

# SAAS LICENSE

## Terms and Conditions

### 1. Definitions.

**1.1 “Additional License Limitations”** means any additional license limitations set forth in the applicable Order Form.

**1.2 “Applicable Data Protection Laws”** means the EU General Data Protection Regulation (2016/679) (“GDPR”), any applicable laws of EU member states implementing the GDPR (including the UK Data Protection Act 2018), and the US Privacy Laws, in each case as amended, consolidated, re-enacted or replaced from time to time and only if and insofar as they apply.

**1.3 “Data”** means all data entered into, received, processed, or stored by or for Customer using the SAAS Service.

**1.4 “Infringement Claim”** means a claim brought against Customer by an unaffiliated third party alleging that Customer’s use of the Services in accordance with this Agreement and each applicable Order Form hereto during the applicable term infringed such party’s intellectual property.

**1.5 “Order Form”** means an order form executed by Service Provider and Customer or otherwise accepted by Service Provider in a legally binding manner acceptable to Service Provider which sets forth the necessary information relating to the Services Customer has the right to receive and the amounts payable to Service Provider (such amounts, the “Fees”). Order Forms shall be in a form substantially similar to Service Provider’s standard Order Form. Customer may not use any Customer standard form of order form which may contain pre-printed or other terms and conditions. The parties agree that such terms and conditions shall have no effect whatsoever.

**1.6 “Output”** means the data contained in any documents, reports, and other output of the Services.

**1.7 “SAAS Service”** means access and use of Software on a software as a service basis via the Internet as identified in an Order Form. Customer will not receive a copy of such Software.

**1.8 “Services”** means the SAAS Service, Support Services, training, professional and other services provided by Service Provider as set forth in an Order Form.

**1.9 “Software”** means Service Provider’s software as further described in an Order Form and includes software provided on a software as a service basis to make available the SAAS Service.

**1.10 “Support Services”** means those support and maintenance services provided by Service Provider to Customer under this Agreement and as set forth in Section 3.1.

**1.11 “Update”** means any improvement, enhancement, modification and/or changes to the SAAS Service offered or provided by Service Provider, including any customizations and other developments made for Customer.

**1.12 “US Privacy Laws”** means, as applicable: the California Consumer Privacy Act of 2018 (California Civil Code §§ 1798.100 et seq. (2018) as amended by the California Privacy Rights Act of 2020 (“CPRA”) (together the “CCPA”), the Virginia Consumer Data Protection Act (“VCDPA”), as of July 1, 2023, the Connecticut Data Privacy Act (“CTDPA”), the Colorado Privacy Act (“CPA”), and as of December 31, 2023, the Utah Consumer Privacy Act (“UCPA”).

**1.13 “User Materials”** means any on-line help files or written instruction manuals regarding the use of the SAAS Service provided to Customer by Service Provider.

### 2. SAAS Service.

**2.1 Access and Use Rights.** Subject to compliance with this Agreement, Service Provider grants to Customer a nonexclusive, personal, and nontransferable, non-sublicensable right, during the term of the applicable Order Form, to allow Customer to access and use the SAAS Service and the Output solely for Customer’s internal use and subject to any Additional License Limitations. Service Provider shall make available the SAAS Services electronically, such that no tangible media passes to Customer.

**2.2 Modification to the SAAS Services.** Service Provider reserves the right to modify the Software underlying the SAAS Services at any time. Service Provider reserves the right to improve or otherwise modify its internal computing or storage device, machine learning algorithms, or network architecture at any time subject to maintaining appropriate industry standards of practice relating to the provision and security of the SAAS Services, and provided that any such modification does not materially diminish the core functionality or security of the SAAS Services.

**2.3 Restrictions.** Customer will not, in whole or in part, (a) copy the SAAS Service or User Materials or distribute copies of the SAAS Service or User Materials to any third party; (b) modify, adapt, translate, publicly display, reverse engineer, make alterations, decompile, disassemble or make derivative works based on the SAAS Service or User Materials; (c) rent, loan, sub-license, lease, distribute or attempt to grant any rights to the SAAS Service or User Materials to third parties; or (d) use the SAAS Service or User Materials to act as a service bureau or application service provider, or to permit access to the SAAS Service or User Materials of any kind to any third party; (e) create public Internet “links” to the SAAS Services or “frame” or “mirror” the SAAS Services content on any other server or wireless or Internet-based device; (f) use the SAAS Services to circumvent the security of another party’s network/information, develop malware, unauthorized surreptitious surveillance, data modification, data exfiltration, data ransom or data destruction; (g) remove or alter any notice of proprietary right appearing on the SAAS Services or the User Materials; (h) conduct any stress tests, competitive benchmarking or analysis on, or publish any performance data of, the SAAS Services; (i) use any feature of Service Provider’s application programming interfaces for any purpose other than in the performance of, and in accordance with, this Agreement; or (j) cause, encourage or assist any third party to do any of the foregoing.

