves the right to charge the Customer in accordance with its Tariff in relation to any work undertaken in preparing its quote in response to a change request.

4.3 Should the request made not be viable, the Supplier shall within seven (7) Working Days of the request, notify the Customer, qualifying why and where possible suggest an alternative. The Supplier also reserves the right to charge the Customer in accordance with its **Tariff** in relation to any work undertaken in preparing its response to a change request.

4.4 Within seven (7) Working Days of receipt of the written quote referred to in paragraph 4.2, the Customer shall inform the Supplier in writing of whether the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a **SOW** specifying any changes to the scope of the Professional Services and the Charges payable to the Supplier.

5. STATEMENTS

5.1 STATEMENTS ARE MADE BASED ON THE INFORMATION AVAILABLE AT THE TIME.

SCHEDULE 3 – PROFESSIONAL SERVICE SCHEDULE

- 5.2 STATEMENTS, INCLUDING THOSE MADE ABOUT PRODUCTS, EQUIPMENT OR SERVICES, ARE NOT A REPRESENTATION, UNDERTAKING OR WARRANTY AS TO OUTCOME OR ACHIEVABLE RESULTS.
- 5.3 STATEMENTS ARE PROVIDED FOR INFORMATION ONLY AND ARE NOT:
- 5.3.1 LEGAL ADVICE; OR
- 5.3.2 ADVICE ABOUT HOW ANY REGULATION OR COMPLIANCE REQUIREMENT MAY APPLY TO THE CUSTOMER.
- 5.4 THE SUPPLIER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY AS TO THE INFORMATION IN ANY STATEMENT.
- 5.5 THE SUPPLIER WILL NOT BE RESPONSIBLE FOR THE WAY IN WHICH THE DELIVERABLES, STATEMENTS OR ANY OTHER OUTPUT FROM THE PROFESSIONAL SERVICES IS USED.
- 6. SUSPENSION, CANCELLATION AND POSTPONEMENT**
- 6.1 SUBJECT TO CLAUSE 8 OF THE **GENERAL CONDITIONS**, THE SUPPLIER RESERVES THE RIGHT TO SUSPEND PROVISION OF THE PROFESSIONAL SERVICES IN ACCORDANCE WITH THE PROVISIONS THEREIN.
- 6.2 IF THE CUSTOMER GIVES NOTICE IN WRITING CANCELLING AN **ORDER** NOT LESS THAN TEN (10) WORKING DAYS BEFORE THE PROFESSIONAL SERVICES ARE DUE TO COMMENCE, NO CHARGES WILL BE APPLIED BY THE SUPPLIER.
- 6.3 IF THE CUSTOMER GIVES NOTICE IN WRITING CANCELLING AN **ORDER** NOT MORE THAN NINE (9) WORKING DAYS AND NOT LESS THAN FIVE (5) WORKING DAYS BEFORE THE PROFESSIONAL SERVICES ARE DUE TO COMMENCE, THE SUPPLIER RESERVES THE RIGHT TO INVOICE THE CUSTOMER FIFTY PERCENT (50%) OF THE AGREED CHARGES AS STATED IN THE **ORDER** OR WHERE APPLICABLE THE **SOW** OR IF NO CHARGES ARE STATED FIFTY PERCENT (50%) OF THE CHARGES THAT THE SUPPLIER ANTICIPATED CHARGING IN RESPECT OF THE **ORDER** OR WHERE APPLICABLE THE **SOW**. IN ALL OTHER CASES THE SUPPLIER RESERVES THE RIGHT TO INVOICE THE CUSTOMER ONE HUNDRED PERCENT (100%) OF THE CHARGES STATED IN THE **ORDER** OR WHERE APPLICABLE THE **SOW** OR IF NO CHARGES ARE STATED ONE HUNDRED PERCENT (100%) OF THE CHARGES THAT THE SUPPLIER ANTICIPATED CHARGING IN RESPECT OF THE **ORDER** OR WHERE APPLICABLE THE **SOW** ("**CANCELLATION CHARGES**").
- 6.4 ONCE THE SUPPLIER COMMENCES DELIVERY OF THE PROFESSIONAL SERVICES THEN NO CANCELLATION OF AN **ORDER** FOR THE PROFESSIONAL SERVICES WILL BE PERMITTED UNLESS THE SUPPLIER AGREES IN WRITING.
- 6.5 SHOULD THE CUSTOMER WISH TO PROCEED WITH THE PROVISION OF PROFESSIONAL SERVICES FOLLOWING SERVICE OF A NOTICE OF CANCELLATION, THE CUSTOMER WILL BE REQUIRED TO ENTER A NEW AGREEMENT WITH THE SUPPLIER.
- 6.6 IF THE CUSTOMER GIVES NOTICE IN WRITING, TO RESCHEDULE OR POSTPONE THE DELIVERY OF THE PROFESSIONAL SERVICES FROM THE DATE AGREED WITH THE SUPPLIER TO A DATE NO LATER THAN 3 MONTHS FROM THE DATE AGREED,:
- 6.6.1 NOT LESS THAN TEN (10) WORKING DAYS BEFORE THE PROFESSIONAL SERVICES ARE DUE TO COMMENCE THEN NO ADDITIONAL CHARGES WILL BE APPLIED IN RELATION TO THE RESCHEDULING OF DELIVERY;
- 6.6.2 NOT MORE THAN NINE (9) WORKING DAYS BUT NOT LESS THAN FIVE (5) WORKING DAYS BEFORE THE PROFESSIONAL SERVICES ARE DUE TO COMMENCE THEN THE SUPPLIER RESERVES THE RIGHT TO INVOICE THE CUSTOMER RESCHEDULING CHARGES CALCULATED AT TWENTY-FIVE PERCENT (25%) OF THE AGREED CHARGES STATED IN THE **ORDER** (OR WHERE APPLICABLE THE **SOW**) OR IF NO CHARGES ARE STATED TWENTY-FIVE PERCENT (25%) OF THE CHARGES THAT THE SUPPLIER ANTICIPATED CHARGING IN RESPECT OF THE **ORDER** OR WHERE APPLICABLE THE **SOW**; AND
- 6.6.3** LESS THAN FIVE (5) WORKING DAYS BEFORE THE PROFESSIONAL SERVICES ARE DUE TO COMMENCE THEN THE SUPPLIER RESERVES THE RIGHT TO INVOICE THE CUSTOMER RESCHEDULING CHARGES CALCULATED AT FIFTY PERCENT (50%) OF THE CHARGES STATED IN THE **ORDER** (OR WHERE APPLICABLE THE **SOW**) OR IF NO CHARGES ARE STATED FIFTY PERCENT (50%) OF THE CHARGES THAT THE SUPPLIER ANTICIPATED CHARGING IN RESPECT OF THE **ORDER** OR WHERE APPLICABLE THE **SOW** ("**RESCHEDULING CHARGES**").
- 6.7 THE CUSTOMER AGREES THAT THE CANCELLATION CHARGES AND RESCHEDULING CHARGES ARE A FAIR ASSESSMENT OF THE OF THE LOSSES AND DAMAGES THE SUPPLIER WILL SUFFER IN THE EVENT OF CANCELLATION OF THE **ORDER** OR POSTPONEMENT OF DELIVERY OF THE PROFESSIONAL SERVICES.
- 6.8 THE SUPPLIER MAY AT ITS SOLE DISCRETION APPLY A REDUCTION TO THE CHARGES PAYABLE FOR PROFESSIONAL SERVICES THAT HAVE BEEN RESCHEDULED WHERE THE CUSTOMER HAS PAID THE RESCHEDULING CHARGES IN FULL. SAVE FOR WHERE A REDUCTION IS AGREED BY THE SUPPLIER AND CONFIRMED IN WRITING, PAYMENT BY THE CUSTOMER OF RESCHEDULING CHARGES DOES NOT EXTINGUISH OR OTHERWISE AFFECT THE CUSTOMER'S LIABILITY TO PAY THE CHARGES FOR THE PROFESSIONAL SERVICES IN ACCORDANCE WITH THE **ORDER** AND/OR **SOW**.
- 7. TERMINATION**
- 7.1 THIS PARAGRAPH 7 IS SUPPLEMENTAL TO CLAUSES 2 AND 9 OF THE **GENERAL CONDITIONS**. IF THIS PARAGRAPH 7 CONFLICTS WITH CLAUSES 2 OR 9 OF THE **GENERAL CONDITIONS**, THIS PARAGRAPH SHALL TAKE PRECEDENCE.
- 7.2 THE AGREEMENT SHALL COMMENCE ON THE DATE OF THIS AGREEMENT AND SHALL AUTOMATICALLY EXPIRE UPON COMPLETION OF THE **ORDER** AND/OR **SOW** UNLESS OTHERWISE TERMINATED EARLIER IN ACCORDANCE WITH THIS PARAGRAPH 7 AND/OR CLAUSE 9 OF THE **GENERAL CONDITIONS**.
- 7.3 FOLLOWING COMMENCEMENT OF THE PROFESSIONAL SERVICES EITHER PARTY MAY TERMINATE THE AGREEMENT, AN **ORDER** OR A **SOW** WITHOUT CAUSE BY GIVING AT LEAST THIRTY (30) DAYS' WRITTEN NOTICE TO THE OTHER PARTY.
- 7.4 WHERE THE AGREEMENT, AN **ORDER** OR A **SOW** IS TERMINATED FOLLOWING COMMENCEMENT OF THE PROFESSIONAL SERVICES, OTHER THAN WHERE THE CUSTOMER TERMINATES THE AGREEMENT UNDER CLAUSE 9.1 OF THE **GENERAL CONDITIONS** OR WHERE THE SUPPLIER TERMINATES UNDER PARAGRAPH 7.3 ABOVE OR PURSUANT TO CLAUSES 9.3.1 TO 9.3.3 OF THE **GENERAL CONDITIONS**, THE SUPPLIER RESERVES THE RIGHT TO INVOICE THE CUSTOMER ONE HUNDRED PERCENT (100%) OF THE REMAINING CHARGES STATED IN THE **ORDER** OR WHERE APPLICABLE THE **SOW** OR IF NO CHARGES ARE STATED ONE HUNDRED PERCENT (100%) OF THE REMAINING CHARGES THAT THE SUPPLIER ANTICIPATED CHARGING IN RESPECT OF THE **ORDER** OR WHERE APPLICABLE THE **SOW** ("**TERMINATION CHARGES**").
- 7.5 IMMEDIATELY FOLLOWING SUSPENSION OR TERMINATION OF THE PROFESSIONAL SERVICES (WHETHER PARTIAL OR IN RESPECT OF ALL THE PROFESSIONAL SERVICES) THE CUSTOMER SHALL FORTHWITH PAY TO THE SUPPLIER:

SCHEDULE 3 – PROFESSIONAL SERVICE SCHEDULE

- 7.5.1 ALL OUTSTANDING FEES AND CHARGES (TOGETHER WITH VAT WHERE APPROPRIATE) AND INTEREST;
- 7.5.2 IN RESPECT OF ALL PROFESSIONAL SERVICES DELIVERED BUT FOR WHICH NO INVOICE HAS BEEN SUBMITTED, THE SUPPLIER MAY SUBMIT AN INVOICE, WHICH SHALL BE PAYABLE IMMEDIATELY UPON RECEIPT;
- 7.5.3 ANY OUTSTANDING FEES AND CHARGES PAYABLE BY INSTALMENTS, WHICH WOULD HAVE BECOME DUE AND PAYABLE BY THE CUSTOMER IF THE PROFESSIONAL SERVICES HAD NOT BEEN TERMINATED;
- 7.5.4 ALL LIABILITIES, CLAIMS, COSTS, LOSSES AND EXPENSES INCURRED AND/OR ACCRUED BY THE SUPPLIER, AND;
- 7.5.5 ANY COMMITTED COSTS OR LOSSES PAYABLE TO A THIRD-PARTY SUPPLIER INCURRED AS A RESULT OF SUCH SUSPENSION OR TERMINATION, WHICH THE SUPPLIER CANNOT REASONABLY MITIGATE.
- 7.6 TERMINATION OF THE PROFESSIONAL SERVICES SHALL NOT AFFECT ANY RIGHTS, REMEDIES, OBLIGATIONS OR LIABILITIES OF THE PARTIES THAT HAVE ACCRUED UP TO THE DATE OF TERMINATION, INCLUDING THE RIGHT TO CLAIM DAMAGES IN RESPECT OF ANY BREACH OF THIS SCHEDULE WHICH EXISTING ON OR BEFORE THE DATE OF TERMINATION.
- 7.7 UPON TERMINATION OF THE AGREEMENT, THE CUSTOMER SHALL WITHIN FOURTEEN (14) DAYS CEASE ALL USE OF THE SUPPLIER SOFTWARE AND RETURN SUPPLIER SOFTWARE (AND ALL COPIES OF THE WHOLE OR ANY PART THEREOF) TO THE SUPPLIER, OR IF REQUESTED BY THE SUPPLIER, DESTROY ALL COPIES OF THE SAME.

“Systems” means Equipment, Bespoke Software, Products or any other software owned or used by the Customer in relation to which Professional Services are provided by the Supplier;

“Tools” means any software, specifications, reports, diagrams, instructions, materials or other know how used by the Supplier for the purposes of providing the Professional Services to the Customer;

“Working Document” means any, **SOW**, Acceptance into Service, or **Order** detailing work to be completed, which may be paper or electronic format (email);

ANNEX 1 - DEFINITIONS

“Account Manager” means the Supplier’s account manager as may be agreed from time to time between the Customer and the Supplier;

“Acceptance Tests” means any tests or criteria stated in a **SOW** in relation to any Deliverables or Bespoke Software;

“Supplier Office(s)” means Supplier’ offices located in Alderley Edge, Burnley, Glasgow, Bury St Edmonds, or Borehamwood (as applicable).

“Customer Materials” means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the provision of Professional Services;

“Deliverables” means all Equipment, products, documents and materials developed or provided by the Supplier in relation to the provision of the Professional Services;

“Equipment” means the hardware at the Site whether or not such hardware is situated at the Site prior to commencement of the Agreement , and whether provided by the Supplier or not;

“Project Manager” means the project manager appointed by each the Customer and the Supplier for the purposes of managing the relationship between the parties under the Agreement;

“Service Hours” means standard working hours that shall not exceed seven (7) hours each day from Monday to Friday between the hours of 09:00 and 17:00, excluding public holidays unless otherwise agreed;

“Specification” means the description (if any) of the Professional Services set out or referred to in any **Working Document**;

“Statements” means the surveys, statements, presentations, recommendations, advice, reports, opinions and other communication provided by the Supplier as part of the Professional Services;

SCHEDULE 4 – MANAGED SECURITY SUPPORT SCHEDULE

1. SERVICE DESCRIPTION

- 1.1. Where the Customer has purchased **Standard Security Support**, the Supplier shall provide the Customer with the following:
 - 1.1.1. onboarding the Supported Equipment into the Service;
 - 1.1.2. access to MyPortal and Service Desk contact information;
 - 1.1.3. remote Incident management support; and
 - 1.1.4. facilitate any claim made under a Third-Party Supplier warranty and/or support contract on behalf of the Customer;
- 1.2. Where the Customer has purchased **Managed Security Support**, the Supplier shall provide the Customer with the services listed at paragraph 1.1 in addition to the following:
 - 1.2.1. System Monitoring;
 - 1.2.2. Elective Change Management;
 - 1.2.3. Configuration Back Ups and Recovery in the event of a disaster;
 - 1.2.4. End User Support;
 - 1.2.5. Automated reports; and
 - 1.2.6. Quarterly advisory sessions.

