

BLACKTHORN GRC LIMITED.
SOFTWARE AND SERVICES TERMS AND CONDITIONS ('CONDITIONS')

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in the Agreement.

1.1 Definitions

Agreement: a signed Order Form, these Conditions and any applicable Statement(s) of Work, collectively forming one contractual agreement between Blackthorn and the Client.

Authorised Users: Client users permitted by the Agreement to use the Software and/or Hosting Services.

Authorised User Number: the number of Client users permitted to access the Software and/or Hosting Services as specified in the Order Form.

Blackthorn: Blackthorn GRC Limited, a company incorporated and registered in England and Wales, company number 09826065 whose registered office is 85 Witham Road, Anerley, London, SE20 7YB

Blackthorn Data: has the meaning conferred in clause 8.3.

Blackthorn Materials: all Documents and materials (including, without limitation, Blackthorn manuals and training materials) provided by Blackthorn relating to the Software and/or Services.

Client: the customer specified in the Order Form.

Client Employees: employees, officers, contractors, and advisors of the Client.

Client Materials: all Documents and materials provided by the Client in relation to the Agreement.

Confidential Information: know-how, processes, designs, software, programmes, source or object codes, databases, specifications, data, drawings, licence codes, security configuration, trade secrets, pricing, and the terms of the Agreement.

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject: an individual who is the subject of Personal Data.

Digital Forensics: analysis of computers, tablets, hard drives, mobile telephones, cameras, printers, fax machines, game consoles and other digital devices, as detailed in an Order Form and Statement of Work.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Effective Date: the date the Client signs the Order Form.

Fees: the charges for the Software and/or Services as set forth in an Order Form.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a 'Member'.

Hosted Services: Blackthorn software, data management, and data storage accessible to Authorised Users via the Internet.

Incident Response: the investigation and recommended mitigation of information security breach events.

Initial Period: the initial time period for supply of the Software and/or Services as specified in the Order Form.

Intellectual Property Rights (or IPR's): patents, rights to inventions, copyright and related rights, moral rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in

confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Open-Source Software: open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

Order Form: Blackthorn's sales order form setting forth the Software and/or Services purchased by the Client, applicable Fees, and related details.

Party: the Client or Blackthorn as the context requires.

Parties: the Client and Blackthorn.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller and in relation to which the Processor is providing services under the Agreement.

Processing and process: in relation to data processing and data process have the meaning set out in section 1(1) of the Data Protection Act 1998.

Project: a Blackthorn Services project as specified in a Statement of Work.

Project Data: factual and analytical data which is specific to the Services being supplied and which is contained in Digital Forensics and/or Incident Response analysis, reports, findings, or other related documents prepared by Blackthorn and supplied to the Client as part of the Services.

Renewal Period: has the meaning conferred in clause 2.

Services: information security solutions and services including Digital Forensics, Incident Response, supply of Blackthorn Data, training, consultancy, Hosted Services, and Software support and maintenance as set forth in the Order Form and applicable Statements of Work.

Software: Blackthorn's proprietary software in machine-readable object code form including any corrections, updates, upgrades, modifications and enhancements provided to the Client under the Agreement.

Specifications: a description of the standard-version Blackthorn Software and/or Services specifying functionality and related attributes, as updated by Blackthorn from time to time and available to Client on request.

Start Date: the date the Software is first provided, and/or the date the Services commence, as set forth in the Order Form.

Statement of Work (or SOW): a detailed plan describing a Project and setting out the scope, technical specifications, responsibilities, timetable, and related details.

Term: the Initial Period and any applicable Renewal Period.

2. APPLICATION AND TERM

2.1 These Conditions shall:

- (a) apply to and be incorporated in the Agreement; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 The Term shall commence on the Effective Date and continue for the Initial Period. At the end of the Initial Period, the Agreement shall:

- (a) expire unless a Renewal Period is confirmed in the Order Form;

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- (b) where a Renewal Period is confirmed in the Order Form, renew for consecutive 12-month periods (each a "Renewal Period"), provided that either party may terminate the Agreement by serving prior written notice of at least 30 days, said notice to take effect at the end of the Initial Period or then-current Renewal Period.