**2.4 Right of Access.** Customer understands that this Agreement grants certain rights of access only to the Security Investigation Platform, and that nothing in this Section may be interpreted to require delivery of a copy of any of any software to Customer or installation of a copy of such software upon any computers or systems under Customer’s control.

### 3. Support Services and Training.

**3.1 Support Services.** Service Provider will use commercially reasonable efforts to provide the following Support Services:

(a) **Support Requests.** Service Provider will provide support during its normal business hours in response to telephone and email queries from System Administrators as described in this Agreement.

(b) **Error Resolution.** If Customer identifies an Error, a System Administrator will report the Error (defined below) to Service Provider in accordance with Service Provider’s support procedures. System Administrator will provide all information reasonably requested by Service Provider and will give Service Provider

assistance and co-operation to enable Service Provider to properly perform the activities included in this Agreement. An “**Error**” is an verified event where the SAAS Service does not perform substantially as described in the User Materials.

Service Provider will assign a category and work to resolve reported Errors as follows:

**Severity 1:** An Error that causes an emergency condition preventing access to the SAAS Service or loss of critical functions that prevents Customer from conducting normal business operations. Service Provider will give first priority to resolving Severity 1 Errors. If Service Provider provides a workaround for a Severity 1 Error, it will be downgraded to a Severity 2 or 3 Error.

**Severity 2:** An Error that prevents the use of one or more functions of the SAAS Service, but does not prevent Customer from conducting normal business operations. Severity 2 Errors will have priority for resolution over Severity 3 Errors.

**Severity 3:** An Error that does not significantly affect Customer’s use of the SAAS Service. Severity 3 Errors will not have priority and may not be resolved until a future Update.

(c) **System Administrator.** Customer will provide Service Provider a designated system administrator / support contact (“**System Administrator**”) with all relevant contact information to correspond with Service Provider regarding the SAAS Service and Service Provider’s provision of Services.

(d) **Support Exceptions.** Service Provider will not be responsible or liable with respect to any problems or issues arising from (i) unauthorized or improper use of the SAAS Service; (ii) modification, alteration, or configuration of the SAAS Service by or for Customer that has not been authorized in writing by Service Provider; (iii) hardware, software, technology or intellectual property which has not been provided by Service Provider pursuant to this Agreement; (iv) communications facilities; (v) any breach of this Agreement by Customer, or any act or omission of any of Customer’s personnel or agents which, if performed or omitted by Customer would be a material breach of this Agreement; and/or (vi) any act or omission of Customer or any personnel or agents of Customer that prevents, delays, disturbs or interferes with Service Provider’s performance of its obligations hereunder.

**3.2 Scheduled Maintenance.** Service Provider reserves the right to take down applicable servers hosting the SAAS Service to conduct routine maintenance checks (“**Scheduled Maintenance**”) or emergency maintenance (“**Emergency Maintenance**”). Service Provider will use commercially reasonable efforts to perform Scheduled Maintenance outside of regular business hours. Service Provider will not be responsible for any damages or costs incurred by Customer, if any, for Scheduled Maintenance or Emergency Maintenance.

**4. Additional Services.** If requested by Customer and agreed upon by Service Provider, Customer may purchase training services and/or consulting, interface development or other services at Service Provider’s then-current standard rates pursuant to a mutually agreed Order Form.

## **5. Fees and Payment.**

**5.1 Fees and Payment Terms.** Fees for Services are as mutually agreed and set forth in the applicable Order Form. Customer will pay the Fees as specified in the applicable Order Form or otherwise within (30) days of the date of an invoice from Service Provider.

**5.2 Late Fees; Suspension of Services; Collection Costs.** If Customer fails to pay any charges when due, Service Provider may charge interest of the lesser of one and one-half percent (1.5%), or the

maximum permissible rate, per month on any outstanding balance. In addition to any other rights and remedies of Service Provider hereunder, if payment is past due, Service Provider may, in its sole discretion, elect to suspend the SAAS Service and any other Services under this Agreement, and Service Provider’s suspension of the SAAS Service does not relieve Customer of any of its obligations under this Agreement. Customer agrees to pay all costs and expenses (including reasonable attorneys’ fees) incurred by Service Provider in connection with collecting any amounts due and payable by Customer under this Agreement.