ONBOARDING AND INITIAL CONFIGURATION

- 1.3. Where the Supported Equipment is being provided by the Supplier pursuant to an **Order**, the Supplier shall provide the Supported Equipment in accordance with its **General Conditions** and the applicable **Service Schedule**. In all other cases, the Customer shall provide all Supported Equipment.
- 1.4. Where the Customer does not purchase the Supported Equipment from the Supplier, the Customer shall provide suitable alternative servers and infrastructure which meet the Vendor's minimum requirements for the Supported Equipment, including but not limited to all port requirements. It is the Customer's responsibility to make any required port access changes. For product and/or Vendor specific requirements please see the applicable **Vendor Annexes**.
- 1.5. Subject to compatibility, the Supplier shall configure the Customer's servers and infrastructure to host the specified Managed Security Support. The configuration provided by the Supplier is limited to the configuration required to provide the Managed Support Services, not of the Supported equipment itself.
- 1.6. The Customer will provide the Supplier with an account to access the management consoles of the Supported Equipment with sufficient privileges to perform the required administration. For product and/or Vendor specific requirements and obligations relating to Initial Configuration please see the applicable **Vendor Annexes**.
- 1.7. Server and proxy reboots/downtime should be expected with any upgrade processes performed by the Supplier. The Supplier shall agree and notify the Customer of any planned upgrades/downtime on the Customer Network.
- 1.8. The Customer must ensure that the existing Third-Party Supplier AV solutions are centrally managed and any tamper protection can be switched off on all devices before the Supplier is able to migrate an AV product.
- 1.9. Where the Customer requires the Supplier to migrate an existing Third-Party Supplier AV solution, this shall be chargeable as Professional Services and provided pursuant to **Schedule 3 (Professional Services)**.
- 1.10. Where the Customer requests the Supplier to undertake any services which are out of scope of the Services whether by way of onboarding and initial configuration shall be provided by the Supplier by way of Professional Services and chargeable in accordance with any **SOW** agreed and **Schedule 3 (Professional Services)**.

2. COMMENCEMENT AND DURATION

- 2.1. The Agreement shall commence on the date the Order is placed by the Customer, subject to site survey and credit check by the Supplier, and shall continue in force for a minimum period of two (2) years from the Commencement Date or as otherwise specified in the Order ("**Minimum Term**") and thereafter shall automatically renew for successive periods of one (1) year (each a "**Successive Term**") unless terminated:
 - 2.1.1. by the Customer giving the Supplier not less than ninety (90) days written notice before the end of the Minimum Term or Successive Term; **or**
 - 2.1.2. in accordance with clause 9 of the **General Conditions**.

3. STANDARD SECURITY SUPPORT

MY PORTAL

- 3.1. MyPortal provides the Customer with important information about its account, systems, and services. It enables the self-service management of the Services providing, status updates and responses to assist in the monitoring and reporting of the Supported Equipment.
- 3.2. The Supplier shall provide to the Customer's designated administrator a unique login ID and password to access the Customer's account in MyPortal. As a designated administrator, access to MyPortal can be enabled for others, including control of areas and level of access, where required.

SERVICE DESK

- 3.3. The Service Desk will provide support to the Customer during the Support Hours. The Service Desk provides a single point of contact for all Customer enquiries, queries or Incidents logged by MyPortal, email or telephone.
- 3.4. When contacting the Service Desk the Customer must, where possible, provide details of the following:
 - 3.4.1. contract number;
 - 3.4.2. serial number or make and model;
 - 3.4.3. details of Supported Equipment;
 - 3.4.4. Customer contact information; and
 - 3.4.5. full description of the issue.

INCIDENT MANAGEMENT

- 3.5. Save for where 24/7 Incident Management is purchased by the Customer pursuant to an **Order**, the Supplier shall provide Incident Management in accordance with the Standard Support Hours, as further described below, from the Commencement Date:
- 3.6. The Customer shall report an Incident to the Service Desk as soon as reasonably practicable by telephone, email or MyPortal.

INCIDENT IDENTIFICATION

- 3.7. The Supplier shall identify and classify a request submitted to the Service Desk as either (i) an Incident or (ii) a Change Request as defined in **Annex 1**. All Incidents shall be managed in accordance with this paragraph 3.
- 3.8. Where a request is deemed by the Supplier to be a Change request, this Supplier may provide support subject to an Additional Charge calculated on a time and materials basis in accordance with the Supplier's applicable Tariff from time to time.

PRIORITY CLASSIFICATION

SCHEDULE 4 – MANAGED SECURITY SUPPORT SCHEDULE

- 3.9. The Supplier shall allocate a unique reference number to each Incident and shall prioritise the Incident as follows:

PRIORITY LEVEL	DESCRIPTION
Priority 1 Critical	A critical service is non-operational, impacting the Customer's business, multiple End Users or multiple Sites; or severe functional error or degradation of Service(s) affecting production, demanding immediate attention. Business Risk is High
Priority 2 Major	The Customer's business is experiencing failure or performance degradation that impairs the operation of a critical business Service, although a work around may exist; or Application functionality is lost; or significant number of End Users or major Site is affected. Business Risk is Medium
Priority 3 Minor	The Customer is experiencing a problem that causes moderate business impact. The impact is limited to an End User or a small Site; or incident has moderate, not widespread impact; or involves partial loss with minimal impact which is non-critical in nature. Business Risk is Low
Priority 6 Change Request	Standard service request (e.g. End User guidance and Change Requests); or updating documentation. Business Risk is Minor localised

INCIDENT MANAGEMENT

- 3.10. Subject to paragraph 3.4 above, the Supplier shall use reasonable endeavours to deliver a Change Request as soon as reasonably practicable during Support Hours.
- 3.11. Where the Customer notifies the Supplier of an Incident in relation to the Supported Equipment or where a ticket is automatically generated or inputted by the Supplier, the Supplier shall log, process and manage Incidents through its Service Desk.
- 3.12. All Incident resolutions are verified with the Customer and/or its End Users in accordance with ITIL Methodology before the Incident is deemed Resolved.
- 3.13. For all Incidents relating to Excluded Events, equipment not listed as Supported Equipment or where the support requested or required is deemed outside of the scope of the Services, the Supplier shall use reasonable endeavours to respond to such Incidents, subject to an Additional Charge calculated on a time and materials basis in accordance with the Supplier's applicable Tariff from time to time. Such Incidents shall not be counted or considered in relation to the performance of any Service Levels.

REMOTE SUPPORT

- 3.14. The Service Desk will aim to resolve Incidents at first line, where this is not possible, the Incident will be escalated to the appropriate 2nd / 3rd line subject matter expert in accordance with the Incident Management process.
- 3.15. Attendance at Site of an Engineer is not included within the Managed Security Support. If the Customer requests an

Engineer to attend Site, this shall be subject to an Additional Charge calculated on a time and materials basis in accordance with the Supplier's applicable Tariff from time to time.

INVESTIGATION AND DIAGNOSIS

- 3.16. Tickets are manually inputted and processed by the Service Desk through MyPortal. Initial triage of the ticket, fact verification including incident prioritisation and classification are completed.
- 3.17. The Service Desk will then attempt to resolve or direct the Incident to the appropriate service team.
- 3.18. Throughout the Incident or Change Request, updates, notes and where appropriate log files and images will be placed on MyPortal. The status of an Incident or Change Request will change depending on the current actions required.

RESOLUTION AND CLOSURE

- 3.19. When the Incident has been Resolved, the notes, including a description of the resolution will be updated and made available for review by the Customer if required.
- 3.20. Where appropriate, communication will be made between all parties before the Incident is closed in accordance with Incident Management deliverables.
- 3.21. Incidents may also be closed, if after reasonable effort has been made to get a response from the Customer, no update has been given on three (3) consecutive occasions. In such cases Incidents can be reopened upon request by the Customer.

SERVICE LEVELS

- 3.22. The Supplier shall use its reasonable endeavours to ensure that response times to the Customer's notification of an Incident are not more than:

PRIORITY LEVEL	CATEGORY	INITIAL RESPONSE TARGET* (NORMAL WORKING HOURS)
Priority 1	Critical	1 Hour
Priority 2	Major	4 Hours
Priority 3	Minor	8 Hours
Priority 6	Minor	5 Working Days

**Calculated from receipt of notification of Incident by Supplier.*

- 3.23 The initial response targets in paragraph 3.22 above are standard response targets. Where the Supplier has agreed specific response targets with a Customer, these shall be set out in the relevant Order.

THIRD PARTY WARRANTY SUPPORT

- 3.24 Where the Supported Equipment has a valid Third-Party Supplier warranty and/or support contract in place, the Supplier shall facilitate on behalf of the Customer any claim made under the Third-Party Supplier warranty and/or support contract, in respect of an Incident identified and logged with the Service Desk.
- 3.25 Where the Supported Equipment does not have a valid Third-Party Supplier warranty or support contract, or the Third-Party Supplier no longer provides appropriate support, the Supplier shall use reasonable endeavours to respond to an Incident, subject to payment of Additional Charges or a sufficient balance of Resource Credits on the Customer account shown in MyPortal.

4. MANAGED SECURITY SUPPORT

SYSTEM MONITORING

- 4.1. The Supplier shall provide real-time monitoring with intelligent alerting. The Supplier shall respond to SNMP and email alerts

SCHEDULE 4 – MANAGED SECURITY SUPPORT SCHEDULE

where appropriate and at its discretion and logon to the relevant console to inspect issues in accordance with the Service Level Targets.

- 4.2. A specification document detailing what the Supplier monitors and backs up can be provided to the Customer upon request.
- 4.3. In accordance with the Service Level Targets the Supplier will either attempt to resolve the issue on the Customer's behalf (only if the problem can be resolved from the relevant management console) or advise the Customer on what actions are required to take place to address the issue.

ELECTIVE CHANGE MANAGEMENT

- 4.4. The Supplier upon request by the Customer can undertake Change Requests and will manage all changes covered under the Services in accordance with the Change Request process.
- 4.5. The Customer shall submit a Change Request through the Service Desk, subject to Additional Charges as follows:
 - 4.5.1. Up to five (5) Elective Changes per month are included in the Service and shall be allocated for common changes that do not require a detailed scope of works; and
 - 4.5.2. Customised Changes are specific to the Customer and are scoped on a case-by-case basis with the Customer being charged on a time and materials basis.
- 4.6. All additional Elective Changes are completed on a time/materials basis and charged to the Customer as per the Supplier's Standard Schedule of Rates.
- 4.7. The Customer may also purchase, at the Commencement Date, a specific quantity of Technical Attendance Days which will be set out in the applicable **Order**.
- 4.8. For the avoidance of doubt, Customised Changes under paragraph 4.5.2 above shall be outside of the scope and terms of this Schedule and subject to a separate **Order**, will be specified and carried out in accordance with **Schedule 3 (Professional Services)**.

CONFIGURATION BACKUPS AND DISASTER RECOVERY

- 4.9. The Supplier will take configuration backups of the Supported Equipment, and in the event of a disaster shall restore the Support Equipment remotely, in accordance with the appropriate **Vendor Annex**.
- 4.10. Restoration is limited to configuration backup of the Supported Equipment, and is subject to:
 - 4.10.1. the Supported Equipment being maintained in accordance with paragraph 6 below; and
 - 4.10.2. the backup covering the requirements of the restoration.
- 4.11. If the Supplier is unable to take backups or the backups are being stored by the Customer only, the Supplier is not responsible, or liable to the Customer, if a backup is unavailable or cannot be restored in the event of disaster recovery event.
- 4.12. The Supplier reserves the right to limit to one (1) restoration per Contract Year.

AUTOMATED REPORTING

- 4.13. The Supplier shall provide automated reporting as defined in the applicable **Vendor Annex**.

ADVISORY SESSIONS

- 4.14. The Supplier shall provide as part of the Service, quarterly advisory sessions for up to one (1) hour with an Engineer.
- 4.15. The Supplier will advise on recommended rule and configuration changes and will implement upon agreement following the scheduled sessions either by using the Elective Change or Customised Change process.

24/7 ADDITIONAL INCIDENT MANAGEMENT SERVICES

- 4.16. Where the **Order** specifies an 24/7 Incident Management Service, the Supplier will monitor P1 and P2 Incident emails and alerts (where the Supported Equipment provides them) from,

or relating to, the Supported Equipment between 07:30 and 22:00, 365 days a year.

- 4.17. At all other times the Supplier will respond to calls received by the Customer relating to P1 and/or P2 Incidents, save that the Target Response Time for P2 faults shall be 1 Hour subject to the terms of this Schedule.
- 4.18. The Supplier will not monitor emails and alerts (where the Supported Equipment provides them) outside of the hours stated at paragraph 5.37 above and as such the Customer must contact the Service Desk by telephone in the event of a P1 or P2 Incident.

5. CUSTOMER OBLIGATIONS

- 5.1. On and from the Commencement Date and for the duration of the Agreement, the Customer shall:
 - 5.1.1. pay the Charges as and when they fall due under the Agreement;
 - 5.1.2. make available all such facilities as the Supplier, and its Personnel reasonably require in providing the Security Support, including but not limited to:
 - 5.1.2.1. direct and remote access to the Customer Network, the Supported Equipment;
 - 5.1.2.2. full and free access to the Site during the Support Hours; and
 - 5.1.2.3. provide such reasonable assistance as the Supplier may request (e.g. providing sample output and other diagnostic information);
 - 5.1.3. notify the Supplier immediately upon failure of any of the Supported Equipment;
 - 5.1.4. ensure that the Supported Equipment is compliant with Applicable Law;
 - 5.1.5. ensure that proper environmental conditions are maintained for the Supported Equipment and shall maintain in good condition the accommodation of the Supported Equipment, the cables and fittings associated therewith and the electricity supply thereto;
 - 5.1.6. keep and operate the Customer Network and Supported Equipment in a proper and prudent manner, in accordance with the manufacturer's operating instructions, and ensure that only competent trained employees (or persons under their supervision) are allowed to access the Customer Network and Supported Equipment;
 - 5.1.7. provide a secure, continuous power supply at the Site(s) for the operation of the Customer Network at such points with such connections as the Supplier specifies, and in order to mitigate any interruption to the Supported Equipment resulting from failure of the primary power supply, provide back-up power with sufficient capacity to conform to the standby requirements of the applicable standards;
 - 5.1.8. ensure that all data held on the Customer Network is adequately backed up and keep full security copies of the Customer's programs, data bases and computer records and maintain a disaster recovery process;
 - 5.1.9. be responsible for data cleaning, the integrity of any data provided to the Supplier and for all direct and indirect consequences of any errors in such data;