3. LICENCE AND RESTRICTIONS

3.1 Software and/or Hosted Services: Where Software and/or Hosted Services are specified in the Order Form:

- (a) Blackthorn hereby grants to the Client a non-exclusive, non-transferable, non-assignable, worldwide, revocable licence to use the Software and/or Hosted Service during the Term up to the authorised User Number and in accordance with the terms and conditions of this Agreement;
- (b) The Client shall not: (i) share, sell, loan, transfer, assign or otherwise provide or permit access to the Software or Hosted Service to any third party; (ii) adapt, reverse engineer, decompile, disassemble, or modify the Software; (iii) exceed the Authorised User Number.
- (c) The Client may upon written consent from Blackthorn increase the number of Authorised Users during the Term of Agreement, subject to payment by Client of Fees pro-rated to the increased usage.

3.2 Project Data: Subject to clause 8.3 and to the permitted purpose restrictions in clause 5.2, the Client shall own all right, title and interest in the Project Data.

4. BLACKTHORN'S OBLIGATIONS

- 4.1** Blackthorn shall provide the Software and Services with all reasonable skill and care using suitably trained and qualified staff.
- 4.2** Blackthorn shall use reasonable endeavours to provide the Software and Services in material accordance with Blackthorn's standard specifications and applicable Statements of Work.
- 4.3** When Blackthorn employee access to Client premises is required in order to perform the Services, Blackthorn will ensure such employees shall carry proper identification and observe all reasonable, applicable Client policies relating to security, health and safety, and conduct.
- 4.4** If Blackthorn's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Client, Blackthorn shall not be liable for any costs, fees or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay (together 'Costs') and shall be entitled to be reimbursed by the Client for any such Costs suffered or incurred by Blackthorn.

5. CLIENT'S OBLIGATIONS

- 5.1** The Client shall:
- (a) provide in a timely manner such Client Materials and other information as Blackthorn may reasonably require to supply the Software and/or Services;
- (b) provide office accommodation, secretarial services, and telephone and communication facilities for Blackthorn staff when Blackthorn is required to be on Client premises in order to perform the Services (or part of the Services); and
- (c) ensure that any Client computer equipment, software, and Internet browsers used to access the Software

and/or Hosted Service are compatible with the minimum Specifications from time to time for such Software and/or Services.

5.2 To the extent the Services include **Digital Forensics and/or Incident Response**, the Client's use of any resultant Project Data is restricted to the following purposes ("**Permitted Purposes**"):

- (a) to establish or verify legally-admissible evidence in relation to criminal prosecution and/or other legal proceedings;
- (b) the lawful investigation of fraud, intellectual property theft, misuse, or unauthorised access of computer systems;
- (c) assessment of digital devices and systems for the purpose of regulatory compliance; and
- (d) any other lawful purpose notified by the Client to Blackthorn prior to the Effective Date.

The Client shall ensure that access to such Project Data is limited to Client Employees on a need-to-know basis only, and that any such Client Employees shall be informed of and shall adhere to the Permitted Purposes. Blackthorn's provision of Digital Forensics and/or Incident Response and related Project Data is subject to strict adherence by the Client with its obligations under this clause 5.2 failing which adherence, Blackthorn shall be entitled to require the Client, upon written notification, to destroy all tangible and digital records of the Project Data and any related Blackthorn Data.

5.3 The Client warrants to Blackthorn that the purposes for which it has requested Digital Forensics and/or Incident Response are within the Permitted Purposes and undertakes to indemnify Blackthorn against any loss, liability, cost or expense it may suffer or incur as a result of any breach of such warranty.

5.4 The Client shall not, without the prior written consent of Blackthorn, at any time from the date of the Agreement to the expiry of 12 months after the last date of supply of the Software and/or Services, solicit or entice away from Blackthorn or employ or attempt to employ for work in the development of products materially similar to the Software or Services any person who is, or has been, engaged as an employee, consultant or subcontractor of Blackthorn in the provision of the Software and/or Services.

6. CHANGE CONTROL

6.1 If either party requests a change to the scope or execution of the Software and/or Services, Blackthorn shall, within a reasonable time, provide a written estimate to the Client of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to Blackthorn's Fees arising from the change; and
- (c) the likely effect of the change on any applicable Statement of Work.

6.2 If the Client wishes Blackthorn to proceed with the change, Blackthorn has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its Fees, the time for performance of the Services and any applicable Statement of Work.

6.3 Notwithstanding the above, and for the avoidance of doubt, Blackthorn reserves the right in its sole discretion periodically to update and modify the Software and/or Services for the purposes of product improvement and data security.