**5.3 Taxes.** The fees do not include taxes. Unless Customer provides Service Provider with a valid, properly executed, tax exemption certificate, Customer will be responsible for and reimburse and hold Service Provider harmless against the payment of all taxes associated with this Agreement (other than taxes based on Service Provider’s gross receipts or net income).

## **6. Customer Responsibilities.**

**6.1 Compliance with Laws.** Customer agrees to use the Services and Software in compliance with all applicable laws, rules, and regulations applicable to Customer and acknowledges that Customer is solely responsible for determining whether a particular use of an Offering is compliant with such laws.

**6.2 Responsibility for Users.** Customer is responsible and liable for: (a) all obligations under this Agreement arising in connection with any use of the SAAS Service or the Output by any other person or entity authorized by, through or as a result of an act or omission of Customer, including without limitation any of Customer’s personnel and agents (“**Other User**”); (b) any act or omission by any Other User, which, if performed or omitted by Customer, would be a breach of this Agreement; and (c) any such act or omission of any Other User will be deemed to be a breach of this Agreement by Customer.

**6.3 Computer System.** Customer will: (a) cooperate and consult with Service Provider in the set-up and activation of the SAAS Service for Customer, provided that Customer is responsible for integrating the SAAS Service into Customer’s IT environment; and (b) provide and maintain, in good and working order at all times, its own Internet access and all necessary communications equipment, software and other materials necessary for Customer to access and use the SAAS Service. Customer is responsible for the security of its own computer systems and the security of its access to and connection with the SAAS Service.

**6.4 Authorization; Non-infringement; Delivery of Data.** Customer is responsible for obtaining all authorizations, consents, releases, and permissions all necessary or desirable to use the SAAS Service, to process and store Data, to receive the Services and Output and to grant the rights to Service Provider pursuant to Section 8.3. Customer will not submit any Data or use the Services in any way that infringes, misappropriates, or violates any trademark, copyright, patent, trade secret, publicity, privacy, or other right of any third party or violates any applicable local, state, or federal laws, statutes, ordinances, rules, or regulations or any judicial or administrative orders. Service Provider shall not be liable for the accuracy, completeness or authenticity of Data furnished by Customer or any other third party, and shall have no obligation or responsibility to audit, check or verify the Data. Customer shall transmit Data and receive Output by means of a secure network connection with Service Provider. Customer shall be responsible for acquiring at its own expense all equipment needed for such transmission unless otherwise agreed in writing by the parties. If equipment is not provided by Service Provider, then Customer equipment shall conform to Service Provider specifications and requirements. Customer shall bear all costs associated with the method of transmission used, including without limitation line rentals, installation charges, required deposits,

and/or related hardware, software, and internet connectivity costs. Service Provider shall not be liable or responsible for any loss or delay of Data, Output, reports, or any other information that pertains to Customer or the Services during any period of transit or electronic transmission to or from Service Provider's facility or other agreed delivery location except to the extent caused by the fault of Service Provider.

**6.5 No Interference with Service Operations.** Customer will not take any action that: (a) interferes or attempts to interfere with the proper working of the SAAS Service or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of the SAAS Service; (b) circumvents, disables, or interferes or attempts to circumvent, disable, or interfere with security-related features of the SAAS Service or features that prevent or restrict use, access to, or copying of any data or enforce limitations on use of the SAAS Service or data; or (c) imposes or may impose, in Service Provider's sole discretion, an unreasonable or disproportionately large load on the SAAS Service infrastructure.

**6.6 Data Protection Laws.** The parties shall comply with their respective obligations under the Applicable Data Protection Laws. In particular, if Customer is established in the European Economic Area ("EEA"), in the United Kingdom ("UK") or in California, or will, in connection with the SaaS Services, provide Service Provider with personal data relating to an individual located within the EEA, the UK or California, the parties shall comply with the Data Processing Addendum found at <https://www.cybrbase.com/Data-Processing-Addendum.pdf> ("DPA") which in such case is hereby incorporated into this Agreement.