SCHEDULE 4 – MANAGED SECURITY SUPPORT SCHEDULE

- 5.1.10.put in place and maintain up to date security measures to protect the Customer Network from viruses, harmful code, malicious damage and unauthorised direct and remote access to the Customer Network in accordance with Good Industry Practice;
- 5.1.11.procure and maintain all relevant licences and consents and, always comply with the terms of the relevant Supported Equipment and other licences and consents and all Applicable Law; and
- 5.1.12.inform the Supplier, in writing, of all health and safety rules and regulations and any other reasonable security requirements in place at the Customer Site(s), including any updates from time to time, and take all reasonable steps to protect the health and safety of the Supplier's Personnel whilst at the Customer's Site(s).
- 5.2. The Customer shall promptly implement recommendations by the Supplier in respect to remedial actions, whether prior to or following an Incident and confirms that it owns or will obtain valid Licenses for all Software which are necessary to grant the Supplier access to and use of the Software for the purpose of fulfilling its obligations under this Schedule.
- 5.3. The Customer shall inform the Supplier of any changes to its applications, underlying Operating System and/or maintenance and support on services not provided by the Supplier, which may affect the validity of the data to be obtained by the Supplier during an Audit.
- 5.4. The Supplier reserves the right, subject to providing the Customer with reasonable notice, to undertake an Audit of the Hardware and Software on an annual basis.
- ### 6. SERVICE CONDITIONS
- 6.1. The Supplier shall perform the Services;
- 6.1.1. using appropriately qualified and skilled personnel;
- 6.1.2. in accordance with this Schedule and the relevant level of Service;
- 6.1.3. with reasonable care and skill and in accordance with Good Industry Practice, and;
- 6.1.4. so as to conform with all statutory requirements and applicable regulations relating to the Services; and
- 6.1.5. in accordance with the provisions of this Schedule as applicable and set forth in the applicable **Order**.
- 6.2. The Customer is required to provide accurate and up to date contact details for primary contact details that the Supplier can access as necessary, and it is the Customer's responsibility to keep the Supplier updated and provide secondary points of contact in case of absences. The Supplier shall not be responsible if a Service Failure occurs due to the Supplier not being able to contact the Customer.
- ### SERVICE LIMITATIONS
- 6.3. The Supplier shall only provide the Services where the Customer meets the prerequisites as set out in paragraph 1 and 5 above.
- 6.4. Any work outside of the Services described in this Schedule shall be subject to an Additional Charge, this includes but is not limited to any Elective Charges exceeding 5 a month, any Customised Changes, any non-security related elements of the Supported Equipment and all attendance at Site of an Engineer.
- 6.5. Configuration changes either requested or required as part of a resolution of an Incident or otherwise are not covered under Managed Security Support. These changes can be completed, subject to approval, and an Additional Charge unless the configuration change is an Elective Change and is 1 of the 5 monthly allowance that is included as part of the Managed Security Support.
- 6.6. Major Upgrades to the Supported Equipment are not covered under Managed Security Support. Support with Major Upgrades can be provided by way of Professional Services in accordance with **Schedule 3**.
- 6.7. Save for where the Customer has purchased 24/7 Incident Management pursuant to an **Order**, the Supplier shall not be obliged to provide Services outside of Standard Support Hours or for any equipment other than the Supported Equipment.
- 6.8. Managed Security Support does not include support directly on endpoints, support in relation to threat hunting or threat remediation. Where support is provided, it is provided subject to an Additional Charge.
- ### 7. CHARGES AND PAYMENT
- 7.1. This paragraph 7 is supplemental to clause 7 of the **General Conditions** and in this event of express conflict this paragraph 7 shall apply. The Supplier shall invoice the Customer for the Charges for the Services as set out in paragraph 82 in the amounts specified in the applicable **Order** or as varied pursuant to the terms of this Agreement.
- 7.2. Unless stated otherwise in the applicable **Order** or **SOW**, the Supplier shall invoice the Customer as follows:
- 7.2.1. Recurring Charges annually in advance;
- 7.2.2. Additional Charges monthly in arrears;
- 7.2.3. all reasonable and properly incurred expenses, including but not limited to travel and other out of pocket expenses;
- 7.2.4. reasonable time spent by the Engineer(s) in travelling, where the distance travelled is further than 35 miles from the Supplier Office closest to the geographical location of the Customer Site; and
- 7.2.5. any Termination Charges upon termination of the Services
hereinafter defined as "**Charges**".
- 7.3. Additional Charges shall be invoiced in arrears at the end of the month in which the Additional Charges are incurred, together with replacement parts and any other expenses and costs reasonably incurred.
- 7.4. The Supplier shall have the right to invoice Additional Charges to the Customer for any expenses and costs reasonably incurred under paragraph 9 below, or where the Supplier upon investigation an Incident is caused by something which the Supplier is not responsible for under this Schedule.
- 7.5. If in the opinion of the Supplier, the Services are required by the Customer as a result of any misuse or neglect of, or accident to the Customer Network, and/or the Supported Equipment or due to the Customer not adhering to paragraph 9, or other third-party hardware problems, the Supplier reserves the right to charge an additional fee in relation to the provision of the Services.
- 7.6. The Supplier reserves the right to charge the Customer an Additional Charge for an Incident where the Supported Equipment has been moved to a new location and not installed by the Supplier, if the Supplier reasonably determined that the problem was caused by the transportation or re-installation of the Supported Equipment.
- 7.7. Where the Supplier finds that the Supported Equipment list does not contain all Software and/or Hardware forming the estate to which Services are being provided, the Supplier reserves the right to (i) vary the list to add such Software and/or Hardware; and (ii) increase the Recurring Charges in consideration for providing Services for the Supported

SCHEDULE 4 – MANAGED SECURITY SUPPORT SCHEDULE

Equipment added (“**Additional Supported Equipment**”). Where the Supplier exercises its right under this paragraph, the Customer shall be liable to pay the increased Recurring Charges in accordance with this clause 8 and the **General Conditions**.

8. EXCLUSIONS

8.1. Notwithstanding any other provision of this Schedule or the **General Conditions**, the Supplier shall not be obliged to perform or provide the Services in one or more of the following circumstances:

- 8.1.1. the Customer is in breach of its obligations under paragraph 6 above or is in material breach of this Agreement;
- 8.1.2. negligence of the Customer or its End Users or the improper use by the Customer or its End Users of the Customer Network and/or Supported Equipment;
- 8.1.3. damage to the Supported Equipment resulting from accident, transportation or relocation, neglect, misuse or causes other than ordinary use (including but not limited to, failure to observe any instructions supplied by the manufacturer regarding the operation and maintenance) of the Supported Equipment;
- 8.1.4. damage caused by consumable items such as recording materials, machine stationary, ribbons, media, laser drum, toner, printer cartridges, paper trays, platen knobs, fuses, batteries, print heads, cathode ray tubes, switch boxes, power adaptor blocks or any other item considered to be a consumable by the Supplier;
- 8.1.5. damage caused by the use of non-manufacturer approved consumables, where this results in abnormal wear or damage to the Supported Equipment;
- 8.1.6. damage caused by virus attacks or failure due to any unauthorised third party Software;
- 8.1.7. alteration, modification, repair or maintenance of the Supported Equipment by any person other than the Supplier or its approved Third Party Supplier;
- 8.1.8. the Supported Equipment is removed from Site without the prior written approval of the Supplier;
- 8.1.9. insufficient or improper access to the Customer Network and/or Supported Equipment;
- 8.1.10. failure or fluctuations in electrical power supply and/or unsatisfactory environmental conditions which do not meet manufacturers requirements;
- 8.1.11. where the Customer's own insurance covers the accidental or malicious damage to the Supported Equipment and costs relating to the Supported Equipment; and
- 8.1.12. damage to the Customer Network and/or Supported Equipment due to accidental damage, theft, vandalism or a Force Majeure Event.

8.2. Where the Supplier is called out in connection with any of the matters referred to in paragraph 9.1 or where the Supplier determines that the call was not warranted or falls within paragraph 9.1, the Supplier has the right to charge the Customer for any expenses and costs reasonably incurred as Additional Charges or by way of Professional Service Charges.

8.3. For the avoidance of doubt, the excluded events as listed in paragraph 9.1 above shall not be counted or considered in relation to the performance of any Service Levels.

9. TERMINATION

9.1. This paragraph 11 is supplemental to clause 2 and 9 of the **General Conditions** and in the event this paragraph 8 conflicts

with clause 2 and 9 of the **General Conditions**, this paragraph shall take precedence.

9.2. The Customer may terminate the Services generally or in relation to any part of the Services at any time by giving the Supplier not less than ninety (90) days written notice prior to the end of the Minimum Term or Successive Term, such notice to take effect at the end of the Minimum Term or Successive Term.

ANNEX 1 – DEFINITIONS

Additional Charges means the additional charges incurred in accordance with terms of this Schedule together with any replacement parts and any other costs or expenses reasonably incurred if not expressly included in the relevant **Order**;

Applications means a computer software package that performs a specific function directly for and End User or, in some cases, for another application, also referred to as an application program or application software;

Change Request means a formal request to change, modify or alter the Services provided by the Supplier to the Customer as set forth in the applicable **Order**;

Charges has the meaning given to it in paragraph 8.2;

Contract Year means a period of twelve (12) months from the Commencement Date and/or any subsequent anniversary of the Commencement Date;

Customer Equipment means any equipment including purchased Hardware, Devices and Software used by the Customer in connection with the provision of the Services;

Customer Network means the Customer's physical network and server infrastructure, including (if any) servers and switches to routers and firewalls, plus business systems software;

Device means any mobile handset, laptop, tablet, computer or other input item or handheld equipment, including all peripherals, excluding SIM cards and Applications, which are in the scope of the Services, as set out in the **Order**;

End User means anyone permitted by the Customer to use or access the Supported Equipment, Customer Network and/or the Customer Equipment;

Engineer means the Supplier's Personnel who is responsible for carrying out technical engineering duties either remotely or at a Customer's Site;

Excluded Events means the events and circumstances listed at paragraph 9.1

Force Majeure shall have the meaning given to it in Clause 9.6 of the **General Conditions**;

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of skill and care which could be reasonably expected of a highly skilled and experienced professional;

Hardware means any and all computer and computer related hardware, including but not limited to, computers, servers, network switches, UPS units, firewalls and connect peripherals;

Incident means any event which is not part of the standard operation of the Supported Equipment and which causes or may cause an unplanned interruption to, or a reduction in the quality of the performance of the Supported Equipment;

Incident Management is the process as further defined in paragraph 5 of this Schedule;

ITIL Methodology means a set of IT Service Management practices that focuses on aligning IT services with the needs of business;

SCHEDULE 4 – MANAGED SECURITY SUPPORT SCHEDULE

Installation Charges means the charges in relation to the installation of the Supported Equipment, Services or any Customer Equipment as applicable;

Licence Fees means the charges associated with the use of the Software, by the purchase of a Licence Agreement;

Major Upgrade means any major version release of the Supported Equipment that has been made available by the Vendor which would require a **SOW** and would therefore be chargeable by way of Professional Services;

MyPortal means the Customer's online access to the provision of the Services available through the Supplier's website <https://cyberlab.co.uk>;

Operating System means system software that manages computer hardware, software resources, and provides common services for computer programs;

Order means an order issued by the Supplier to the Customer for the provision of the Services;

Point Upgrade means a minor version release of the Supported Equipment that has been made available by the Vendor;

Professional Services means engineering support as further detailed in **Schedule 3.1 (Professional Services)**;

Resolved or Resolution means where an Incident has been resolved and the standard operation of the Customer Network and/or Supported Equipment as is expected in accordance with manufacturers recommendations;

Services means Managed Security Support;

Service Desk means the Supplier's Service Desk that the Customer is able to contact to report an Incident;

Service Levels means the relevant Service Level targets as further defined in paragraph 5 of this Schedule;

Site(s) means the Customer's premises at which the Customer Network and/or Supported Equipment is located as specified in the relevant **Order**;

Software means the software licensed to the Customer, together with any embedded software which is necessary for provision of the Services and/or operation of the Supported Equipment, which may be provided by a Third-Party Supplier and governed by a separate Licence Agreement;

Standard Support Hours means 09:00hrs to 17:30hrs on a Working Day;

Supplier's Personnel means all employees, agents, consultants, sub-contractors and other representatives of the Supplier who are involved, or proposed to be involved, in the provision of the Services;

Supported Equipment means the list of Hardware and/or Software as further detailed in the relevant **Order** or **SOW** and for which the Service is being provided in accordance with this Schedule;

Technical Attendance Days means where an Engineer attends Site to carry out Elective Changes during Standard Support Hours, excluding consumables and spare parts;

Third Party Supplier means a third-party supplier, provider or supplier of services of which:

- (a) the Customer may utilise for the provision of equipment and the Customer's Network, and;
- (b) the Supplier may utilise for provision of the Services;

Vendor means the vendor of the Supported Equipment as stated on the **Order** or **SOW** being either Forcepoint, Microsoft or Sophos;

Vendor Annexes means **Annex 2 (Sophos)**, **Annex 3 (Microsoft)** and **Annex 4 (Forcepoint)**;

ANNEX 2 – SOPHOS

1. Where the Supported Equipment includes Sophos Software and/or Hardware this **Annex 2** applies and take precedence over the Schedule in the event of express conflict.

Initial Configuration

2. The Customer shall provide suitable alternative servers and infrastructure and must ensure that they meet the Vendor and Product specific minimum requirements which can be found at <https://docs.sophos.com/>.
3. As stated at paragraph 2.5 of the Schedule the initial configuration shall not include configuration of the Supported Equipment itself, only configuration required to provide the Managed Support Services. It does not therefore include installation or configuration of new Sophos agents for example. Where the Supplier undertakes such installation or configuration work, the Customer shall liable for the Supplier's Professional Service Charges pursuant to **Schedule 3 - Professional Services**.
4. The Supplier is not responsible for installing or migrating an AV software and where the Customer requires support this can be provided by the Supplier by way of Professional Service under **Schedule 3 -Professional Services**.
5. If the Operating Systems are not supported by the manufacturer but are supported by Sophos, and an extended subscription has been purchased, if required and the Supplier shall use reasonable endeavours to support the same.
6. The Customer is responsible for ensuring it has the appropriate Sophos License Agreements in place for the infrastructure environment and each End User and acknowledges that provision of Managed Security Support is dependent upon such License Agreements being in place at the point of implementation and for the duration of the Agreement.
7. Where the Customer purchases Sophos products through the Supplier, the terms of **Schedule 2 -Software Schedule** apply and as detailed therein the Customer also accepts the applicable Sophos End User terms and conditions.

System Monitoring

8. SNMP alerts only available with the XG firewall and UTM solutions. Email alerts are available on both Sophos Central and Sophos XG/UTM.

System Backups and Disaster Recovery

9. The Supplier will take backups of the XG and UTM firewall (Configuration not reporting data) when this service option has been selected. This configuration will be stored on the Supplier's servers
10. In the event of a disaster, the Supplier will restore the Supported Equipment/Sophos XG and UTM Firewall using remote access and the Customer is required to have on Site assistance during such time to support the Supplier remotely. The Supplier is not responsible for restoring clients and servers either from a disaster or due to a failed Upgrade or patch.

Automated Reporting

11. The Supplier shall provide automated reporting relating to Sophos Central and/or XG/UTM Firewalls as applicable.
12. The Customer acknowledges that that Sophos will continue to develop and amend the various components listed above and as such any reporting functionality may be subject to change due to changes to the components comprised within the Sophos License.

Upgrades

13. Where the Supported Equipment is an XG or UTM Firewall point upgrades are included as part of Managed Security Support but

SCHEDULE 4 – MANAGED SECURITY SUPPORT SCHEDULE

are subject to the Customer having a Sophos Firewall Support Agreement with Sophos.

ANNEX 3 – MICROSOFT

1. Where the Supported Equipment includes Microsoft Software and/or Hardware this **Annex 3** applies and takes precedence over the Schedule in the event of express conflict.
2. The Support Services can only be provided to the following Supported Equipment: Microsoft 365 E3; E5; and Business Premium Licenses.

Initial Configuration

3. Vendor and Product minimum requirements can be found at <https://learn.microsoft.com/en-gb/docs/>.
4. As stated at paragraph 2.5 of the Schedule the initial configuration shall not include configuration of the Supported Equipment itself, only configuration required to provide the Managed Support Services. It does not therefore include installation or configuration of new Microsoft clients into Intune for example. Where the Supplier undertakes such installation or configuration work, the Customer shall be liable for the Supplier's Professional Service Charges pursuant to **Schedule 3 - Professional Services**.
5. The Supplier is not responsible for installing or migrating an AV software and where the Customer requires support this can be provided by the Supplier by way of Professional Service under **Schedule 3 - Professional Services**.
6. If the existing AV software does not have a central removal tool, then additional work will be required by the Supplier to investigate, test and perform the removal process. The Supplier shall be entitled to invoice Professional Services Charges in accordance with **Schedule 3 – Professional Services**. The current non-Microsoft removal tool is available from the following link <https://support.microsoft.com/en-us/topic/list-of-security-program-cleanup-and-uninstall-tools-751fd6cc-a39f-dc66-ef44-61a7de91b7dc>.

Service Description

7. The Customer is responsible for ensuring it has the appropriate Microsoft License Agreements in place for the infrastructure environment and each End User and acknowledges that provision of Managed Security Support is dependent upon such License Agreements being in place at the point of implementation and for the duration of the Agreement.

System Monitoring

8. Pro-active monitoring as described at paragraphs 5.22 to 5.24 of the Schedule is not applicable where the Supported Equipment is an unsupported Microsoft product.
9. The Supplier will provide system monitoring based on Microsoft features and functionality available from time to time but is unable to guarantee any specific form of monitoring.

Systems Back Up and Disaster Recovery

10. The Supplier is unable to provide System Back Up and Disaster Recovery feature of the Service as the functionality doesn't exist natively within the Microsoft Licenses.

Automated Reporting

11. The Supplier shall provide automated reporting where applicable as part of the Microsoft License.
12. The Customer acknowledges that that Microsoft will continue to develop and amend the various components listed above and as such any reporting functionality may be subject to change due to changes to the components comprised within the Microsoft License.

ANNEX 4 – FORCEPOINT

1. Managed Security Support is designed to support Forcepoint Data, Forcepoint Web and Forcepoint Email. The Supplier can offer support for each product as well as for all products subject to them being listed in the Supported Equipment List in the **Order** and/or **SOW**.

Installation and Configuration

2. As stated at paragraph 2.5 of the Schedule the initial configuration shall not include configuration of the Supported Equipment itself, only configuration required to provide the Managed Support Services. It does not therefore include, for example, installation, configuration, or maintenance of any Forcepoint agents, or configuration of the Customer side of the VPN tunnel of the Customer firewall. These are responsibilities of the Customer.
3. Where the Supplier undertakes any installation, configuration or maintenance work which is the responsibility of the Customer, the Customer shall be liable for the Supplier's Professional Service Charges pursuant to **Schedule 3 - Professional Services**.

Automated Reporting

4. The Supplier shall provide automated reporting relating to the Supported Equipment.
5. The Customer acknowledges that that Forcepoint will continue to develop and amend the various components listed above and as such any reporting functionality may be subject to change due to changes to the components comprised within the Forcepoint License.

