

Terms and Conditions

G-CLOUD 15

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This document sets out the general terms and conditions ("Terms") that apply to Cloud Software Services / Managed Services offerings ordered from Becrypt by a Customer under G-Cloud 15.

Terms and Conditions (the "Agreement")

Parties

- (1) Becrypt Limited, incorporated and registered in England and Wales with company number 04328430 whose registered office is a 55 New Oxford Street, London, WC1A 1BS (**Supplier**)
- (2) The person or entity on whose behalf this licence is accepted for the use of the Cloud Software / Managed Services (**Customer**)

Background

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers on a per user subscription basis for the purpose of managing and providing secure environments, secure endpoints and operating systems for endpoint devices.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

Agreed Terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2(d).

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 13.1.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the documents made available to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of this agreement.

EULA: the Supplier's end user licence agreement as per Schedule 4.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Incident: any Vulnerability, Virus or security incident which:

- a) may affect the Software or the Services;
- b) may affect the Supplier's network and information systems, such that it could potentially affect the Customer or the Software or the Services;
or
- c) is reported to the Supplier by the Customer.

Initial Subscription Term: the initial term of this agreement as set out in Schedule 2

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Known Vulnerability: any Vulnerability that has either:

- a) been assigned a Common Vulnerabilities and Exposures (CVE) number;
- b) been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or
- c) been disclosed on the internet, or any open public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice.

Latent Vulnerability: any instances of typical classes of Vulnerability, including without limitation buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection.

Mandatory Policies: the Supplier's business policies defined in the Documentation, as amended by notification to the Customer from time to time.

Mitigate: the taking of such reasonable steps that would be taken a prudent supplier in accordance with Good industry Practice to mitigate against the Incident in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety) provided these are approved by the Customer in writing in advance, and the terms Mitigated and Mitigation shall be construed accordingly.

Normal Business Hours: 09.00 am to 17.30 pm local UK time, each Business Day.

Process, Processing and Processed: each has the meaning given to it in EU General Data Protection Regulation (EU) 2016/679 and any national implementing legislation.

Renewal Period: the period described in clause 17.1.

Services: the subscription services including Software provided by the Supplier to the Customer under this agreement as notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Software: the software applications provided by the Supplier as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, set up fees and logging fees as set out in paragraph 1 of Schedule 1.

Subscription Term: has the meaning given in clause 17.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy: the Supplier's policy for providing support in relation to the Services described in the Documentation and as may be notified to the Customer from time to time.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation from a device in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or

data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. **User subscriptions**

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 10.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed according to the Customer policy and that each Authorised User shall keep their password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name of each Authorised User to audit compliance with this agreement. Each such audit may be conducted no more than once per annum, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 1 of **Error! Reference source not found.** Schedule 1 within 10 Business Days of the date of the relevant audit.

2.3 The Customer shall not access, store, distribute or transmit any Viruses or Known Vulnerability or Latent Vulnerability, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 25.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Customer only.

3. Additional user subscriptions

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph 1 of **Error! Reference source not found.** Schedule 1 and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request, such approval not to be unreasonably withheld. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 Business Days of its approval of the Customer's request.
- 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in paragraph 2 of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Export licencing

- 4.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**) to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 4.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

5. Services

- 5.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 5.2 In the event of any use of the Service in breach of clause 2.2, 2.3 or 2.4 by the Customer that in the Supplier's reasonable opinion directly threatens the security, the operational integrity or the availability of the Service, the Supplier may suspend an Authorised User's access to the Service. In advance of taking this action, the Subcontractor will immediately notify the Customer of the issue and provide sufficient information for the Parties to assess the notified breach and consult with each other as to the proportionate course of action, the extent of such consultation and the proportionate course of action being dependent upon the severity of the notified breach. Should any notified breach under this clause 5.2 directly impact the Supplier's ability to make the Service available, the Customer's ability to receive any Service Credits will be proportionately adjusted to reflect the length of the suspension.
- 5.3 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during a maintenance window; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 24 Normal Business Hours' notice in advance.
- 5.4 The Supplier will, as part of the Services and in consideration of the support fees set out in Schedule 1, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