## **7. Term and Termination.**

**7.1 Term.** The term of this Agreement will commence on the Effective Date and expire in accordance with the end date set forth in the Order Form, unless earlier terminated in writing in accordance with Section 7.2 below (the "**Initial Term**"). Notwithstanding the foregoing or anything else to the contrary, the Initial Term of this Agreement will automatically renew for successive terms of equal length (each a "**Renewal Term**" and together with the Initial Term, the "**Term**") to the then expiring term unless either Customer or Service Provider cancels such auto renewal at least thirty (30) days prior to the expiration of the current term.

### **7.2 Termination.**

(a) Each party will have the right to terminate this entire Agreement or the applicable Order Form upon thirty (30) days prior written notice if the other party is in material breach of this Agreement or an applicable Order Form, and the breaching party fails to remedy such breach within such notice period. Notwithstanding the foregoing, Service Provider may terminate this entire Agreement or any applicable Order Form upon written notice to Customer if Customer violates the scope or any restriction on its license under Section 2 above or its obligations hereunder with respect to Confidential Information.

(b) If at any time Customer fails to pay to Service Provider the amounts required under this Agreement as and when such sums are due, Service Provider may in such event terminate this Agreement or the applicable Order Form by written notice to Customer, unless Customer pays all amounts due, including all accrued interest, within ten (10) days of such notice.

### **7.3 Effect of Termination.**

(a) Upon termination for any reason, all access rights and licenses granted hereunder will automatically terminate, and Service Provider may immediately disable and discontinue Customer's access to and use of the SAAS Service without additional notice to Customer. Customer will return to Service Provider all User Materials and other

materials it has acquired pertaining to the SAAS Service or any Confidential Information of Service Provider. Upon request, Customer will provide to Service Provider a certification of destruction by an authorized officer of Customer. In addition, all fees and payment obligations of Customer will become immediately due and payable.

(b) Once a party has provided notice of termination or non-renewal to the other party pursuant to this Section, the parties will use their commercially reasonable efforts to reach agreement as to an "exit plan" including, to the extent possible, the appropriate transition of the Services. Any transition services provided by Service Provider shall be chargeable at Service Provider's then current professional services rates. Pursuant to Customer's written request, which must be received by Service Provider within thirty (30) days after the termination or expiration of this Agreement or an applicable Order Form, Service Provider will furnish to Customer, at Service Provider's then current professional services rates, one copy of Customer's data files in Service Provider's standard machine-readable format as may be maintained by Service Provider from time to time in accordance with Service Provider's procedures and retention schedules. In the absence of such notice by Customer, Service Provider may dispose of or destroy such data and any other materials at Service Provider's discretion consistent with the requirements of Section 9 governing Customer's Confidential Information.

(c) All rights to payment and the provisions of Sections 2.3, 5, 6, 7.3 and 8 through 12 of this Agreement will survive any expiration or termination of this Agreement.

## **8. Proprietary Rights; Ownership.**

**8.1 SAAS Service.** Service Provider is and will remain the exclusive owner of all right, title and interest in and to the SAAS Service, the Output, Updates, User Materials, Service Provider's Confidential Information, and all other templates, specifications, manuals, tapes, programs, documentation, reports, systems, work product and/or other tangible or intangible material of any nature used, developed, improved, provided or accessible to Customer in connection with this Agreement, including all intellectual property rights therein (the "**Service Provider Materials**"). Customer hereby acknowledges and agrees that the Service Provider Materials, including without limitation, its Confidential Information, constitute and contain valuable proprietary products and trade secrets of Service Provider, embodying substantial creative efforts and confidential information, ideas, and expressions. The parties acknowledge that this Agreement in no way limits or restricts Service Provider or any Service Provider affiliates from developing or marketing on their own or for any third party software or services from time to time without payment of any compensation, or delivery of any notice, to Customer.

**8.2 Aggregated Information.** Customer acknowledges and agrees that all general, anonymized, or otherwise aggregated information based on Data or Output from Customer's use of the Services or data based on Customer's overall use of the Services are and will remain the property of Service Provider.

**8.3 Data and Output.** Customer grants to Service Provider a non-exclusive license, during the term of this Agreement, to use, reproduce, modify, display, and distribute Data and Output for the purposes of performing its obligations under this Agreement. Subject to the foregoing, Customer is and will remain the owner of all right, title, and interest in and to all Data and Customer Confidential Information.

**8.4 Feedback.** To the extent that Service Provider receives from Customer or any of its personnel or agents any suggestions, ideas, improvements, modifications, feedback, error identifications or other information related to the SAAS Service or any other products or services ("**Feedback**"), Service Provider may use, disclose and exploit such Feedback without restriction, including to improve the Services

and to develop, market, offer, sell and provide other products and services.