Upgrades

6. All Forcepoint Upgrades are excluded from the Services including Point Upgrades. It is the Customer's responsibility to ensure it is running a Vendor supported version of the Supported Equipment.

System Monitoring

7. Where the Services are being provided for on-premises Forcepoint solutions, to provide the System Monitoring an agent will be required to be installed on the Windows servers.

Back Up

8. Back Ups will be taken by the Supplier where possible and depending upon the Forcepoint solution the Supplier is supporting.

SCHEDULE 5 – PENETRATION TESTING SCHEDULE

1. SERVICE DESCRIPTION

- 1.1 The Supplier shall provide the Customer with Penetration testing Services (“**Services**”) as set forth in the applicable **Order** and/or Statement of Work (“**SOW**”).
- 1.2 This Schedule consists of the terms and conditions in the body of this Schedule and, where applicable, the **SOW**.
- 1.3 In the event of any conflict between this Schedule and any of the **SOW**, unless this Schedule expressly provides that it takes precedence over the terms in the **SOW**, the terms of the **SOW** will take precedence.
- 1.4 Subject to the above, later versions of the **SOW** once agreed between the parties in writing and signed by the Customer shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 1.5 All Services shall be provided on a time and material basis. Unless otherwise set forth in the **Order** or **SOW**, all Services will be chargeable at the Supplier’s current **Tariffs**.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the date when the Order has been signed by both Parties. It shall continue, unless terminated earlier in accordance with its terms, until the Services have been completed by the Supplier and the Charges have paid in full by the Customer.

3. THE PARTIES OBLIGATIONS

- 3.1 This paragraph 3 is supplemental to clause 5 of the **General Conditions**. It does not supersede it unless expressly stated.

- 3.2 The Supplier warrants that it:

- 3.2.1 shall perform the penetration testing element of the Service during the Authorised Testing Period unless otherwise agreed in writing with the Customer;
- 3.2.2 shall use reasonable endeavours to meet any agreed timescales for completion of the Services notwithstanding that timescales are estimates only and time shall not be of the essence; and
- 3.2.3 shall take reasonable care of shall take reasonable care of any of the Customer’s materials in its possession and make them available for collection by the Customer on reasonable notice and request. The Supplier may destroy the Customer Materials if the Customer fails to collect them within a reasonable period after termination of this Agreement; and
- 3.2.4 has full capacity and authority to enter into this Agreement.

- 3.3 The Customer shall:

- 3.3.1 perform its obligations under this Agreement with reasonable skill and care;
- 3.3.2 comply with all applicable laws, statutes, regulations from time to time in force, which apply to the performance of its obligations under this Agreement;
- 3.3.3 co-operate with the Supplier in all matters relating to the Services, including the provision of accurate and complete access, resources, information and facilities in a timely manner to allow the Supplier to perform the Services;
- 3.3.4 maintain and be responsible for maintaining its own:
 - 3.3.4.1 data and software back up and associated restoration measures; and
 - 3.3.4.2 business continuity and disaster recovery measures.

- 3.4 The Customer warrants that:

- 3.4.1 all of its applications, devices, network and infrastructure are fully operational in a manner which will allow the Supplier to perform the Services;
- 3.4.2 it understands the nature of cyber- security testing, and that the Services being provided by the Supplier are intended to identify vulnerabilities in the Customer’s internal and external IT applications, hardware, networks and infrastructure and may result in adverse consequences. The Customer further acknowledges and agrees that:

- 3.4.2.1 the scanning of IP addresses and/or domain names may expose vulnerabilities and, in some circumstances, could result in the disruption of services and/or access being provided by the Customer;
- 3.4.3 exploitive scans involve substantial risk of issues, including without limitation, Denial of Service (DOS) attacks, loss of service, hardware failure and loss or corruption of data); and
- 3.4.4 the Customer needs to ensure that it has its own business continuity and disaster recovery measures in place against (including without limitation to deal with) systems becoming unavailable for access purposes; data loss; and data corruption;
- 3.4.5 it consents, despite the risks and consequences set out above, to the undertaking by the Supplier of all such activities as are necessary to perform the Services under this Agreement;
- 3.4.6 it is lawfully granting the Supplier the rights and access to the systems which it is being asked to provide the Services in respect of pursuant to this Agreement. Furthermore, the Customer confirms that it will not request the Supplier to undertake any act or omission which will result in a violation by the Supplier or the Client of: the Computer Misuse Act 1990; the Data Protection Legislation; Article 8 of the Human Rights Act 1998; or any other legislation or legal requirement;
- 3.4.7 it has full capacity and authority to enter into this Agreement, and to give the confirmations and consent set out in this clause 3.4; and
- 3.4.8 IT WILL INDEMNIFY THE SUPPLIER IN FULL AGAINST ANY AND ALL CLAIMS, LIABILITY, LOSSES, DEMONSTRABLE COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE LEGAL EXPENSES) ARISING FROM OR IN CONNECTION WITH ANY CLAIM BROUGHT AGAINST THE SUPPLIER BY A THIRD PARTY IN RESPECT OF ANY BREACH BY THE CUSTOMER OF ITS OBLIGATIONS PURSUANT TO THIS CLAUSE 3.
- 3.5 The Customer acknowledges that:
 - 3.5.1 the Services will not be undertaken in a manner which is exhaustive and comprehensive in identifying all issues, due to the finite level of resources and time which will be expended on performing the Services, and the nature of security issues in general. Consequently, the Customer acknowledges that performance of the Services has the objective of improving the Customer’s security arrangements, but that performance of such Services will not remedy any issues identified as the Supplier will not be implementing any recommendations which are provided (in respect of which, the Customer acknowledges the provisions contained within clause 10 of the **General Conditions** and paragraph 5 of this Schedule), and there may exist other security issues which are not revealed during the Services;
 - 3.5.2 any certification which may be available following provision of the Services will be provided at the Supplier’s sole discretion, subject to any agreed certification obligations in the **Order** and/or **SOW**;
 - 3.5.3 any certification provided by the Supplier will apply to the state of the respective system at the time at which the Services for certification purposes are undertaken, and such certification does not provide any assurances in respect of and future threats which have not been tested against by the Supplier as part of the Services; nor any updated certification standards; and

SCHEDULE 5 – PENETRATION TESTING SCHEDULE

- 3.5.4 it is permitted to use any materials provided by the Supplier in connection with the Services, including the Deliverables, solely for its own internal business purposes.
- 3.6 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall:
- 3.6.1 not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- 3.6.2 be entitled to payment of the Charges despite any such prevention or delay; and
- 3.6.3 be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.
- 4. CHARGES AND PAYMENT**
- 4.1 This paragraph 4 is supplemental to clause 7 of the **General Conditions** and shall not supersede it unless expressly stated.
- 4.2 Unless otherwise stated in the **Order** or **SOW**, the Supplier shall invoice the Customer the following Charges upon completion of the work:
- 4.2.1 all Charges on a time and material basis including charges relating to any work undertaken by the Supplier which was out of scope or for additional time spent exceeding the estimate provided in the **SOW** and stated on the **Order**;
- 4.2.2 all reasonable and properly incurred expenses including but not limited to travel and other out of pocket expenses; and
- 4.2.3 reasonable time spent by our engineer(s) where the distance is further than 35 miles from the Supplier's Office.
- 4.3 If the Customer fails to comply with its obligations as set out in clause 3, without prejudice to the Supplier's other rights and remedies, the Supplier shall be entitled to:
- 4.3.1 charge the Client the full charges for the Services even if it has not been possible to conduct the Services due to the default of the Customer; and/or
- 4.3.2 re-arrange or repeat the Services for a subsequent date and charge the Customer for performance of the Services again at that stage.
- 4.4 Where the Customer cancels or re-schedules the delivery of Services, or terminates the Agreement, the Supplier may invoice the Customer Cancellation Charges, Re-Scheduling Charges and/or Termination Charges in accordance with paragraphs 6 and 7 below at any time following the receipt of such notice.
- 5. LIMITATION OF LIABILITY**
- 5.1 THIS PARAGRAPH 5 IS SUPPLEMENTAL TO CLAUSE 10 OF THE **GENERAL CONDITIONS** AND IT DOES NOT SUPERSEDE IT UNLESS EXPRESSLY STATED.
- 5.2 TO THE EXTENT THAT THE SUPPLIER MAKES ANY RECOMMENDATIONS OR SUGGESTIONS (WHETHER AS PART OF THE SERVICES OR OTHERWISE) REGARDING THE CUSTOMER TAKING ANY ACTION OR PROCURING ANY PRODUCTS AND/OR SERVICES (INCLUDING WITHOUT LIMITATION SOFTWARE), SUCH RECOMMENDATIONS AND SUGGESTIONS COLLECTIVELY BEING REFERRED TO AS THE "**RECOMMENDATIONS**"; THE PRODUCTS, ACTIONS AND/OR SERVICES REFERRED TO IN THE RECOMMENDATIONS ARE REFERRED TO AS "**SOLUTIONS**", THE CUSTOMER ACKNOWLEDGES THAT:
- 5.2.1 SUCH RECOMMENDATIONS SHOULD NOT FORM THE SOLE BASIS FOR ANY DECISION OR ACTION BY THE CUSTOMER;
- 5.2.2 SUCH RECOMMENDATIONS MAY RELATE TO ACTIONS AND/OR THIRD PARTIES' PRODUCTS AND/OR SERVICES, WHICH ARE UNCONNECTED WITH THE SUPPLIER, AND THEREFORE THE SUPPLIER HAS NO CONTROL OVER SUCH ACTIONS, PRODUCTS AND/OR SERVICES;
- 5.2.3 IT IS THE CUSTOMER'S RESPONSIBILITY TO CHECK INTERNALLY AND WITH THE RELEVANT THIRD PARTY THAT ANY SOLUTION IS SUITABLE FOR THE CUSTOMER'S REQUIREMENTS;
- 5.2.4 THE CUSTOMER WILL BE ENTERING INTO A CONTRACT WITH THE RELEVANT THIRD PARTY FOR THE THIRD PARTY ASPECT OF THE SOLUTION, AND THEREFORE THE CUSTOMER ACCEPTS THAT IT MUST ENSURE THAT IT PROVIDES FOR ANY RIGHTS AND REMEDIES WHICH IT REQUIRES IN RESPECT OF THE SOLUTION, IN ITS CONTRACT WITH SUCH THIRD PARTY; AND
- 5.2.5 THE CUSTOMER WILL BE SUBJECT TO ANY RISKS ASSOCIATED WITH IMPLEMENTING ANY ACTIONS (WHETHER INTERNALLY ITSELF OR BY USING A THIRD PARTY) WHICH ARE RELATED TO THE RECOMMENDATIONS, AND THEREFORE THE CUSTOMER ACCEPTS THAT IT MUST ENSURE THAT IT PROVIDES FOR ITS OWN INTERNAL CONTINGENCY MEASURES TO BE PUT IN PLACE AT ITS OWN COST (INCLUDING WITHOUT LIMITATION ITS OWN DISASTER RECOVERY AND BUSINESS CONTINUITY MEASURES) AND IT MUST PUT IN PLACE ITS OWN INSURANCE AND ITS OWN COST TO GUARD AGAINST ANY RISKS, LOSSES OR LIABILITY WHICH FLOW FROM FOLLOWING THE RECOMMENDATIONS OR USING THE SOLUTIONS.
- 5.3 SUBJECT TO CLAUSE 10.2 OF THE **GENERAL CONDITIONS**, THE SUPPLIER SHALL NOT BE LIABLE FOR ANY ISSUES ASSOCIATED WITH ANY SOLUTION. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS IS REASONABLE IN VIEW OF THE PROVISIONS CONTAINED IN THIS PARAGRAPH 5 AND CLAUSE 10 OF THE **GENERAL CONDITIONS**.
- 5.4 SUBJECT TO CLAUSE 10.2 OF THE **GENERAL CONDITIONS**, THE SUPPLIER SHALL NOT BE LIABLE FOR ANY ISSUES, COSTS, EXPENSES OR CONSEQUENCES ASSOCIATED WITH THE CUSTOMER UNDERTAKING ANY SOFTWARE AND/OR DATA RESTORATION AND/OR CONFIGURATION. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS IS REASONABLE IN VIEW OF PARAGRAPHS 3.3.4, 3.4.2, 3.4.6, 5.2 AND 5.5.
- 5.5 THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CHARGES HAVE BEEN CALCULATED ON THE BASIS THAT THE SUPPLIER WILL EXCLUDE AND LIMIT ITS LIABILITY AS DETAILED IN THIS SCHEDULE AND THE **GENERAL CONDITIONS**, AND THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY ARE THEREFORE REASONABLE.
- 6. CANCELLATION AND RE-SCHEDULING SERVICES**
- 6.1 If the the Customer gives notice in writing cancelling an Order not less than ten (10) Working Days before the commencement of the Authorised Testing Period, then no Charges will be applied by the Supplier.
- 6.2 If the Customer gives notice in writing cancelling an Order not more than nine (9) Working Days and not less than five (5) Working Days before the commencement of the Authorised Testing Period, the Supplier reserves the right to invoice the Client fifty percent (50%) of the agreed Charges as stated in the **Order** and **SOW** or if no Charges are stated fifty percent (50%) of the Charges that the Supplier anticipated charging in respect of the **Order**. In all other cases the Supplier reserves the right to invoice the Customer one hundred percent (100%) of the Charges stated in the **Order** and **SOW** or if no Charges are stated one hundred percent (100%) of the Charges that the Supplier anticipated charging in respect of the **Order** ("**Cancellation Charges**").
- 6.3 Once the Supplier commences delivery of the Services then no cancellation of an Order and/or the Agreement will be permitted unless the Supplier agrees in writing.

SCHEDULE 5 – PENETRATION TESTING SCHEDULE

- 6.4 Should the Customer wish to proceed with the provision of Services following service of a notice of cancellation, the Customer will be required to enter a new order, and therefore agreement, with the Supplier.
- 6.5 If the Customer gives notice in writing, to re-schedule or postpone the Authorised Testing Period to a date no later than three (3) months from the commencement of the Authorised Testing Period,:
- 6.5.1 not less than ten (10) Working Days before the commencement of the Authorised Testing Period then no additional Charges will be applied in relation to the rescheduling of the Authorised Testing Period;
- 6.5.2 not more than nine (9) Working Days but not less than five (5) Working Days before the commencement of the Authorised Testing Period then the Supplier reserves the right to invoice the Client rescheduling charges calculated at twenty-five percent (25%) of the agreed Charges stated in the **Order** or if no Charges are stated twenty-five percent (25%) of the Charges that Armadillo Sec anticipated charging in respect of the **Order**; and
- 6.5.3 less than five (5) Working Days before the commencement of the Authorised Testing Period then the Supplier reserves the right to invoice the Customer rescheduling charges calculated at fifty percent (50%) of the Charges stated in the **Order** or if no Charges are stated fifty percent (50%) of the Charges that the Supplier anticipated charging in respect of the **Order** ("**Rescheduling Charges**").
- 6.6 The Customer agrees that the Cancellation Charges and Rescheduling Charges are a fair assessment of the of the losses and damages the Supplier will suffer in the event of Cancellation of the **Order** or Postponement of delivery of the Services.
- 6.7 The Supplier may at its sole discretion apply a reduction to the Charges payable for the Services that have been rescheduled where the Customer has paid the Rescheduling Charges in full. Save for where a reduction is agreed by the Supplier and confirmed in writing, payment by the Customer of Rescheduling Charges does not extinguish or otherwise affect the Customer's liability to pay the Charges for the Services in accordance with the **Order**.

7. TERMINATION

- 7.1 This paragraph 7 is supplemental to clause 9 of the **General Conditions** and does not supersede it unless expressly stated.
- 7.2 The Customer may terminate this Agreement at any time prior to the commencement of the Authorised Testing Period by giving not less than 2 days' notice in writing, subject always to the payment by the Client to Supplier of any applicable Cancellation Charges provided for in paragraph 6.2 above.

8. DATA PROTECTION

- 8.1 This paragraph 8 is supplemental to clause 11 of the **General Conditions** and does not supersede it unless expressly stated.
- 8.2 To the extent that the Supplier is required to process personal data obtained by it and/or made available by or the Client in connection with the performance of the Supplier's obligations under this Agreement, the Parties shall comply with this paragraph 8.
- 8.3 Where Data Protection Legislation changes in a way that this Agreement is no longer adequate for the purpose of governing lawful data processing exercises, the Parties will negotiate in good faith to amend this paragraph 8 in light of such new legislation.
- 8.4 To the extent that the Supplier is required to process Protected Data on behalf of the Customer, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is

the controller and the Supplier is the processor of that Protected Data.