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7. FEES AND PAYMENT

- 7.1 In consideration of the provision of the Software and/or Services by Blackthorn, the Client shall, unless otherwise agreed in writing, pay the Fees on or before the Effective Date.
- 7.2 Where Software and/or Services are provided for a fixed price, the total Fees shall be the amount set out in the applicable Order Form.
- 7.3 Where Services are provided on a time and materials basis:
- (a) the Fees payable for the Services shall be calculated in accordance with Blackthorn's standard fee rates set forth in the Order Form or Statement of Work;
 - (b) Blackthorn's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day during normal working hours on weekdays (excluding public holidays); and
 - (c) Fees for such Services shall be invoiced monthly.
- 7.4 The Client shall reimburse Blackthorn for all reasonable, pre-agreed travel and accommodation expenses incurred by Blackthorn in connection with performance of the Services, provided Blackthorn provides valid receipts for such expenses.
- 7.5 The parties agree that Blackthorn may review and increase its standard Fee rates, provided that such Fees cannot be increased more than once in any 12-month period. If such increase is greater than 5%, Blackthorn shall give Client at least 30 days' prior notice of such increase and if the increase is not acceptable to the Client, the Client may, within 15 days of such notice being received, terminate the Agreement by giving 30 days' written notice to Blackthorn.
- 7.6 The Client shall pay each invoice submitted to it by Blackthorn, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by Blackthorn.
- 7.7 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Blackthorn on the due date:
- (a) the Client shall pay interest on the overdue amount at the rate of 5% per annum above the Lloyds Bank plc base rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount; and
 - (b) Blackthorn may suspend all Software and/or Services until payment has been made in full.
- 7.8 All sums payable to Blackthorn under the Agreement shall become due on its termination, notwithstanding any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.
- 7.9 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Each Party (and/or its licensors) will retain ownership in its Intellectual Property Rights. Nothing in the Agreement shall be deemed to transfer or assign ownership in Intellectual Property Rights from one Party to the other Party.
- 8.2 As between the Client and Blackthorn:

- (a) all Intellectual Property Rights and all other proprietary rights in the Software and the Blackthorn Materials shall be owned by Blackthorn (and/or Blackthorn licensors); and
- (b) all Intellectual Property rights and all other proprietary rights in the Client Materials shall be owned by Client (and/or Client licensors).

- 8.3 For clarity, Blackthorn retains its Intellectual Property Rights in all creative or proprietary ideas, information and other materials (not being Project Data) used, created or supplied by it in performing the Services including, without limitation, data, databases, designs, methodologies, analysis frameworks, report formats, and all forms of data expression and specifications (together 'Blackthorn Data').
- 8.4 Blackthorn grants to the Client a non-transferable, royalty-free licence to use the Blackthorn Materials and the Blackthorn Data for its own business purposes only provided it shall not create any derivative works therefrom or disclose the same to any third party other than a Client Employee.

9. IPR INDEMNITY

- 9.1 Blackthorn shall defend the Client, its officers, directors and employees against any claim that the Software infringes any United Kingdom patent effective as of the Effective Date, copyright, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- (a) Blackthorn is given prompt notice of any such claim;
 - (b) the Client provides reasonable co-operation to Blackthorn in the defence and settlement of such claim, at Blackthorn's expense; and
 - (c) Blackthorn is given sole authority to defend or settle the claim.
- 9.2 In the defence or settlement of the claim, Blackthorn may obtain for the Client the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to the Client. Blackthorn shall have no liability if the alleged infringement is based on:
- (a) a modification of the Software by anyone other than Blackthorn; or
 - (b) the Client's use of the Software in a manner contrary to the instructions given to the Client by Blackthorn; or
 - (c) the Client's use of the Software after it has been given notice of the alleged or actual infringement by Blackthorn or otherwise.
- 9.3 The foregoing and clause 13.4 state the Client's sole and exclusive rights and remedies, and Blackthorn's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.