**8.5 Open Source Licenses.** The SAAS Services includes certain open source components, which will be made available upon written request to Service Provider. Customer's use of any open source software is subject to the terms of the applicable open source licenses. Ownership of all intellectual property rights in any open source components will remain with the respective owners thereof, subject to Customer's rights under the applicable open source licenses.

## **9. Confidential Information.**

**9.1 Definition.** "Confidential Information" means information of or relating to Customer or Service Provider or their respective affiliates, subsidiaries, vendors, suppliers, service providers or licensors, that is competitively sensitive material not generally known to the public, including without limitation, information that relates to past, present or future research and development, trade secrets, products and services, pricing, marketing, financial matters, or business affairs (including without limitation, policies, procedures, plans, methods of operation, specifications, manuals, programs, documentation, guidelines, procedures, forms, and report formats), systems, networks, computer equipment and software proprietary to or licensed by a party, including without limitation, object or source code, custom software modifications, software documentation and training aids, and all data, code, techniques, algorithms, methods, logic, architecture, and designs embodied or incorporated therein.

**9.2 Obligations.** The parties acknowledge that the Services require disclosure by each party ("Disclosing Party") to the other party ("Receiving Party") of certain of the Disclosing Party's Confidential Information. With respect to Confidential Information of the Disclosing Party that is disclosed to the Receiving Party, the Receiving Party shall, subject to the exceptions stated herein: (a) maintain and protect the confidentiality of the information with the same care and measures to avoid unauthorized disclosure or access as the Receiving Party uses with its own Confidential Information, but in no event less than a reasonable standard of care; (b) use the information solely to carry out the purposes for which the information was disclosed; and limit access to the information to: (i) employees of the Receiving Party, or of its subsidiaries or affiliates, who have a need to know to facilitate, monitor or review the delivery, receipt or performance of the Services; (ii) employees of the Receiving Party's suppliers or licensors who have a need to know the information solely for the purpose of facilitating the performance, delivery or use of the Services; and (iii) the Receiving Party's external attorneys and auditors. Any of the foregoing individuals to whom the Receiving Party discloses information must be under a legally binding obligation to maintain the confidentiality of the information. The Receiving Party shall remain responsible to the Disclosing Party for acts or omissions of such individuals that if committed by the Receiving Party would constitute a violation of the Receiving Party's confidentiality obligations hereunder. Customer shall not disclose the terms and conditions of this Agreement, including without limitation, pricing, to any third party without Service Provider's prior written consent.

**9.3 Exceptions.** The Receiving Party shall not be in violation of this Agreement for: (a) disclosing Confidential Information of the Disclosing Party that (i) is or becomes publicly available other than as a result of a breach of this Agreement, (ii) is disclosed to the Receiving Party by a third party not subject to any obligation of confidentiality, (iii) was already known by the Receiving Party prior to the date of this Agreement (unless disclosed in connection with negotiations and discussions related to this Agreement or associated transactions), or (iv) was independently developed by the Receiving Party without reference to Confidential Information received from the Disclosing Party; or (b) disclosing Confidential Information of the Disclosing Party when required to do so by (i) the Receiving Party's federal or state regulatory agencies, or (ii) a federal

or state law or regulation, or a subpoena or court order or agency action that requires disclosure, provided, however, that, if disclosure of Confidential Information is required by any of the foregoing, the Receiving Party shall, unless prohibited by law, regulation, or court or agency order, promptly notify the Disclosing Party in writing of such request and, at the Disclosing Party's request and expense, cooperate with the Disclosing Party's efforts, if any, to prevent or limit the disclosure.

**9.4 No License; Return of Information.** Nothing in this Section shall be construed as a grant or assignment of any right or license in the Disclosing Party's Confidential Information. The Disclosing Party's Confidential Information shall at all times remain the property of the Disclosing Party. At any time the Disclosing Party reasonably requests, and in any event upon the termination or expiration of this Agreement, the Receiving Party shall, at the election of the Disclosing Party, promptly return to the Disclosing Party all Confidential Information of the Disclosing Party in the Receiving Party's possession or control, or certify in writing to the Disclosing Party that the Confidential Information has been destroyed, subject to any provisions in this Agreement regarding return of Customer's Data or as otherwise agreed between the parties for the transfer of Customer's Data to a third party.