PROCESSING ACTIVITIES

- 8.5 The Parties that to provide the Services under this Agreement, Armadillo Sec may be required to process Protected Data whether such data is obtained by the Supplier during the course of providing the Services or provided by the Customer.
- 8.6 The Parties further acknowledge that the nature of the Services provided by the Supplier are such that: a) the Supplier may come into contact with personal data of any nature whatsoever in the course of providing the Services and that it is not therefore possible to identify or limit the categories of Protected Data which may be processed under this Agreement; and b) the Protected Data may relate to any data subject whose personal data is stored on the Customer's systems.
- 8.7 The Supplier shall only process Protected Data for the purpose of providing the Services during the term of this Agreement.

CUSTOMER OBLIGATIONS

- 8.8 Without prejudice to the generality of clause 11.2 of the **General Conditions**, the Customer shall:
- 8.8.1 ensure that it has lawful grounds to instruct the Supplier to process the Protected Data;
- 8.8.2 ensure that it has all necessary and appropriate consents and it is entitled to transfer or permit access by the Supplier to the Protected Data so that the Supplier may lawfully use, process and transfer the Protected Data in order to provide the Services for the duration and purpose of the Agreement;
- 8.8.3 be responsible for maintaining the accuracy of the Protected Data; and
- 8.8.4 ensure that it implements technical and organizational measures against unauthorized or unlawful processing of personal data or its accidental loss, destruction or damage.
- 8.9 The Customer shall indemnify in full and keep indemnified the Supplier and hold it harmless from any cost, charge, damages, expense or loss arising as a result of any failure of the Customer to comply with its obligations under the Data Protection Legislation or this Schedule.
- 8.10 Without prejudice to the generality of clause 11.3 of the **General Conditions**, the Supplier shall, when processing Protected Data on behalf of the Customer:
- 8.10.1 maintain and make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and this Schedule and allow for and
- 8.10.2 contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer;
- 8.10.3 process the Protected Data only in accordance with written instructions given by the Customer unless the Supplier is required to process by Applicable Law. Where the Supplier is relying on Applicable Law as the basis for processing the Protected Data, it shall promptly notify the Customer of the same before performing the processing required by Applicable Law unless such Applicable Law prohibits the Supplier from notifying the Customer;
- 8.10.4 promptly inform the Customer in the event that the Supplier is of the opinion that the Customer's instructions breach the Data Protection Legislation;
- 8.10.5 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Protected Data, having regard to the state of technological development and the cost of implementing any measures;

SCHEDULE 5 – PENETRATION TESTING SCHEDULE

- 8.10.6 taking into account the nature of processing and the information available to the Supplier, provide the Customer with full co-operation and assistance in ensuring compliance with the obligations laid down in the Data Protection Legislation concerning security of processing breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 8.10.7 ensure that all personnel who have access to and/or process the Protected Data are obliged to keep the Protected Data confidential;
- 8.10.8 promptly inform the Customer of any complaints, requests or enquiries received from data subjects under the Data Protection Legislation, including but not limited to requests to access, correct, delete, block or restrict access to their personal data and co-operate with the Customer to ensure that such requests are handled in accordance with the Data Protection Legislation;
- 8.10.9 notify the Customer without undue delay upon becoming aware of a personal data breach (the accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, or any other unlawful form of processing) and co-operate fully with the Customer to the extent required with regard to the notification of the data breach to the relevant supervisory authority and the communication of the data breach to the affected data subject(s);
- 8.10.10 at the Customer's written direction, delete or return all of the Protected Data and copies thereof to the Customer on termination of this Agreement unless required by Applicable Law or regulatory requirements to store the Protected Data, including for the avoidance of doubt the retention of data in accordance with the Supplier's obligations pursuant to any regulations or guidelines issued by the National Cyber Security Centre which may apply to the provision of the Supplier's services under this Agreement;
- 8.10.11 ensure that any Protected Data which may be transferred or stored outside of the European Economic Area in order to carry out the Services and the Supplier's other obligations under this Agreement are carried out in compliance with the Data Protection Legislation; and
- 8.10.12 be entitled to engage a sub-contractor to perform any of the Services (each a "**Sub- Processor**"). The Supplier shall provide the Customer with reasonable prior notice of any intended changes concerning the addition or replacement of such Sub- Processors. If, acting reasonably, the Customer decides to object to such sub- processing, then the Customer shall provide written details to the Supplier within seven (7) days of the date of the Supplier's notification and the following shall apply:
- 8.10.12.1 the Parties shall discuss the Customer's concerns and the Supplier shall use reasonable endeavours to propose an alternative arrangement (along with any additional charges); and
- 8.10.12.2 if the Parties agree an alternative arrangement, then any changes to the Services or Charges required to implement such arrangement will be documented by the Parties;
- 8.10.13 where it engages a Sub-Processor, comply with the following obligations:
- 8.10.13.1 the Supplier will enter with the Sub-Processor into a written agreement incorporating terms which are substantially similar to those set out in this Schedule and which provide sufficient guarantees that the Sub-Processor will implement appropriate technical and organisational measures in such a

manner that the processing will meet the requirements of the Data Protection Legislation; and

- 8.10.13.2 as between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any Sub-Processor appointed by it pursuant to this paragraph as if they were the acts or omissions of the Supplier.

ANNEX 1 – DEFINITIONS

"Authorised Testing Period" means the agreed timeframe for testing as set out in the SOW or as agreed between the Parties following acceptance of the Order;

"Deliverables" means a report outlining the findings of the Services carried out pursuant to the Agreement;

"Protected Data" means Personal Data received from or on behalf of the Customer or otherwise obtained in connection with the performance of the Supplier's obligations under the Agreement.

SCHEDULE 6 –CERTIFICATION SERVICES SCHEDULE

1. SERVICE DESCRIPTION

- 1.1 The Supplier shall provide the Customer with certain certification Services (“**Certification Services**”) as set out in this Schedule, or an applicable Order or Statement of Work (“**Order**”). The Certification Services may include:
 - 1.1.1 Cyber Essential certification services, to which Annex A of this Schedule 6 applies;
 - 1.1.2 PCI Data Security Standard (“**PCI DSS**”) certification services, to which Annex B of this Schedule 6 applies; and
 - 1.1.3 other certification services agreed in writing between the parties in an Order from time to time.
- 1.2 Security certifications or standards such as Cyber Essentials or PCI DSS are defined as “**Schemes**”.
- 1.3 This Schedule consists of the terms and conditions in the body of this Schedule (including the Annexes) and, where applicable, the Order.
- 1.4 In the event of any conflict between this Schedule and any of the Order, unless this Schedule expressly provides that it takes precedence over the terms in the Order, the terms of the Order will take precedence.
- 1.5 Subject to the above, later versions of the Order once agreed between the parties in writing and signed by the Customer shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 1.6 The Certification Services will be provided on the basis that you have paid the Charges in full and accept the terms of this Agreement. Your Certification Services project will remain live for 12 months and upon expiry it will be closed.

2. SUPPLIER OBLIGATIONS

- 2.1 The Supplier will, upon receipt of Charges, allow you to complete your Scheme assessment, subject to the terms of this Schedule.
- 2.2 Subject to you meeting your obligations under this Schedule, the Supplier will assess your completed self-assessment questionnaire (“**Questionnaire**”) against the Scheme’s criteria.
- 2.3 The Supplier will perform the Certification Services using reasonable care and skill.

3. CUSTOMER OBLIGATIONS

- 3.1 The Customer must complete its certification under a Scheme within 12 months of the date of the Supplier’s invoice for the relevant Charges, failing which the Supplier will close down the Certification Services project. To restart certification, the Supplier shall pay the Charges again and wait 30 days.
- 3.2 Customer will comply with any obligations set out in the Annexes to this Schedule and the Order in respect of the relevant Scheme.
- 3.3 The Customer will complete the Questionnaire accurately, fully and honestly.
- 3.4 The Customer must not use any Intellectual Property Rights associated with a Scheme or claim to be certified under a Scheme unless you are in receipt of a current, valid Scheme certificate or report of compliance issued by the Supplier or a Scheme administrator.
- 3.5 The Customer must not make any derogatory statements about a Scheme or behave in any manner that would damage the reputation of a Scheme.
- 3.6 The Customer acknowledges that a Scheme is intended to reflect that certificated organisations have themselves established the cyber security profile set out in the Scheme documents only and that receipt of a Scheme certificate or report of compliance (as applicable) does not indicate or certify that the certificate holder is free from cyber security vulnerabilities. The Customer further acknowledges that the Supplier has not warranted or represented the Scheme, or certification or a compliance report under the Scheme as conferring any additional benefit to the Customer.

- 3.7 The Customer will comply with the Scheme documentation and all reasonable directions made to it by a Scheme partner or administrator.

4. CHARGES AND PAYMENT

- 4.1 The Customer must pay the Charges as stated on the Order prior to the commencement of the Certification Services. All Charges are non-refundable.
- 4.2 The Customer acknowledge that failure to ensure adequate access and availability on a scheduled audit day, which results in any rescheduled or additional assessor time, will be chargeable at the Supplier’s discretion.
- 4.3 The Customer consents to the Supplier storing its card details on Stripe following its initial transaction for future Charges for Certification Services.

5. RENEWAL

The Customer must pay the Scheme’s renewal charges and be reassessed at each anniversary of the issue of its original certificate. Non-payment of the renewal charges or non-compliance at the reassessment will result in the Scheme certificate becoming invalid.

6. CONFIDENTIALITY

The Scheme profile details and methodology are confidential and the Customer agrees to keep them confidential save where disclosure is required by an order of the courts or tribunal or as required by HMRC and only in accordance with the terms of that order or requirement.

7. WARRANTIES

- 7.1 The Customer warrants that:

- 7.1.1 the Questionnaire has been completed by an authorised and suitably competent person;
- 7.1.2 it will maintain the security profile indicated in its completed Questionnaire; and
- 7.1.3 the Questionnaire you submit is complete and accurate in all material respects.

8. LIMITATION OF LIABILITY

- 8.1 THIS PARAGRAPH 8 IS SUPPLEMENTAL TO CLAUSE 10 OF THE GENERAL CONDITIONS IT DOES NOT SUPERSEDE UNLESS EXPRESSLY STATED.
- 8.2 SUBJECT TO CLAUSE 10.2, THE SUPPLIER SHALL NOT BE LIABLE TO THE CUSTOMER IN RELATION TO ANY SECURITY BREACH OR VULNERABILITY IN ITS SYSTEMS OR PROCESSES.

9. DATA PROTECTION

- 9.1 This paragraph 9 is supplemental to clause 11 of the General Conditions, it does not supersede it unless expressly stated.
- 9.2 The Supplier will share the following data about the Customer with a third parties such as IASME, NCSC, and any suppliers strictly to the extent that such third parties require such data as part of the Certification Services:

Data	Purpose
Customer Contact Name	To contact for purposes of notifications about their Cyber Essentials assessment and renewal
Email Address	As above
Customer Name	To identify a company in the system
Address	As above
Telephone Number	To contact for purposes of notifications about their Scheme assessment and renewal
Orders	The Supplier records the time and IP address of every order so that the Supplier has a data trail of access to the system.

SCHEDULE 6 –CERTIFICATION SERVICES SCHEDULE

Annex A – Cyber Essentials Certification services

1. The Cyber Essentials Scheme (including Cyber Essentials and Cyber Essential Plus) is administered by NCSC. IASME is the Cyber Essentials accreditation body, and the Supplier is the certification body. This Agreement is intended to govern the relationship between the Supplier as the certification body and the Customer under which the Customer wishes to apply for certification under the Scheme. Cyber Essentials Certificate Services also includes the IASME Governance standard.
2. You must have a current Cyber Essentials certificate to apply for Cyber Essentials Plus. Cyber Essentials Plus cannot be purchased as a standalone certification. The Customer must complete the Cyber Essentials Plus audit within 3 months of achieving its last basic level Cyber Essentials certification.
3. In the event your Questionnaire meets the Scheme criteria (which we shall assess at our sole and absolute discretion) we will notify you by phone or by email and, subject to you meeting your obligations under paragraph 2 of Annex A, will arrange for the issue of a Scheme Certificate to you.
4. Cyber Essentials Plus involves a technical audit of the systems that are within scope for Cyber Essentials. That includes a representative set of workstations, mobile devices and build types used by the organisation with access to corporate data. In advance of the Cyber Essentials Audit, the Customer will familiarise itself with the Supplier's 'Preparing for the Cyber Essentials Plus Audit' guidance document.
5. The assessor will randomly sample from the devices for internal testing. These devices must be end-user devices and cannot be built for the purpose of testing. The number of devices that will be tested as part of the Cyber Essentials audit is defined by the number of configurations of operating systems.
6. The table below can be used to determine the representative sample size for the applicable number of configurations:

No. of configurations	Sample of devices tested
1	1
2-5	2
6-19	3
20-60	4
61+	5
7. Please see table below for a worked example of the sample size:

Configuration type	No in use	Sample to test
Windows 10 v19H1	6	3
Windows 10 v.20H2	50	4
Ubuntu 18.04	3	2
Total sample size		9
8. Cyber Essential Plus provides onsite or remote testing of the number of sample devices as agreed during the scheduling phase of the audit. If the Supplier needs to test more than the agreed sample size, additional testing will be charged at £100 per device.
9. Invoices for Cyber Essentials Plus and IASME Governance standard will be raised after achieving the first stage of the accreditation (Cyber Essentials or IASME Governance), or after 60 days of your account creation, whichever comes first. Payment will be taken within five working days of issuing your invoice.
1. The PCI DSS is administered by the PCI Security Standards Council.
2. The Supplier uses inhouse PCI Qualified Professionals to deliver consultancy in respect of the PCI DSS standard.
3. You must accurately confirm the number of payment transactions the Customer process annually in order for the Supplier to deliver the correct consultancy program (either PCI Level 3 or PCI Level 4).
4. Both PCI Level 3 and Level 4 include a Questionnaire (which is completed by the Customer with support from the Supplier) followed by a vulnerability scan of the endpoints that were identified as being in scope.
5. Following completion of the Questionnaire by the Customer, the Supplier will conduct a pre-assessment check where a PCI Qualified Professional will review the Customer's submission and highlight any gaps or non-compliances. The Supplier will schedule a video meeting with the Customer to provide feedback and consultancy around actions required.
6. Following completion of the Questionnaire and once non-compliances have been rectified, the Supplier will then conduct a vulnerability scan using a scanning vendor platform approved by the PCI Security Standards Council ("**ASV Platform**"). Following the scan by the ASV Platform, the Supplier will advise which vulnerabilities need to be remediated in order to comply with PCI DSS.
7. All endpoints listed as being within scope in the Questionnaire must be scanned using the ASV Platform. The Customer is required to provide adequate access to its systems to ensure a scan of every endpoint in scope can be conducted successfully.
8. On successful completion of the project the Supplier will provide the Customer with a final copy of the Questionnaire as well as the compliant ASV Platform scan report.

Annex B - PCI DSS Compliance services

SCHEDULE 7 – CSaaS SCHEDULE

1. SERVICE DESCRIPTION

- 1.1. The Supplier shall provide CSaaS (“the Service”) as stated in the Order in accordance with the terms of this Schedule and the Service Specification.
- 1.2. The Service is provided as a per User subscription service. The Customer may only allow the number of Users as stated in the Order (as amended by the Parties from time to time in writing) to access and use the Services. The Customer must ensure that at no time during the Agreement is the maximum number of permitted Users exceeded.
- 1.3. The Supplier will use penetration testing techniques on the Systems in accordance with the Service Specification to attempt to identify Weaknesses.

2. COMMENCEMENT AND DURATION

- 2.1. The Agreement shall commence on the date the Order is placed by the Customer, subject to credit check by the Supplier, and shall continue in force for a minimum period stated on the Order from the Commencement Date (“Minimum Term”) and thereafter shall automatically renew for successive periods of one (1) year (each a “Successive Term”) unless terminated:
 - 2.1.1. by the Customer giving the Supplier not less than ninety (30) days written notice before the end of the Minimum Term or Successive Term; or
 - 2.1.2. in accordance with clause 9 of the **General Conditions**.