10. CONFIDENTIALITY

- 10.1 Each Party undertakes that it shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person Confidential Information disclosed by one Party to the other Party, except as permitted by clause 10.2.
- 10.2 The Client may disclose Blackthorn's confidential information:

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- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Neither Party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 11. DATA PROTECTION**
- 11.1 Blackthorn's obligations
- (a) The Client and Blackthorn acknowledge that for the purposes of the Data Protection Act 1998, and unless otherwise expressly agreed in writing, the Client is the Data Controller and Blackthorn is the data processor in respect of any Personal Data.
 - (b) Blackthorn shall process the Personal Data only in accordance with the Client's instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Client.
- 12. WARRANTIES**
- 12.1 Each Party warrants that it has the lawful authority to enter into the Agreement.
- 12.2 Each Party warrants that it will at all times adhere to all applicable legislation and regulations, including the Data Protection Act 1998 (and subordinate legislation thereto).
- 12.3 Blackthorn warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- (a) take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and (ii) the nature of the data to be protected.
 - (b) take reasonable steps to ensure compliance with those measures.
- 12.4 Blackthorn warrants that the Software will materially conform to the Specifications. Blackthorn does not warrant that use of the Software will be error-free or free from interruption.
- 12.5 Any Open-Source Software provided by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 12.6.
- 12.6 Except as expressly stated in this Agreement, all other warranties, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 13. LIMITATION OF LIABILITY**
- 13.1 Nothing in the Agreement limits or excludes either Party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation or deliberate repudiatory breaches of this agreement; or
 - (c) any infringement of Blackthorn's IPR's (whether or not deliberate) by or on behalf of the Client or by anyone for whom the Client is responsible;
 - (d) any other liability which cannot be limited or excluded by applicable law.
- 13.2 Subject to clause 13.1, neither Party shall be liable, whether in contract, tort (including negligence), or otherwise, arising under or in connection with the Agreement for loss of profits, goodwill, business opportunity or anticipated savings or for any indirect or consequential loss.
- 13.3 The Client acknowledges that Blackthorn is reliant on the Client for direction as to the extent to which Blackthorn is entitled to use and process Personal Data.
- 13.4 Subject to clause 13.1 and clause 13.2, each Party's total liability whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement in respect of all claims (connected or unconnected) shall be limited to a sum equal to the total Fees paid by the Client to Blackthorn under the Agreement.
- 14. TERMINATION**
- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (b) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
 - (c) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - (d) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (f) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 15. CONSEQUENCES OF TERMINATION**
- 15.1 On termination or expiry of the Agreement:
- (a) the Client shall immediately pay to Blackthorn all of Blackthorn's outstanding unpaid invoices and interest and, in respect of Software and/or Services supplied but for which no invoice has been submitted, Blackthorn may submit an invoice, which shall be payable on receipt;
 - (b) the Client shall upon request return all Blackthorn Materials;
 - (c) the following clauses shall continue in force: clause 8 (Intellectual property Rights), clause 10 (Confidentiality), clause 11 (Data Protection), clause 13 (Limitation of liability), clause 24 (Notices), and clause 25 (Governing law and jurisdiction).

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- 15.2 Termination or expiry of the 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 the Agreement which existed at or before the date of termination or expiry.
16. **FORCE MAJEURE**
- 16.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster, fire; terrorist attack, arson, civil war, civil unrest, war, threat of or preparation for war, armed conflict; or imposition of sanctions.
- 16.2 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.3 If the Force Majeure Event prevails for a continuous period of more than 3 months, either party may terminate the Agreement by giving 30 days' written notice to all the other party. On the expiry of this notice period, the Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Agreement occurring prior to such termination.
17. **VARIATION**
No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
18. **WAIVER**
No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
19. **SEVERANCE**
If any provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
20. **ENTIRE AGREEMENT**
The Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
21. **ASSIGNMENT**
- 21.1 Except as provided for in clause 21.2, the Client shall not, without the prior written consent of Blackthorn (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 21.2 The Client may assign its rights and obligations under the Agreement to a Member of its Group subject to such Members adherence to the terms of the Agreement, and provided that the Authorised User limit shall be deemed to apply to the aggregate number of users of the Client and all such Group Members.
- 21.3 Blackthorn may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
22. **NO PARTNERSHIP OR AGENCY**
- 22.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
23. **THIRD PARTY RIGHTS**
No one other than a party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
24. **NOTICES**
- 24.1 Notices shall be in writing and served via recorded post, verifiable email, courier, or in person and, in the case of the Client, shall be addressed to the person named in the Order Form or such other person as the Client may nominate for the purpose.
- 24.2 For the purpose of deemed receipt, receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.
25. **GOVERNING LAW AND JURISDICTION**
The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).