**9.5 Remedies and Responsibilities.** The Receiving Party acknowledges that the Disclosing Party has the right to take all reasonable steps to protect the Disclosing Party's Confidential Information, including without limitation, seeking injunctive relief and/or any other remedies that may be available at law or in equity, all of which remedies shall be cumulative and in addition to any rights and remedies available by contract, law, rule, regulation or order. Any requirements for a bond in connection with any such injunctive or other equitable relief are hereby waived by both parties.

## **10. Limitations; Disclaimer.**

### **10.1 Service Limitations.**

(a) The SAAS Service may be temporarily unavailable from time to time due to required maintenance, telecommunications interruptions, or other disruptions. Service Provider may also make improvements and/or changes in the SAAS Service at any time without notice. Service Provider will not be responsible for any damages that Customer may suffer arising out of use, or inability to use, the SAAS Service. Service Provider will not be liable for unauthorized access to or alteration, theft or destruction of Customer's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method. Unless provided otherwise in an Order Form, Customer is responsible for protecting Customer's Data from loss by maintaining back-ups of all Data and routinely updating such back-ups. Customer hereby waives any damages occasioned by lost or corrupt Data, incorrect Output or incorrect data files resulting from a programming error, operator error, equipment, or software malfunction, or from the use of third-party software.

(b) Accuracy. Artificial intelligence and machine learning are rapidly evolving fields of study and the Service Provider is constantly working to improve the SAAS Services and the resulting Output to make them more accurate, reliable, safe and beneficial. However, given the probabilistic nature of machine learning, use of the SAAS Services and the resulting Output may in some situations result in incorrect Output that does not accurately reflect real threats, vulnerabilities, compromises, or facts. Therefore, notwithstanding anything to the contrary herein, all Output is provided AS IS without any warranties whatsoever, and the Customer takes full and sole responsibility for the use and reliance upon any such Output. Customer agrees to separately evaluate the accuracy of any Output as appropriate for its use case, including by using human review of the Output.

**10.2 Remedy.** Notwithstanding anything in this Agreement to the contrary, Service Provider's sole obligation in the event of an Error by the Service Provider in the performance of any Services under this Agreement shall be limited to the reprocessing of the applicable Data or the reperformance of the applicable Services.

**10.3 Disclaimer of Warranties.** SERVICE PROVIDER MAKES NO WARRANTIES RELATED TO THE SERVICES OR SOFTWARE PROVIDED BY SERVICE PROVIDER HEREUNDER, AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES AND SOFTWARE TO ACHIEVE CUSTOMER'S INTENDED RESULTS AND FOR ITS USE OF THE OUTPUT OBTAINED FROM THE SERVICES AND SOFTWARE. SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES OR SOFTWARE MEET CUSTOMER'S REQUIREMENTS OR WILL BE UNINTERRUPTED OR ERROR FREE. THE SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. THE SERVICES ARE NOT DESIGNED TO BE USED IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL, OR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, SEVERE PHYSICAL INJURY, OR PROPERTY DAMAGE.

**10.4 Limitations of Liability.**

(a) EXCEPT FOR: (A) DAMAGES ARISING FROM THE GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT OF A PARTY; OR (B) DAMAGES ARISING FROM A PARTY'S BREACH OF SECTION 2, IN NO EVENT WILL EITHER PARTY (INCLUDING SUCH PARTY'S AFFILIATES, LICENSORS, EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS THEREOF) BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY SERVICES OR SOFTWARE PROVIDED BY SERVICE PROVIDER HEREUNDER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, SOFTWARE, DATA OR ANY OUTPUT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AVAILABLE REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

(b) THE TOTAL AGGREGATE LIABILITY, IF ANY, OF SERVICE PROVIDER (INCLUDING ITS AFFILIATES, LICENSORS, EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS THEREOF) FOR ALL CLAIMS, CAUSES OF ACTION, DAMAGES, OR LIABILITIES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT AND/OR THE SERVICES OR SOFTWARE PROVIDED HEREUNDER (COLLECTIVELY, "**CLAIMS**"), SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO SERVICE PROVIDER IN THE MOST RECENT SIX (6) MONTH PERIOD.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SERVICE PROVIDER (INCLUDING ITS AFFILIATES, LICENSORS, EMPLOYEES,