3. CUSTOMER OBLIGATIONS

- 3.1. The Customer is responsible for ensuring that only employees, agents and consultants authorised and permitted by the Customer can access and use the Service. Only employees, agents and consultants of the Customer are entitled to be Customer Users.
- 3.2. The Customer shall be responsible for all access to and use (whether authorised or not) of the Services.
- 3.3. The Customer permits the Supplier to scan the Customer's systems and networks (including without limitation the Systems and any applications or data held on such network and systems) for the purposes of the Computer Misuse Act 1990 (as updated, replaced and amended from time to time) and represents it has authority and will have authority at all times during this Agreement, to give such permission.
- 3.4. The Customer undertakes that it has and will have at all times during this Agreement, all necessary permissions, authorisations and consents from the owners or licensors of the Customer's systems and networks (including without limitation the Systems) to enable the Services to be provided to the Customer.
- 3.5. The Customer undertakes that where it uses the Service in any jurisdiction or territory other than the UK, it shall be wholly responsible for ensuring that the use of the Service in that jurisdiction or territory complies with applicable laws or regulation.
- 3.6. THE CUSTOMER SHALL INDEMNIFY AND KEEP INDEMNIFIED THE SUPPLIER AGAINST ALL LOSSES, COSTS, CLAIMS, DEMANDS, DAMAGES AND EXPENSES (EACH WHETHER DIRECT OR INDIRECT) ARISING OUT OF OR IN CONNECTION WITH A BREACH OF ANY OF THE PROVISIONS OF THIS PARAGRAPH 3.

4. CHARGES AND PAYMENT

- 4.1. This paragraph 4 is supplemental to clause 7 of the **General Conditions**, it does not supersede it unless expressly stated.
- 4.2. Unless otherwise stated in the Order, the Supplier shall invoice the Customer the Recurring Charges monthly in advance for the Services.
- 4.3. All payments are to be made via either Stripe or GoCardless during the sign-up process on the Supplier's website.

5. CONFIDENTIALITY

- 5.1. This paragraph 5 is supplemental to clause 13 of the General Conditions, it does not supersede it unless expressly stated.
- 5.2. During this Agreement, the Supplier shall be entitled to describe the Customer as a customer of this Service and include its name on marketing and promotional materials. In addition, and on reasonable notice, the Customer may be requested to act as a referee for the Supplier in respect of prospective customers of the Supplier for the Service.

6. WARRANTIES AND LIMITATION OF LIABILITY

- 6.1. SUBJECT TO PARAGRAPH 6.2 AND 6.3, THE SUPPLIER WARRANTS THAT THE SERVICE SHALL COMPLY IN ALL MATERIAL RESPECTS WITH THE SERVICE SPECIFICATION.
- 6.2. THE SUPPLIER DOES NOT WARRANT THAT USE OF OR ACCESS TO THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT IT WILL BE CONTINUOUSLY AVAILABLE.
- 6.3. THE CUSTOMER ACKNOWLEDGES THAT THE SERVICE MAY NOT IDENTIFY ALL WEAKNESSES THAT CAN IMPACT OR AFFECT SYSTEMS. THE SUPPLIER SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS THAT THE CUSTOMER OR ANY CUSTOMER USER MAY SUFFER, WHETHER DIRECTLY OR INDIRECTLY AS A RESULT OF A WEAKNESS THAT IS NOT IDENTIFIED BY THE SERVICE.

ANNEX 1 – DEFINITIONS

“Customer User” means any employee, agent and/or consultant of the Customer who is authorised by the Customer to access and use the Service;

“Cyberlab Portal” means the online platform (as may be modified by the Supplier from time to time) through which Customer Users can access their metrics/reporting data and manage their cyber security strategy;

“Service Specification” means the specification set out at <https://www.cyberlab.co.uk/pricing> as updated and amended from time to time by the Supplier to reflect changes, enhancements and improvements that it makes to the Cyberlab Portal and technology;

“System” means an internet-accessible computer system as identified by the IP address or hostname assigned to it and

“Weakness” means a particular configuration, software patch level, or application code deployment which is perceived as likely to, or can be demonstrated to reduce or undermine the security of a System, or the information stored, processed or transmitted by it.

SCHEDULE 8 – THREAT DETECT

1. THREAT DETECT SERVICES

- 1.1 The Supplier shall provide the Customer with certain threat and vulnerability scanning services (the “**Threat Detect Services**”) as more particularly described as a cloud based digital footprinting tool to be carried out on public and external networks and domains as agreed between the parties and set out in the applicable Order and/or SOW or in writing from time to time (the “**Agreed External Networks**”).
- 1.2 The Threat Detect Services comprise of:
 - 1.2.1 A daily Dark Web breach scan carried out automatically by the Supplier every 24 hours until the Threat Detect Services are terminated in accordance with this Schedule; and
 - 1.2.2 a weekly threat and vulnerability scan of the Agreed External Networks, carried out automatically by the Supplier on a weekly basis until the Threat Detect Services are terminated in accordance with this Schedule; and
 - 1.2.3 the provision via automated emails and/or the Customer’s account on the Portal of a monthly report summarising the results of the most recent scan carried out on the Agreed External Networks pursuant to sub-paragraph 1.2.1.
- 1.3 This Schedule sets out any additional terms and conditions applicable to the provision of the Threat Detect Services. Such terms and conditions are additional to those set out in the General Conditions, the applicable Order and/or SOW and any other contractual documents.

2. COMMENCEMENT AND DURATION OF THE THREAT DETECT SERVICES

- 2.1 Trial access may be granted to access redacted versions of the Threat Detect reports. This access will be for a time period stated at the commencement of the trial and can be revoked at any time, without any advance notice from the supplier.
- 2.2 The Threat Detect Services shall commence on the date set out in the Order or as otherwise agreed in writing between the parties (including by email), or, if not date is agreed in writing, on the date that the Supplier sets up the Threat Detect Services for the Customer on the Portal. The Supplier will carry out the first scan of the Threat Detect Services on or shortly after such commencement date and automatically thereafter based on the frequencies specified in clause 1.2.
- 2.3 Unless otherwise agreed and set out in the Order and/or SOW or otherwise in writing, the Threat Detect Services will be provided on either a rolling 30-day basis or 12 month commitment from the commencement date set out in the paragraph 2.1 of this Schedule and can be terminated at any time by either party on 30 days’ written notice (which includes the Customer opting to “unsubscribe” from the Threat Detect Services on the Portal). Termination of the Threat Detect Services will not affect any other Services set out in any relevant Order and/or Statement of Work or that have otherwise been agreed.
- 2.4 On termination of the Threat Detect Services, the Supplier shall continue to carry all associated scans for the duration of the 30-day notice period. Termination of the Threat Detect Services will remove the Customer’s account, data and access to any reports and/or results in relation to the Threat Detect Services available on the Portal.

3. ADDITIONAL PARTY OBLIGATIONS

- 3.1 This paragraph 3 is supplemental to clause 5 of the **General Conditions** and any other obligations set out in the **Order** or other contractual documents. It does not supersede these documents unless expressly stated.
- 3.2 The Supplier shall use its reasonable endeavors to provide the Threat Detect Services in accordance with the terms of this Schedule and any documents expressly referenced herein.
- 3.3 The Supplier warrants that in carrying out the Threat Detect Services, it will use its reasonable endeavors to meet any agreed

timescales for the Threat Detect Services (including, without limitation, that a scan will be carried out according to the frequencies specified in clause 1.2 and that the report will be available for download on the Portal upon request). Where there are any delays in the Supplier performing the Threat Detect Services, the Supplier shall use reasonable endeavors to resolve such delays as soon as reasonably possible. Notwithstanding the foregoing, the Customer accepts and understands that the Threat Detect Services will be set to run automatically and delays may not be immediately apparent to (or resolvable by) the Supplier. Any timescales stated are estimates only and time shall not be of the essence in the provision of the Threat Detect Services.

- 3.4 By agreeing to the Threat Detect Services, the Customer permits the Supplier to carry out the Threat Detect Services on the Agreed External Networks and represents that it has all requisite authority and will continue to have such authority at all times during the Threat Detect Services, enabling the Customer to give such permission.
- 3.5 The Customer shall:
 - 3.5.1 co-operate with the Supplier in all matters relating to the Threat Detect Services, including the prompt provision of accurate and complete information relating to the Threat Detect Services (such as the details relating to the Agreed External Networks to be scanned as part of the Threat Detect Services and any changes to those details);
 - 3.5.2 comply with all applicable laws, statutes, regulations from time to time in force which apply to it;
 - 3.5.3 be responsible for confirming and approving the Agreed External Networks to be scanned as part of the Threat Detect Services, including any amendments or updates to the Agreed External Networks;
 - 3.5.4 be responsible for controlling access to and use of the Threat Detect Services by its personnel (including access to and use of any results contained in reports) and be responsible for ensuring that only personnel that are permitted by the Customer can access and use the Threat Detect Services;
 - 3.5.5 remain at all times responsible for the security of its own systems, networks, IT infrastructure, applications, equipment and data (and for any back-ups and restoration and recovery measures including without limit any business continuity and disaster recovery plans and measures). The Supplier assumes no responsibility for any of the elements listed in this sub-paragraph in carrying out the Threat Detect Services; and
 - 3.5.6 not request (whether knowingly or unknowingly) that the Supplier undertakes any act or omission in carrying out the Threat Detect Services that is contrary to applicable laws or in breach of any third-party rights (including without limitation any applicable laws of any territory or jurisdiction outside of the UK).
- 3.6 The Customer acknowledges and understands:
 - 3.6.1 that the nature of threat and vulnerability scanning services generally means that the Threat Detect Services provided by the Supplier are intended only to identify potential vulnerabilities in the Agreed External Networks that are identified as part of the process of carrying out the Threat Detect Services. The Threat Detect Services are limited to providing results based on information and other data that is available in the public domain only. The results of any Threat Detect Services are indicative only and are not intended to be an exhaustive or conclusive list of all issues that may exist or that could impact or affect the Agreed External Networks;

SCHEDULE 8 – THREAT DETECT

- 3.6.2 that the results of any Threat Detect Services are for information purposes only and that it relies on any results from the Threat Detect Services at its own risk and remains at all times fully responsible for the security of the Agreed External Networks, and its IT systems and infrastructure generally in accordance with paragraph 3.5.5 of this Schedule;
- 3.6.3 that in the unlikely circumstances that the Threat Detect Services cause some disruption to the Agreed External Networks, including to the Customer's use of the Agreed External Networks, or generally to the Customer's systems the Supplier is not responsible for any such disruption, or for any consequences arising from it;
- 3.6.4 that the outcome of any Threat Detect Services will not require or cause the Supplier to assume any responsibility for (or liability in relation to) the remedying or resolving any issues that are flagged as part of the Threat Detect Services, or for providing any recommendations in relation to how the Customer deals with any issues that are flagged;
- 3.6.5 the limitations and exclusions that are set out in clause 10 of the **General Conditions**, this Schedule and in the Order and/or SOW and any other contractual documents generally apply to the Threat Detect Services and any results that are provided in the provision of the Threat Detect Services; and
- 3.6.6 the Threat Detect Services are provided using third-party software of which the Supplier has limited control and as such, are provided on a continuing "as-is" basis. Notwithstanding paragraph 3.3 of this Schedule, the Supplier cannot guarantee that the Threat Detect Services will be available and/or available with the same functionality at all times or at all. The Threat Detect Services will require that information on the Agreed External Networks be shared with the applicable third-party so that the Threat Detect Services can be carried out. The applicable third-party and its licensors may own or have certain rights in connection with the software used to provide the Threat Detect Services and the Customer agrees to not do anything, or cause anything to be done, that infringes those rights.
- 3.7 The Supplier will not be responsible in any respect for any delay or prevention in its ability to provide the Threat Detect Services that is caused by any act or omission of the Customer (including any failure to make payment for the Threat Detect Services). In such circumstances, the Supplier's delay or prevention in its ability to provide the Threat Detect Services in accordance with this clause will not excuse the obligation of the Customer to make payment for the Threat Detect Services.
- 3.8 Notwithstanding paragraph 3.3 of this Schedule, the Supplier will not be responsible in any respect for any delay or prevention in its ability to provide the Threat Detect Services, or for changes to functionality of any part of the Threat Detect Services (including without limit changes to any service description) that are caused by a third party's acts or omissions. Where the Supplier is prevented from providing the Threat Detect Services due to a third party act or omission, or changes are made that impact the functionality or delivery of the Threat Detect Services, the Supplier can immediately terminate the Threat Detect Services on written notice to the Customer and will refund any payments made by the Customer for Threat Detect Services that have not been provided (which will be the Customer's sole and exclusive remedy in relation to such termination).
- 3.9 To the limited extent that the Supplier Processes any Personal Data in providing the Threat Detect Services as a data Controller (for example, in administering the Customer account on the Portal), it will comply at all times with Data Protection Legislation and will Process Personal Data in accordance with its privacy policy located on its website (as updated from time to time).
- #### 4. CHARGES AND PAYMENT
- 4.1 This paragraph 4 is supplemental to clause 7 of the **General Conditions** and shall not supersede it unless expressly stated.
- 4.2 Unless otherwise stated in the **Order** or **SOW** or otherwise agreed in writing:
- 4.2.1 the Supplier shall invoice the Customer on a rolling-monthly basis for the Charges relating to the provision of the Threat Detect Services; and
- 4.2.2 the Charges for the Threat Detect Services will be chargeable at the then-current rates set out in the Supplier's Tariffs, or as otherwise notified to the Customer by the Supplier from time to time and will be payable as a fixed amount for each agreed domain as part of the Agreed External Networks to be the subject of the Threat Detect Services.
- 4.3 Failure or delay to payment of the Charges for the Threat Detect Services may, without prejudice to any other rights or remedies available to the Supplier, result in suspension or cessation of the Threat Detect Services, including without limit removal of any reports from the Portal.
- #### 5. LIMITATION OF LIABILITY AND EXCLUSIONS
- 5.1 THIS PARAGRAPH 5 IS SUPPLEMENTAL TO CLAUSE 10 OF THE **GENERAL CONDITIONS** AND TO ANY OTHER LIMITATIONS OR EXCLUSIONS SET OUT IN ANY OTHER CONTRACTUAL DOCUMENT. IT DOES NOT SUPERSEDE IT UNLESS EXPRESSLY STATED.
- 5.2 THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS SET OUT IN THIS PARAGRAPH 5 OF THIS SCHEDULE ARE REASONABLE GIVEN THE NATURE OF THE THREAT DETECT SERVICES AND THE BASIS ON WHICH THE THREAT DETECT SERVICES ARE SUPPLIED PURSUANT TO THE TERMS OF THIS SCHEDULE. IT IS ALSO ACKNOWLEDGED AND UNDERSTOOD THAT THE CHARGES FOR THE THREAT DETECT SERVICES ARE CALCULATED ON THE BASIS THAT THE SUPPLIER WILL EXCLUDE AND LIMIT ITS LIABILITY FOR THE SCAN SERVICE PURSUANT TO THIS PARAGRAPH 5 OF THIS SCHEDULE, AND GENERALLY UNDER CLAUSE 10 OF THE **GENERAL CONDITIONS** AND OTHER CONTRACTUAL DOCUMENTS (AS APPLICABLE).
- 5.3 THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT THE THREAT DETECT SERVICES ARE PROVIDED ON A CONTINUING "AS-IS" BASIS AND ARE PROVIDED TO THE CUSTOMER WITH THE FUNCTIONALITY THAT EXISTS IN THE THREAT DETECT SERVICES AT THE THEN-CURRENT TIME (AS MADE AVAILABLE BY THE RELEVANT THIRD PARTY PROVIDER TO THE SUPPLIER). THE SUPPLIER PROVIDES NO WARRANTIES, CONDITIONS AND/OR GUARANTEES IN RELATION TO THE THREAT DETECT SERVICES EXCEPT FOR AS SET OUT EXPLICITLY IN THIS SCHEDULE.
- 5.4 THE RESULTS OF THE THREAT DETECT SERVICES ARE INDICATIVE ONLY AND ARE NOT INTENDED TO BE EXHAUSTIVE, COMPLETE AND/OR WITHOUT ERROR. THE SUPPLIER MAKES NO REPRESENTATIONS THAT THE RESULTS WILL INCLUDE ANY OR ALL ISSUES THAT MAY EXIST IN RELATION TO THE **AGREED EXTERNAL NETWORKS** OR THAT MAY IMPACT OR AFFECT THE **AGREED EXTERNAL NETWORKS**. THE CUSTOMER RELIES ON THE RESULTS AT ITS OWN RISK AND TAKES FULL RESPONSIBILITY FOR THE ACTIONS THAT IT TAKES IN RELATION TO SUCH RESULTS AND ALL CONSEQUENCES OF THOSE ACTIONS. FURTHER, THE SUPPLIER SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR

SCHEDULE 8 – THREAT DETECT

LOSS THAT THE CUSTOMER OR ANY OTHER PARTY MAY SUFFER, WHETHER DIRECTLY OR INDIRECTLY, AS A RESULT OF THE CUSTOMER OR ANOTHER PARTY RELYING ON THE RESULTS OR WHERE SUCH RESULTS DO NOT IDENTIFY OR FLAG AN ISSUE THAT EXISTS.