6. Data protection

Other than limited business contact information in respect of the Authorised Users and Customer's employees and sub-contractors, which may be used by the Supplier solely for contract management activities in accordance with all applicable laws and regulations, the Supplier shall not Process any Personal Data in relation to the Agreement and shall not appoint any sub-processors unless and until the Customer has authorised such Processing by way of a Special Condition, or an amendment to this Agreement, which shall, amongst other things, set out the precise nature of the

information to be Processed, the scope of Processing and the additional terms and conditions that will apply to any such Processing. The Parties shall use those clauses set out at Schedule 4 as a reference to agree such obligations. If the Supplier provides the Customer with any Personal Data of its employees and sub-contractors in connection with the Agreement (including without limitation, the identities of the relevant individuals, their contact information, and their role and their responsibilities), the Supplier acknowledges and agrees that it shall advise such individuals of the provision of such Personal Data prior to it taking place.

7. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8. Supplier's obligations

- 8.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care in accordance with Good Industry Practice.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.
- 8.3 The Supplier:
- (a) does not warrant that:

- (i) the Customer's use of the Services will be uninterrupted or error-free; and
 - (ii) the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 8.5 The Supplier warrants and undertakes that:
- (a) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement;
 - (b) it will comply with all applicable laws and regulations with respect to its obligations under this agreement;
 - (c) it will co-operate with the Customer in all matters relating to the Services and comply with the Customer's reasonable instructions; and
 - (d) it will not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.
- 8.6 The Supplier:
- (a) in relation to the Software and the Services shall maintain such accreditation(s) and certifications throughout the term of this agreement;
 - (b) shall provide to the Customer, if requested, a complete copy of each audit or other report received by the Supplier in connection with such accreditation(s) and certification(s) within 10 Business Days after the Supplier's receipt of such report; and
 - (c) shall take all reasonable steps not to introduce any Viruses or Known Vulnerabilities or Latent Vulnerabilities into the Customer's network and information systems via the Services or Software or otherwise.
- 8.7 The Supplier shall follow its backup procedures for Customer Data as set out in the service definition Documentation. In the event of any loss or damage to Customer

Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the backup procedure described in the Documentation. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

9. Customer's obligations

9.1 The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) at all times comply with the Supplier's EULA;
- (g) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (h) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating

to the Customer's network connections or telecommunications links or caused by the internet.

- 9.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

10. Charges and payment

- 10.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 10 and Schedule 1 and the support fees in accordance with clause 5.4 and Schedule 1.

- 10.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and approved purchase order information and any other relevant valid, up-to-date and complete contact and billing details. The Customer shall provide:

- (a) its approved purchase order information to the Supplier, and the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 17.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;

and the Customer shall pay each invoice within 30 days after the date of such invoice.

- 10.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier may, without liability to the Customer, disable the Customer's account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank, London from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

- 10.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 16.3(b), non-cancellable and non-refundable;

- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 10.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Effective Date are set out in Schedule 1.
- 10.6 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, the support fees payable pursuant to clause 5.4 and/or the excess storage fees payable pursuant to clause 10.5 at the start of each Renewal Period upon 40 Business Days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

11. Insurance

- 11.1 The Supplier shall, as a minimum, maintain the following primary insurance policies at the specified amount with reputable insurers authorised to conduct business in the jurisdictions in which the Contract is performed against all risks usually insured against, including without limitation, protection for claims for Third Party legal liability for injury or damage and for negligent acts or omissions which result in a claim for any form of financial loss against the Customer as a result of this agreement:
 - (a) a policy of Public Liability Insurance for an amount not less than £10 million per event or series of events in respect of loss of or damage to property of the Customer, or death, disease, illness or injury to persons resulting from delivery of the agreement;
 - (b) a policy of Product Liability Insurance for an amount not less than £10 million per event or series of events in respect of loss of or damage to property of the Customer, or death, disease, illness or injury to persons resulting from delivery of the agreement;
 - (c) a policy of Professional Indemnity Insurance for an amount not less than £5 million per event or series of events;
 - (d) a policy of Cyber Technical Errors and Omissions Insurance for an amount not less than £5 million per event or series of events; and
 - (e) any other insurance which the Supplier may be statutorily required to maintain.
- 11.2 The Supplier shall procure that such insurance is arranged on a continuing basis.