OFFICERS, DIRECTORS AND AGENTS THEREOF) SHALL HAVE NO LIABILITY, EXPRESS OR IMPLIED, WHETHER ARISING UNDER CONTRACT, TORT OR OTHERWISE, FOR ANY CLAIM OR DEMAND: (A) RESULTING DIRECTLY OR INDIRECTLY FROM CUSTOMER'S INTERNAL OPERATIONS, EQUIPMENT, SYSTEMS OR SOFTWARE OWNED OR LICENSED BY CUSTOMER; OR (B) BY THIRD PARTIES, EVEN IF SERVICE PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. CUSTOMER ACKNOWLEDGES THAT SERVICE PROVIDER HAS SET ITS FEES, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

**11. Indemnification.**

**11.1 Indemnification of Customer by Service Provider.**

Subject to the limitations of liability in Section 10, Service Provider shall indemnify and hold harmless Customer, its officers, agents, employees, affiliates, subsidiaries, assigns and successors in interest from, defend Customer against, pay any final judgments awarded against Customer or agreed to in a settlement, and pay Customer's reasonable costs and attorneys' fees resulting from any Infringement Claim, unless and except to the extent that such Infringement Claim is caused by (a) modification of the Services or Software by anyone other than Service Provider, (b) Service Provider's compliance with Customer's unique specification or instructions, (c) Service Provider's use of trademarks, Data, or other materials supplied by Customer, (d) use of any Services or Software in connection or in combination with equipment, devices, or software not provided by Service Provider (but only to the extent that such Service or Software alone would not have infringed); (e) the use of any Service or Software other than as permitted under this Agreement or in a manner for which it was not intended; or (f) use of other than the most current release or version of any Service or Software (if such claim would have been prevented by the use of such release or version).

(a) If the Services or Software becomes the subject of an Infringement Claim under Section 11.1, or in the Service Provider's opinion is likely to become the subject of such a claim, then Service Provider may, at its option and in its sole discretion, (i) replace or modify the Services or Software to make it non-infringing or (ii) procure the right to continue using the Services or Software. If neither alternative is available on commercially reasonable terms, Service Provider shall have the right to cease the use of the Services or Software and terminate the applicable SAAS Service and refund a pro rata portion of any prepaid and unearned fees paid for such SAAS Service. The foregoing obligations will be Customer's sole and exclusive remedy for any claims of infringement.

**11.2 Indemnification of Service Provider by Customer.**

Customer shall indemnify and hold harmless Service Provider, its officers, agents, employees, affiliates, subsidiaries, assigns and successors in interest from, defend Service Provider against, pay any final judgments awarded against Service Provider, and pay all of Customer's reasonable costs and attorneys' fees resulting from any claims, liabilities, losses, suits, and damages asserted by a third party based on: (a) Customer's improper or misuse of the Services or Software (including without limitation, in violation of applicable laws, rules or regulations or this Agreement); (b) Service Provider's compliance with Customer's instructions; (c) Service Provider's use of trademarks, Data or other materials supplied by Customer; (d) any breach or alleged breach by Customer of this Agreement; or (e) the conduct of any business in connection with use of the Services or Software.

**11.3 Indemnification Procedures.** If any third party makes a claim covered by Section 11.1 or Section 11.2 against an indemnitee with respect to which such indemnitee intends to seek indemnification under this Section, such indemnitee shall give notice of such claim to the indemnifying party, including a brief description of the amount and basis therefor, if known. Upon giving such notice, the indemnifying party shall be obligated to defend such indemnitee against such claim, and shall be entitled to assume control of the defense of the claim with counsel chosen by the indemnifying party, reasonably satisfactory to the indemnitee. The indemnitee shall cooperate fully with and assist the indemnifying party in its defense against such claim in all reasonable respects. The indemnifying party shall keep the indemnitee fully apprised at all times as to the status of the defense. Notwithstanding the foregoing, the indemnitee shall have the right to employ its own separate counsel in any such action, but the fees and expenses of such counsel shall be at the expense of the indemnitee. Neither the indemnifying party nor any indemnitee shall be liable for any settlement of action or claim effected without its consent. Notwithstanding the foregoing, the indemnitee shall retain, assume, or reassume sole control over all expenses relating to every aspect of the defense that it believes is not the subject of the indemnification provided for in this Section. Until both (a) the indemnitee receives notice from indemnifying party that it will defend, and (b) the indemnifying party assumes such defense, the indemnitee may, at any time after ten (10) days from the date notice of claim is given to the indemnifying party by the indemnitee, resist or otherwise defend the claim or, after consultation with and consent of the indemnifying party, settle or otherwise compromise or pay the claim. The indemnitee shall keep the indemnifying party fully apprised at all times as to the status of the defense.