- 5.5 THE CUSTOMER IS SOLELY RESPONSIBLE FOR THE SECURITY OF ITS OWN IT SYSTEMS, NETWORKS, INFRASTRUCTURE, APPLICATIONS, EQUIPMENT AND DATA AND FOR HOW IT MANAGES CYBERSECURITY RISKS INHERENT TO ITS BUSINESS (INCLUDING THE STEPS IT TAKES TO REMEDY ANY CYBERSECURITY RISKS AND THE INTERNAL CONTINGENCY MEASURES THAT IT PUTS IN PLACE TO GUARD AGAINST SUCH RISKS AND ANY LOSSES AND LIABILITY WHICH FLOWS FROM THOSE RISKS). THE SUPPLIER IS NOT RESPONSIBLE FOR PROVIDING ANY REMEDY FOR OR RESPONSE TO ANY ISSUES THAT ARE FLAGGED AS PART OF THE RECON SERVICES OR TO MAKE ANY RECOMMENDATIONS ON HOW TO ADDRESS ANY SUCH ISSUE. HOWEVER, SHOULD THE SUPPLIER MAKE ANY RECOMMENDATIONS OR SUGGESTIONS (WHETHER AS PART OF THE THREAT DETECT SERVICES OR OTHERWISE) REGARDING THE CUSTOMER TAKING ANY ACTION IN RESPONSE TO THE ISSUES FLAGGED, OR PROCURING ANY PRODUCTS AND/OR SERVICES (INCLUDING WITHOUT LIMIT SOFTWARE) (A “**RECOMMENDATION**”), THE CUSTOMER FOLLOWS SUCH **RECOMMENDATION** AT ITS OWN RISK AND THE SUPPLIER SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY TO THE CUSTOMER FOR ANY CONSEQUENCES OF THE CUSTOMER FOLLOWING (OR NOT FOLLOWING) SUCH **RECOMMENDATION**, SAVE WHERE SUCH LIABILITY CANNOT LAWFULLY BE EXCLUDED AND/OR RELATES TO SUPPLY BY THE SUPPLIER OF ADDITIONAL PRODUCTS TO MITIGATE ANY SYSTEM VULNERABILITY, IN WHICH CASE THE SUPPLIER’S LIABILITY SHALL BE LIMITED AS SET OUT IN THE RELEVANT PRODUCT TERMS.
- 5.6 NOTWITHSTANDING THE GENERALITY OF PARAGRAPH 5.5 OF THIS SCHEDULE, WHERE A **RECOMMENDATION** IS MADE BY THE SUPPLIER, INCLUDING WHERE THE **RECOMMENDATION** INCLUDES ANY SPECIFIC PRODUCTS, ACTIONS AND/OR SERVICES (TOGETHER “**SOLUTIONS**”), THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT:
- 5.6.1 SUCH **RECOMMENDATIONS** SHOULD NOT FORM THE SOLE BASIS FOR ANY DECISION OR ACTION BY THE CUSTOMER AND IF IT IS, THE CUSTOMER TAKES FULL RESPONSIBILITY FOR ANY CONSEQUENCES ARISING OUT OF OR IN CONNECTION WITH THIS DECISION;
- 5.6.2 SUCH **RECOMMENDATIONS** MAY INCLUDE A REFERENCE TO **SOLUTIONS** THAT ARE OWNED AND CONTROLLED BY A THIRD PARTY, WHICH ARE UNCONNECTED WITH THE SUPPLIER, AND THEREFORE THE SUPPLIER HAS NO CONTROL OVER SUCH **SOLUTION**. IT IS AT ALL TIMES THE CUSTOMER’S RESPONSIBILITY TO CHECK INTERNALLY AND WITH THE RELEVANT THIRD PARTY THAT ANY **SOLUTION** IS SUITABLE FOR THE CUSTOMER’S REQUIREMENTS (INCLUDING WHETHER ANY CONTRACT THAT IT ENTERS INTO WITH ANY THIRD PARTY IN RELATION TO A **SOLUTION** PROVIDES APPROPRIATE RIGHTS AND REMEDIES WHICH IT REQUIRES IN RESPECT OF THE **SOLUTION**); AND
- 5.6.3 THE SUPPLIER WILL HAVE NO LIABILITY TO THE CUSTOMER WHATSOEVER IN RELATION TO THE CUSTOMER ACTING OR NOT ACTING ON ITS **RECOMMENDATION** AND THE CUSTOMER WILL ASSUME ALL RISKS ASSOCIATED WITH AND/OR ARISING OUT OF IMPLEMENTING ANY **RECOMMENDATION** OR **SOLUTION** (WHETHER ITSELF OR BY USING A THIRD PARTY). THE CUSTOMER ACCEPTS THAT IT MUST ENSURE THAT IT PROVIDES FOR ITS OWN

INTERNAL CONTINGENCY MEASURES TO BE PUT IN PLACE AT ITS OWN COST (INCLUDING WITHOUT LIMITATION ITS OWN DISASTER RECOVERY AND BUSINESS CONTINUITY MEASURES) AND IT MUST PUT IN PLACE ITS OWN INSURANCE AND ITS OWN COST TO GUARD AGAINST ANY RISKS, LOSSES OR LIABILITY WHICH FLOW FROM FOLLOWING ANY **RECOMMENDATION** OR **SOLUTION**.

- 5.7 THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT IN THE UNLIKELY CIRCUMSTANCES THAT THE THREAT DETECT **SERVICES** CAUSE DISRUPTION TO THE **AGREED EXTERNAL NETWORKS** AND TO ITS USE OF THEM, OR GENERALLY TO THE CUSTOMER’S SYSTEMS, THE SUPPLIER WILL NOT BE LIABLE TO THE CUSTOMER FOR ANY DISRUPTION OR THE EFFECTS OF ANY DISRUPTION CAUSED AND THE CUSTOMER TAKES SOLE RESPONSIBILITY FOR ANY DISRUPTION CAUSED.
- 5.8 THE THREAT DETECT **SERVICES** ARE ONLY INTENDED TO BE USED FOR BUSINESS PURPOSES, TO SCAN NETWORKS AND DOMAINS THAT ARE USED FOR BUSINESS PURPOSES. THE SUPPLIER WILL NOT BE LIABLE FOR, OR HAVE ANY RESPONSIBILITY IN RELATION TO, ANY SCAN OF NETWORKS AND/OR DOMAINS THAT ARE USED FOR PERSONAL PURPOSES WHERE IT CARRIES OUT THE THREAT DETECT SERVICES ON THESE NETWORKS/DOMAINS IN ACCORDANCE WITH THE INSTRUCTIONS OF THE CUSTOMER.

ANNEX 1 – DEFINITIONS

DEFINITIONS USED IN THE **GENERAL CONDITIONS** WILL APPLY IN THIS SCHEDULE. IN ADDITION THE FOLLOWING DEFINITIONS SHALL APPLY:

“**Agreed External Networks**” has the meaning given to it in paragraph 1.1 of this Schedule;

“**Recommendation**” has the meaning given to it in paragraph 5.5 of this Schedule;

“**Threat Detect Services**” has the meaning given to it in paragraph 1.1 of this Schedule;

“**Solutions**” has the meaning given to it in paragraph 5.6 of this Schedule.

This End User License Agreement (“EULA”) is made between Customer and Forescout Technologies, Inc. (“Forescout”) and covers your use of, license and entitlement to Forescout Products and Services. You, as the Customer, agree to be bound by this EULA through your download, installation, or use of the Products and Services; or your express agreement to this EULA by you or on your behalf by your Forescout Partner.

1. **Forescout Products and Services.**

1.1 **License and Right to Use.** Forescout grants you a non-exclusive, non-transferable:

- (a) license to use the Software; and
- (b) right to use the Cloud Services,

as acquired from a Forescout Partner, for your direct benefit and internal use during the Term subject to your Entitlements and this EULA (collectively, the “**Usage Rights**”). The specific type of license granted per Product is set forth in the [Product License Guide](#).

1.2 **Use by Third Parties.** You may permit Authorized Third Parties to host or access the Products and Services or Usage Rights on your behalf, provided that you are responsible for ensuring that such Authorized Third Parties comply with this EULA, and you are responsible for any breach of this EULA by such Authorized Third Parties.

1.3 **Beta and Trial Use.** If Forescout grants you Usage Rights in Products on a trial, evaluation, beta or other free-of-charge basis (“**Evaluation Products**”) you may only use the Evaluation Products from the date indicated in the Order until the earlier of: (a) the end of the period for which Customer registered; (b) the start date of any purchased subscriptions ordered by Customer including the Evaluation Product(s); or (c) termination by Forescout of the Usage Rights in its sole discretion. If you fail to stop using and/or return the Evaluation Products and/or any Appliance by the end of the trial period, you may be invoiced for the list price of the Evaluation Products and/or Appliance and you agree to pay such invoice. Forescout, in its discretion, may stop providing the Evaluation Products at any time, at which point you will no longer have access to any related data, information, and files and must immediately cease using the Evaluation Products. Evaluation Products may not be subject to Forescout’s usual testing and quality assurance processes and may contain bugs, errors, or other issues. Forescout provides Evaluation Products “AS-IS” without support or any express or implied warranty or indemnity for any problems or issues, and Forescout has no liability relating to your use of the Evaluation Products.

1.4 **Upgrades or Additional Copies of Software.** You may only use Upgrades or additional copies of the Software beyond your Entitlements if you have acquired such rights with technical support Services or separately purchase the right to use Upgrades or additional copies of the Software.

1.5 **Subscription Renewals.** Usage Rights in Products acquired on a subscription basis will not automatically renew and will be subject to a separate renewal Order. If not renewed, subscriptions and Customer’s Usage Rights will terminate at the end of the then current Term.

1.6 **Hardware Appliances.** Forescout will ship the physical Appliance to a location using Forescout’s standard methods for packaging and shipping. Forescout may make partial shipments of Appliances. Shipment dates are not guaranteed. Risk of loss for the Appliance will pass on the date of delivery to Forescout’s designated carrier (“**Shipment Date**”).

1.7 **Professional Services.** Professional Services may be provided under a customized and signed Statement of Work on a time and materials basis or as a pre-packaged standard Professional Services bundle. Forescout reserves all rights and ownership to all Professional Services outputs (“**Forescout Materials**”) without limitation, unless as expressly otherwise agreed in a signed writing. Professional Services are not works made for hire. Upon payment in full of the amounts due for the applicable Professional Services and to the extent any Forescout Materials are incorporated into the deliverable(s), you shall have a perpetual, non-transferable, non-exclusive license to use the Forescout Materials solely as a part of the deliverable(s) for your internal use.

1.8 **Technical Support Services.** Technical support Services are available for purchase for certain Products. Severity levels and response times for technical support Services are available in Forescout’s [Support Services Policy](#) incorporated herein. Lapsed Services may be reinstated by Forescout in its discretion and subject to applicable fees.

1.9 **Cloud Services.** The service level agreement(s) (“**SLA**”) for Cloud Services are set forth in the Documentation and incorporated herein.

2. **Additional Conditions of Use.**

2.1 **Forescout Products Generally.** Unless as expressly agreed by Forescout, you may not:

- (a) make the functionality of any Products available to any third parties that are not Authorized Third Parties;
- (b) remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks;
- (c) reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of the Products; or
- (d) use Forescout Content other than as part of your Usage Rights.

2.2 **Cloud Services.** You will not intentionally:

- (a) interfere with other customers’ access to, or use of, the Cloud Service, or with its security;
- (b) facilitate the attack or disruption of the Cloud Service, including a denial-of-service attack, unauthorized access, penetration testing, crawling or distribution of malware (including viruses, trojan horses, worms, time bombs, spyware, adware and cancelbots); or
- (c) submit any information to Forescout that is not contemplated in the applicable Documentation.

2.3 **Evolving Forescout Products.**

(a) **Changes to Cloud Services.** Forescout may:

- (1) enhance or refine a Cloud Service, although in doing so, Forescout will not materially reduce the core functionality of that Cloud Service, subject to Forescout’s [End of Life](#) Policy; and
- (2) perform maintenance of the infrastructure and software used to provide a Cloud Service, during which you may experience some disruption to that Cloud Service as more fully described in the applicable SLA.

- (b) **End of Life.** Forescout may end the life of Products, including component functionality (“EOL”), by providing written notice in the Customer portal. If you prepaid a fee for your Usage Rights to a Product that becomes EOL before the expiration of your then-current Term, Forescout will use commercially reasonable efforts to transition you to a substantially similar Product. If Forescout does not have a substantially similar Product, then Forescout will credit you or your Forescout Partner, as applicable, for any unused portion of the prepaid fee for the Products declared EOL (“**EOL Credit**”). The EOL Credit will be calculated from the last date the applicable Product is available to the last date of the applicable Term. Such EOL Credit can be applied towards the future purchase of Products and are your sole and exclusive remedy for EOL.
- 2.4 **Protecting Account Access.** You will keep all account information up to date, use reasonable means to protect your account information, passwords and other login credentials, and promptly notify Forescout of any known or suspected unauthorized use of or access to your account.
- 2.5 **Use with Third-party Products.** If you use the Products with third-party products, you are responsible for complying with any third-party provider terms. Forescout does not provide support or guarantee ongoing integration support for products that are not a native part of the Products.
- 2.6 **Open-Source Software.** Open-source software not owned by Forescout is subject to separate license terms set out at www.forescout.com. Forescout’s use of open-source code in Products will not materially or adversely affect your ability to exercise Usage Rights in the Products or cause your Software to become subject to an open-source license, provided you only use Products in accordance with Documentation and in object code form.
3. **Fees.** To the extent permitted by law, Orders for the Products are non-cancellable. Fees, taxes, delivery and payment terms will be exclusively between you and the Forescout Partner. Usage Rights are subject to payment to your Forescout Partner. If you use Products beyond your Entitlement (“**Overage**”), the Forescout Partner may invoice you, and you agree to pay, for such Overage. Any entitlements to SLA credits, other credits or pro-rata refunds, when applicable, shall be made through the Forescout Partner and are your sole and exclusive remedy.
4. **Confidential Information and Use of Data.**
- 4.1 **Confidentiality.** Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, affiliates and contractors who have a need to know (“**Permitted Recipients**”). Recipient: (a) must ensure that its Permitted Recipients are subject to written confidentiality obligations no less restrictive than the Recipient’s obligations under this EULA; and (b) is liable for any breach of this Section by its Permitted Recipients. Such nondisclosure obligations will not apply to information which: (a) is known by Recipient without confidentiality obligations; (b) is or has become public knowledge through no fault of Recipient; or (c) is independently developed by Recipient. Recipient may disclose Discloser’s Confidential Information if required under a regulation, law or court order provided that Recipient provides prior notice to Discloser (to the extent legally permissible) and reasonably cooperates, at Discloser’s expense, regarding protective actions pursued by Discloser. Upon the reasonable request of Discloser, Recipient will either return, delete or destroy all Confidential Information of Discloser and certify the same.
- 4.2 **How We Use Data.**
- (a) **Data Protection Agreement.** Forescout will access, process and use Personal Data in connection with your use of the Products in accordance with applicable privacy and data protection laws. Forescout’s Customer Data Protection Agreement (“**DPA**”) available [here](#) (or terms executed between you and Forescout governing the same scope) applies solely to your Personal Data and processed by Forescout on your behalf when using the Products and Services.
- (b) **Notice and Consent.** To the extent your use of the Products requires it, you are responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer and storage of their data through your use of the Products.
- (c) **Permission and Authorization.** Certain of Forescout’s Products are designed to detect, prevent, respond to, and identify intrusions by collecting and analyzing Customer Data. You acknowledge that Forescout uses a crowd-sourced environment for the benefit of all customers, to help customers protect themselves against suspicious and potentially destructive activities. Forescout uses data collected across your endpoint environment, such as machine event data, executed scripts, code, system files, log files, DLL files, login data, binary files, tasks, resource information, commands, protocol identifiers, URLs, network data, and/or other executable code and metadata, to: (i) analyze, characterize, attribute, warn of, and/or respond to threats against you and other customers, (ii) analyze trends and performance, (iii) improve the functionality of, and develop, Products and Services; (iv) enhance cybersecurity; and (v) permit you to leverage other applications that use the data. Such data is used by Forescout in a way that does not identify you or your Personal Data to other customers. To the extent that your endpoint environment includes Personal Data, such Personal Data may be collected and used by Forescout during the provisioning and use of Forescout’s Products to deliver, support and improve the Products, administer the EULA and further the business relationship between you and Forescout, comply with applicable laws, act in accordance with your written instructions, or as otherwise provided in accordance with this EULA. You authorize Forescout to collect, use, store and transfer the Personal Data that you provide to Forescout as contemplated by the Products and Services under this EULA.
- (d) **Safeguards.** Forescout maintains appropriate technical and organizational safeguards commensurate with the sensitivity of the data and Personal Data processed by it on your behalf, which are designed to protect the security, confidentiality, and integrity of such Customer Data and Personal Data and protect such Customer Data and Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access as certified under the SOC 2 framework, current versions of which are available in the Customer Portal.
5. **Ownership.**
- 5.1 Unless agreed in writing, nothing in this EULA transfers ownership in any intellectual property rights. You retain any ownership of your content and Forescout retains ownership of the Products, Services, Evaluation Products and Forescout Content.