12. Proprietary rights

- 12.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 12.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

13. Confidentiality

- 13.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives, including but not limited to:
- (a) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party or of any member of the group of companies to which the disclosing party belongs; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party or of any member of the group of companies to which the disclosing party belongs;
 - (b) any information developed by the parties in the course of carrying out this agreement and the parties agree that:
 - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
 - (ii) Customer Data shall constitute Customer Confidential Information;

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

- 13.2 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - (d) the parties agree in writing is not confidential or may be disclosed.
 - 13.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
 - (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or
 - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 13.
 - 13.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
 - 13.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
 - 13.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
 - 13.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.
 - 13.8 On termination or expiry of this agreement, each party shall:
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- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
 - (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party.
- 13.9 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.10 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 13.11 The above provisions of this clause 13 shall survive for a period of five years from termination or expiry of this agreement.

14. Security of network and information systems

- 14.1 The Supplier shall at all times implement and maintain appropriate levels of security to protect any and all Customer Data which as a minimum:
- (a) are in accordance with Good Industry Practice; and
 - (b) comply with all applicable laws and regulations.
- 14.2 The Supplier shall notify the Customer immediately it becomes aware of any Incident, and respond without delay to all queries and requests for information from the Customer about any Incident, whether discovered by the Supplier or the Customer, in particular bearing in mind the extent of any reporting obligations the Customer may have under the Data Protection Legislation and that the Customer may be required to comply with statutory or other regulatory timescales.
- 14.3 The Supplier will use its reasonable endeavours to ensure the continuity of the Services at all times in accordance with its business continuity management

policies, with a view to ensuring the continuity of any services to be provided by the Customer that rely on the Services or Software.

15. Indemnity

- 15.1 The Supplier shall defend the Customer, the Authorised Users, its affiliates and subsidiaries and its and their officers, directors and employees against any and all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's intellectual property rights in any jurisdiction.
- 15.2 If the Supplier is required to indemnify the Customer under this Clause 15, the Customer shall:
- (a) notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at Clause 15.1 (**IPRs Claim**);
 - (b) allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Supplier shall obtain the Customer's prior approval of any settlement terms, such approval not to be unreasonably withheld;
 - (c) provide the Supplier with such reasonable assistance regarding the IPRs Claim as is required by the Supplier, subject to reimbursement by the Supplier of the Customer's costs so incurred; and
 - (d) not, without prior consultation with the Supplier, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Supplier considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute.
- 15.3 In the defence or settlement of any claim, the Supplier may:
- (a) procure the right for the Customer to continue using the Services;
 - (b) modify the Services without a reduction or alteration in functionality so that they become non-infringing; or
 - (c) replace the Services with non-fringing IPR.
- 15.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

16. Limitation of liability

16.1 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

16.2 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

16.3 Subject to clause 16.1 and clause 16.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement;
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 15.1), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to 100% of the total Subscription Fees paid for the User

Subscriptions during the 12 months immediately preceding the date on which the claim arose.

- 16.4 Nothing in this agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

17. Term and termination

- 17.1 This agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 17.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) 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 other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) 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, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2(c) to clause 17.2(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

17.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier shall provide, at an agreed cost, all reasonable assistance and information requested by Customer and shall co-operate with Customer

and any replacement provider of the Services to facilitate a smooth transition from the Supplier;

- (d) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten Business Days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 20 Business Days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination); and
- (e) 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 the agreement which existed at or before the date of termination shall not be affected or prejudiced.

18. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for one month, the party not affected may terminate this agreement by giving 20 Business Days' written notice to the affected party.

19. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

20. Variation

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

21. Waiver

- 21.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

- 21.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

22. Rights and remedies

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

23. Severance

- 23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 23.2 If any provision or part-provision of this agreement is deemed deleted under clause 23.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. Entire agreement

- 24.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 24.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 24.4 Nothing in this clause shall limit or exclude any liability for fraud.

25. Assignment and sub-contracting

- 25.1 The Customer shall not, without the prior written consent of the Supplier, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement. The supplier may sub-contract the hosting of the Services without consent (for example to AWS or Microsoft Azure).

- 25.2 The Supplier may not at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement without the prior written consent of the Customer.

26. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. Third party rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

28. Counterparts

- 28.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 28.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement.
- 28.3 No counterpart shall be effective until each party has provided to the other[s] at least one executed counterpart.

29. Notices

- 29.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) Party 1: legal@becrypt.com

(ii) Party 2: [ADDRESS].

29.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post, at 9.00 am on the second Business Day after posting;
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

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

30. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

31. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 – Subscription Fees

1. Subscription Fees
2. Additional User Subscription Fees
3. Excess Storage Fees
4. Support Fees

Schedule 2 – Subscription Term

1. Initial Subscription Term: 12 Months

Schedule 3 – Mandatory Policies

The Mandatory Policies are available upon request:

- Data and Privacy Policy - <https://www.becrypt.com/uk/privacy-statement/>
- Ethics and Anti-Bribery Policy
- Acceptable Use Policy

Schedule 4 – GDPR Terms

DEFINITIONS

Applicable Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Purpose: the purposes for which the Customer Personal Data is processed, as set out in clause 1.8 a).

Supplier Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

1. DATA PROTECTION

- 1.1 For the purposes of this clause 1, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 1.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 1.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:
 - a) the Supplier shall process the personal data set out in clause 2 of this Schedule 4, as a processor on behalf of the Customer in respect of the processing activities set out in clause 2 of this Schedule 4.

- 1.4 Should the determination in clause 1.3 change, then each party shall work together in good faith to make any changes which are necessary to this clause 1 or the related schedules.
 - 1.5 By entering into this agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with this agreement.
 - 1.6 Without prejudice to the generality of clause 1.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier.
 - 1.7 In relation to the Customer Personal Data, clause 2 of this Schedule 4 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
 - 1.8 Without prejudice to the generality of clause 1.1 the Supplier shall, in relation to Customer Personal Data:
 - a) process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in this agreement, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Legislation;
 - b) implement the technical and organisational measures set out in this agreement to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
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- e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of this agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 1.8(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- g) maintain records to demonstrate its compliance with this clause 1 and allow for reasonable audits by the Customer or the Customer's designated auditor.

1.9 The Customer hereby provides its prior, general authorisation for the Supplier to:

- a) appoint processors to process the Customer Personal Data, provided that the Supplier:
 - i. shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 1;
 - ii. shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - iii. shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).

1.10 Either party may, at any time on not less than 30 days' notice, revise this Schedule 4 by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (**Amended Terms**). Such Amended Terms shall apply when replaced by attachment to this agreement, but only in respect of such matters which are within the scope of the Amended Terms.

2. PARTICULARS OF PROCESSING

2.1 Scope. The scope of processing of Customer Data relates to the delivery of the Supplier's Paradox Edge managed service. Customer and Authorised Users'

Personal Data (name, email, mobile number) may be processed by the Supplier to deliver the Services.

- 2.2 Nature. The nature of the processing will be for business purposes only.
- 2.3 Purpose of processing. The purpose of the processing is for the Supply to deliver the Services to the Customer only.
- 2.4 The term of the agreement.
- 2.5 Types of personal data: Name, email, mobile number
- 2.6 Categories of Data Subject: Customer and Authorised Users

Schedule 5 – Supplier's EULA