**11.4 Direct Damages.** The parties agree that for purposes of this Agreement, each party's indemnification and defense obligations under this Agreement are deemed direct damages of the indemnified party.

## **12. General.**

**12.1 Assignment, Successors.** No right or license under this Agreement may be assigned or transferred by Customer, nor may any duty be delegated by Customer without Service Provider's prior written consent. Any assignment, transfer, or delegation in contradiction of this provision will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the successors and assigns of Customer and Service Provider.

**12.2 Subcontracting.** Service Provider may freely subcontract its duties and obligations under this Agreement. In the event that Service Provider subcontracts any of its duties and obligations, Service Provider agrees that: (i) the third party shall execute a confidentiality agreement consistent with the terms of this Agreement; and (ii) any such permitted subcontracting shall not release Service Provider from any of its obligations under this Agreement.

**12.3 Force Majeure.** Notwithstanding any other provision of this Agreement, no party to this Agreement shall be deemed in default or breach of this Agreement or liable for any loss or damages or for any delay or failure in performance (except for the payment of money) due to any cause beyond the reasonable control of, and without fault or negligence by, such party or its officers, directors, employees, agents, or contractors. Without limiting the foregoing, the following shall constitute events of force majeure: acts of State or governmental action, riots, war, terrorism, strikes, lockouts, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, any other acts of God or any third party, the failure of telecommunications equipment or other hardware, any third party software or any third party services.

**12.4 Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Virginia, excluding its principles of conflicts of laws.

**12.5 Exclusive Forums.** All disputes arising under this Agreement shall be brought solely in either the state or federal courts located in Fairfax County, Virginia, as permitted by law. The state and federal courts located in Fairfax County, Virginia shall each have jurisdiction over disputes under this Agreement. Customer consents to the personal jurisdiction of the above courts.

**12.6 Notice.** All notices required or permitted under this Agreement will be in writing and sent by certified mail, return receipt requested, or by reputable oversight courier, or by hand delivery. The notice address for Service Provider is 8505 Arlington Boulevard, Fairfax, VA 22031; and the notice address for Customer is the address specified in this Agreement Signature Page. Any notice sent in the manner sent forth above shall be deemed sufficiently given for all purposes hereunder: (a) in the case of certified mail, on the second business day after deposited in the U.S. mail; and (b) in the case of overnight courier or hand delivery, upon delivery. Either party may change its notice address by giving written notice to the other party by the means specified in this Section.

**12.7 Independent Contractor.** Service Provider is acting as an independent contractor in its capacity under this Agreement. Nothing contained in this Agreement or in the relationship of the Customer and Service Provider shall be deemed to constitute a partnership, joint venture, or any other relationship between the Customer and Service Provider except as is limited by the terms of this Agreement.

**12.8 Use of Name.** Service Provider may use in advertising, publicity, or otherwise the fact that Customer is a customer of Service Provider.

**12.9 Non-solicitation of Key Employees.** During the term of this Agreement and for a period of one (1) year immediately following its termination, each party agrees not to employ or solicit for employment a key employee of the other party while such employee is employed by the other party or within six (6) months following termination of employment with the other party without the prior written approval of the other party. The term "key employee" means any employee engaged in receiving or providing Services under this Agreement. This Section shall not be construed to prevent general advertisement of employment opportunities.

**12.10 Export Control.** Customer shall not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations that may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business, such as the Export Administration Regulations maintained by the United States Department of Commerce, trade and economic sanctions maintained by the United States Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations maintained by the United States Department of State.

**12.11 Entire Agreement.** This Agreement, together with the Order Forms and any exhibits hereto, constitutes the entire agreement between Service Provider and Customer with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants, or undertakings other than those expressly set forth herein and therein. This Agreement supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such matter. Any course of performance shall not be deemed to amend or limit any provision of this Agreement.

**12.12 Amendment.** This Agreement, including the exhibits hereto, may be amended only by an instrument in writing executed by the parties or their permitted assignees.

**12.13 Mutual Drafting.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or arbitrator by reason of such party having or being deemed to have structured or drafted such provision.

**12.14 Headings.** The headings in this Agreement are for reference purposes only and shall not be deemed to have any substantive effect.

**12.15 Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect.

**12.16 Waiver.** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect in any way the full right to require the performance at any subsequent time. The waiver by either party of a breach of any provision of this Agreement shall not be taken or held to be a waiver of the provision itself.

**12.17 Counterparts.** This Agreement may be signed in counterparts with the same effect as if the signatures were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. Counterpart signature pages to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.