5.2 Forescout may use any feedback you provide in connection with your use of the Products, Services and Evaluation Products as part of its business operations.

6. Indemnification.

- 6.1 **Claims.** Forescout will defend any third-party claim against you that your valid use of Products under your Entitlement directly infringes a third party's patent, copyright or registered trademark (the "**IP Claim**"). Forescout will indemnify you against the final judgment entered by a court of competent jurisdiction or any settlements arising out of an IP Claim, provided that you: (a) promptly notify Forescout in writing of the IP Claim; (b) fully cooperate with Forescout in the defense of the IP Claim; and (c) grant Forescout the right to exclusively control the defense and settlement of the IP Claim, and any subsequent appeal. Forescout will have no obligation to reimburse you for attorney fees and costs incurred prior to Forescout's receipt of notification of the IP Claim. You, at your own expense, may retain your own legal representation.
- 6.2 **Additional Remedies.** If an IP Claim is made and prevents your exercise of the Usage Rights, Forescout will either procure for you the right to continue using the Forescout Products or replace or modify the Products with functionality that is at least equivalent. If Forescout determines that these alternatives are not reasonably available, Forescout may terminate your Usage Rights granted under this EULA upon written notice to you and will refund you a prorated portion of the fee you paid for the Product for the remainder of the unexpired Term.
- 6.3 **Exclusions.** Forescout has no obligation regarding any IP Claim based on: (a) compliance with any designs, specifications, or requirements you provide or a third-party provides; (b) your modification of any Products or modification by a third-party; (c) your combination, operation or use of the Products with non-Forescout products, software or business processes to the extent that the Product or Service would not be infringing but for such combination or modification; (d) for, or where any infringement arises as a result of your failure to use the Products in accordance with this EULA; (e) your failure to modify or replace the Products as required by Forescout; or (f) any Evaluation Products.
- 6.4 This Section states Forescout's entire obligation and your exclusive remedy regarding any IP Claim against you.

7. Warranties and Representations.

7.1 Performance. Forescout warrants that:

- (a) For 90 days from the Delivery Date, the Software substantially complies with the Documentation.
- (b) For 9 months from the Shipment Date, the Appliance substantially complies with the specifications set forth in the Documentation and will be free from material defects in manufacturing. Replacement Appliance is warranted for the remaining period of the original warranty or 90 days, whichever is longer.
- (c) During the Term, Forescout will provide the Cloud Services with commercially reasonable skill and care in accordance with the Documentation.
- (d) Professional Services and Product-Related Services shall be performed with commercially reasonable skill and care under generally accepted professional standards in the United States of America. Forescout shall correct and reperform non-conforming Services subject to your prompt notification to Forescout no later than 30 days after non-conforming Services are rendered.

7.2 Malicious Code. Forescout will use commercially reasonable efforts to deliver Products free of Malicious Code.

7.3 Qualifications.

- (a) Sections 7.1(a)-(c) do not apply if the Product(s): (1) has been altered, except by Forescout or its authorized representative; (2) has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this EULA or the Documentation; (3) is an Evaluation Product; (4) is not a Forescout-branded product or service; or (5) has not been provided by Forescout or a Forescout Partner.
- (b) Upon your prompt written notification to the Forescout Partner during the warranty period of Forescout's breach of this Section your sole and exclusive remedy (unless otherwise required by law) is, at Forescout's option, either: (i) repair or replacement of the applicable Product; or authorize (ii) a refund of either: (1) the license fees paid for the non-conforming Software; or (2) the pro-rata fee paid for the period in which the Product or Service did not comply, excluding any amounts paid or owed under an applicable SLA.
- (c) upon prompt return of the Appliance, the fee paid for the Appliance will be calculated on a three-year straight-line depreciation basis.
- (d) Where Forescout provides a refund of license fees for Software, you must return or destroy all copies of the applicable Software and, at Forescout's request, provide a certificate of destruction evidencing compliance.
- (e) Except as set out in this Section and to the extent permitted by law, Forescout expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, fitness for a particular purpose or non-infringement, or that the Forescout Products will be secure, uninterrupted or error-free. CUSTOMER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT FORESCOUT DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, OR DISCOVER ALL OF CUSTOMER'S OR ITS AFFILIATES' SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, AND CUSTOMER AND ITS AFFILIATES WILL NOT HOLD FORESCOUT RESPONSIBLE THEREFOR.

8. Liability.

8.1 Neither party will be liable for indirect, incidental, exemplary, special or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings.

8.2 The maximum aggregate liability of each party under this EULA is limited to:

- (a) for claims solely arising from Software licensed on a perpetual basis or an Appliance purchased, the fees received by Forescout for that Software or Appliance; or
- (b) for all other claims, an amount not to exceed the total fees paid or payable to Forescout for the relevant Product or Service during that Product's Term when the liability first arose.
- (c) Sections 8.1 and 8.2 do not apply to liability arising from (a) a failure to pay all amounts due; or (b) your breach of Sections 1.1

8.3 This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this EULA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

9. **Termination.** If a party materially breaches this EULA and does not cure that breach within 30 days after receipt of written notice of the breach, the non-breaching party may terminate this EULA for cause. Forescout may immediately terminate this EULA if you breach Sections 2.1 (Forescout Products Generally), 2.2 (Cloud Services) or 11.6 (Export). Upon termination of the EULA, you must stop using the Forescout Products and destroy any copies of Software and Confidential Information within your control. If this EULA is terminated due to Forescout's material breach, Forescout will refund you or your Forescout Partner, as applicable, the prorated portion of fees you have prepaid for the Usage Rights beyond the date of termination. Upon Forescout's termination of this EULA for your material breach, you will pay any unpaid fees due and owing through to the end of the then-current Term. If you continue to use or access any Products after termination, you may be invoiced for and, you agree to pay, for such continued use.

10. **Verification.** You will take reasonable steps to maintain accurate records of your use of the Products. Upon reasonable advance notice, and no more than once per 12-month period, you will allow Forescout and its auditors access to the relevant information to verify compliance with this EULA. You agree to pay any underpayment of fees for excess usage during the applicable Term.

11. **General Provisions.**

11.1 **Survival.** Sections 2.1 and 2.2 (Additional Conditions of Use), 3 (Fees), 4 (Confidential Information and Use of Data), 5 (Ownership), 7 (Warranties and Representations), 8 (Liability), 9 (Termination), 10 (Verification) and 11 (General Provisions) survive termination or expiration of this EULA.

11.2 **Assignment and Subcontracting.** Neither party may assign or transfer this EULA or any obligation herein without the prior written consent of the other party, except that, upon written notice, Forescout may assign or transfer this EULA or any obligation herein to an Affiliate, or an entity acquiring all or substantially all assets of Forescout, whether by acquisition of assets or shares, change in control or by merger or consolidation without your consent. Forescout may subcontract any performance associated with the Forescout Products to third parties, provided that such subcontract does not relieve Forescout of any of its obligations under this EULA.

11.3 **US Government End Users.** The Software, Cloud Services and Documentation are deemed to be "commercial computer software" and "commercial software documentation" pursuant to FAR 12.212 and DFARS 227.7202. All US Government end users acquire the Software, Cloud Services and Documentation with only those rights set forth in this EULA. Any provisions that are inconsistent with federal procurement regulations are not enforceable against the US Government.

11.4 **Forescout Partner Transactions.** If you purchase Products, Services and Evaluation Products from a Forescout Partner, the terms of this EULA apply to your use of Products, Services and Evaluation Products and prevail over any inconsistent provisions in your agreement with the Forescout Partner.

11.5 **Compliance with Laws.**

(a) **General.** Each party will comply with all laws and regulations applicable to their respective obligations under this EULA, including applicable data protection laws, employment laws, export laws and anti-corruption laws. Forescout may restrict the availability of Products and Services in any particular location or modify or discontinue features to comply with applicable laws and regulations.

(b) **Data collection and transfer.** If you use the Products, Services and Evaluation Products in a location with local laws requiring a designated entity to be responsible for collection of Personal Data about individual end users and transfer of data outside of that jurisdiction (e.g., China), you acknowledge that you are the entity responsible for complying with such laws.

11.6 **Export.** The Products, technology, Services and Evaluation Products are subject to U.S. and local export control and sanctions laws. You acknowledge and agree to the applicability of and your compliance with those laws, and you will not receive, use, transfer, export or re-export any Forescout Products, Services or Evaluation Products in a way that would violate those laws. You also agree to obtain any required licenses or authorizations related to your use or export of the Products, Services or Evaluation Products.

11.7 **Governing Law and Venue.** This EULA, and any disputes arising from it, (a) will be governed exclusively by the governing law below, without regard to conflicts of laws rules, and (b) each party irrevocably consents and submits to the exclusive jurisdiction and venue of such courts. The United Nations Convention on Contracts for the International Sale of Goods, the Uniform Commercial Code or similar statutes shall not apply with respect to this EULA. Except for actions related to the secrecy of confidential information or the proprietary rights of Forescout and its suppliers, no action arising or resulting from this EULA may be brought by either party more than two (2) years after the cause of action accrued.

Your Primary Place of Business	Governing Law	Jurisdiction and Venue
United States, Latin America, Caribbean	State of Delaware, United States	Courts in Wilmington, Delaware
Australia	State of New South Wales, Australia	Courts in New South Wales
Canada	Province of Ontario, Canada	Courts of the Province of Ontario
Europe, Africa, Middle East, Rest of World	Ireland	Courts in Dublin, Ireland

If you are a US public sector agency or government institution in the US, the laws of the primary jurisdiction in which you are located will govern the EULA. For US Federal Government customers, this EULA will be controlled under the laws of the US.

11.8 **Miscellaneous.** Any notices by Forescout will be delivered via email, regular mail or postings on Forescout.com. Notices to Forescout shall be sent to Forescout Technologies, Inc. Office of General Counsel, 300 Santana Row Suite 400, San Jose, CA 95128 with email copy to generalcounsel@forescout.com. Except for payment obligations, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control. Failure by either party to enforce any right under this EULA will not waive that right. If any portion of this EULA is not enforceable, it will not affect any other terms. This EULA does not grant any right or cause of action to any third party. Forescout may provide local language translations of this EULA for informational

purposes only, and the English version of this EULA will prevail over any inconsistencies. FORESCOUT RESERVES THE RIGHT TO UNILATERALLY MODIFY THE TERMS AND CONDITIONS OF THIS EULA BY NOTICE in the Customer portal which shall take effect immediately upon commencement of the new Term. Customer consents to its logo and name to be included in any listing of Forescout's current customers, unless expressly revoked in writing by Customer. The parties agree that this EULA is the complete and exclusive statement of mutual understanding of the parties respecting the Services and Products and takes precedence over all previous agreements relating to the Services and Products (whether written or oral).

11.9 Definitions. Capitalized terms used in this EULA and not elsewhere defined are defined as follows:

"Affiliate" means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party.

"Appliance" means any Forescout on-premises physical hardware appliance.

"Authorized Third Parties" means Customer's Users, Affiliates, Forescout Partners, and each of their respective users, who are permitted to access and use the Forescout Products or Services on your behalf as part of your Entitlement.

"Cloud Service" means the Forescout Product(s) that is (a) a hosted software-as-a-service offering or other Forescout cloud-enabled feature or (b) cloud functionality made available as part of a Product.

"Confidential Information" means non-public, proprietary information of the disclosing party ("**Discloser**") obtained by the receiving party ("**Recipient**") in connection with this EULA. Forescout Confidential Information includes the Software, Cloud Service and Documentation.

"Customer" means the legal entity acquiring Usage Rights in and Entitlements to the Forescout Products, Services or Evaluation Products.

"Customer Data" means the data generated by Customer and its endpoint environment and collected by Customer's use of the Products and/or sent to Forescout. Customer Data is considered Customer's Confidential Information, subject to the exclusions, exceptions and obligations set forth herein.

"Delivery Date" means the date(s) agreed in your Entitlement, or if no date is agreed, for Software, the earlier of the date Software is made available for download or installation, or for Cloud Services, the date on which the Cloud Service is made available for your use.

"Documentation" means the technical specifications and usage materials specifying the functionalities and capabilities of the applicable Products as published by Forescout and marked as official Documentation.

"Entitlement" means the specific metrics, duration, and quantity of Products you commit to acquire from a Forescout Partner.

"Forescout Content" means (i) any content or data provided to you as part of your use of the Products and Services, (ii) content or data that Forescout Technology generates or derives in connection with your use of the Products and Services including geographic and domain information, rules, signatures, threat intelligence and data feeds and Forescout's compilation of suspicious URLs or other suspicious indicators, excluding any such information or data that identifies Customer or to the extent it includes Personal Data, and (iii) Threat Actor Data.

"Forescout Partner" means a reseller, distributor, managed service provider or systems integrator authorized by Forescout to sell and or provide you with Products and Services.

"Malicious Code" means code designed or intended to disable or impede the normal operation of, or provide unauthorized access to, networks, systems, Software or Cloud Services other than as intended by the Products.

"Order" means the applicable ordering document for Products, Services and/or Evaluation Products including Entitlements thereto ordered by you and that which Forescout has agreed to provision to you.

"Personal Data" means information provided by Customer to Forescout or collected by Forescout from Customer's use of the Products or Services, used to distinguish or trace a natural person's identity, either alone or when combined with other personal or identifying information that is linked or linkable by Forescout to a specific natural person. Personal Data also includes such other information about a specific natural person to the extent that the data protection laws applicable in the jurisdictions in which such person resides define such information as Personal Data.

"Products" means, collectively, generally available Forescout products, Software, and/or Cloud Service subject to an Order, and excludes Evaluation Products.

"Product License Guide" means a basic description of Products with the associated license metric available here: [Product License Guide](#).

"Product-Related Services" means, collectively, (i) the technical support services for certain Products provided by Forescout, (ii) training services, and (iii) any other Forescout services provided or sold with the Products. Product-Related Services do not include Professional Services.

"Professional Services" means any professional services engaged to be performed by or on behalf of Forescout, for Customer pursuant to a customized SOW entered into between the parties or pursuant to a pre-packaged standard professional services bundle sold under a fixed price SKU.

"Services" means, collectively, any Product-Related Services and any Professional Services.

"Software" means the Forescout computer programs including a virtual appliance, Upgrades and firmware.

"Term" means the period commencing on the Delivery Date or Shipment Date for Appliances and continuing until expiration or termination thereof.

"Threat Actor Data" means any malware, spyware, virus, worm, Trojan horse, or other potentially malicious or harmful code or files, URLs, DNS data, network telemetry, commands, processes or techniques, metadata, or other information or data, in each case that is potentially related to unauthorized third parties associated therewith and that: (i) Customer provides to Forescout in connection with this EULA, or (ii) is collected or discovered during the course of Forescout providing Products, excluding any such information or data that identifies Customer or to the extent that it includes Personal Data.

"Upgrades" means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software.

"User" means the individuals (including contractors or employees) permitted to access and use the Products, Services and Evaluation Products on your behalf as part of your Entitlement.