

SAAS LICENCE AGREEMENT

PRINCIPAL TERMS AND CONDITIONS	
COMMENCEMENT DATE	
COMPANY	Dela Security Inc. Address: No. 8 The Green #8149 Dover, DE 19901-3618 United States of America Contact: Support Phone: +1 415 963 9950 Email: support@delasecurity.com
CUSTOMER	[Insert name of Customer] (ACN or / ABN [insert]) Address: [Insert] Contact: [Insert] Phone: [Insert] Email: [Insert]
INTRODUCTION	- The Company provides a cloud-based proprietary software platform, "Dela IEM", designed to identify, analyse and remediate Security Risks (as that term is defined in the General Terms and Conditions) with certain Identity Management Systems (as that term is defined below). - The Customer wants to licence the Dela IEM for its own internal use for its Identity Management System. - The Company has agreed to grant the Customer a licence to use Dela IEM and to provide certain support services to the Customer on the terms and subject to the conditions as set out in this SaaS Licence Agreement which is comprised of these "Principal Terms and Conditions", the "General Terms and Conditions" attached below (together, referred to as this "Agreement").
SECTIONS	PARAGRAPHS
1. SOFTWARE	- The Dela IEM software platform (the "Software") is a cloud-based software platform provided by the Company that, subject to the terms of the Software Licence set out in Section 2 below, can be used to identify, analyse and remediate Security Risks with the Customer's Identity Management System (as defined in the General Terms and Conditions). - The parties acknowledge and agree that the primary features and functions of the Software (the "Software Specifications") are as follows: - assessing the security and integrity of the Customer's Identity Management System, including the accounts and credentials of Active Users (as defined in Section 7.7(a) below) maintained on that system, by assessing the following: - account hygiene and integrity; - object privilege and configurations; - domain group configuration and integrity of the Customer's Identity Management System; - authentication and permission policies; - lateral movement analysis; - forensic analysis; and - forest and trust configuration; - providing details of potential attack paths and forensic data, including accompanying visualisations, related to the Customer's Identity Management System; - providing threat intelligence for compromised accounts and/or credentials on the Customer's Identity Management System, and providing suggested remediation steps and actions; - automated remediation of Security Risks (to the extent contemplated in this Agreement, including as set out in Paragraph 5 below); and - backing-up and restoring functions concerning the configurations for the Customer's Identity Management System.

	3. The Software is hosted in the cloud on Amazon Web Services (AWS) with access to its features and functions to be made available by the Company as follows: (a) if the Customer's Identity Management System is an Active Directory that is hosted / stored locally by the Customer: through the installation of a software agent ("Agent") provided by the Company on the domain controller with access to the Active Directory; or (b) if the Customer's Identity Management System is Azure Entra ID: the Software will be accessible through an application programming interface ("API") to be provided by the Customer (in accordance with any specifications required by the Company). 4. The Customer acknowledges and agrees that for the Software to operate normally and as intended: (a) it must follow the Company's instructions for installation and/or integration, including the setting up and installation of the Agent or the API (as applicable); (b) it must follow the Company's instructions in terms of any settings or configurations that need to be made in respect of the Customer's Identity Management System; and (c) it must provide the necessary software and network permissions so that the Software may identify, analyse and remediate Security Risks in the Customer's Identity Management System, including providing written permissions for the Agent or the API (as applicable). 5. The Customer acknowledges and agrees that the Software may not be able to identify, analyse and/or remediate all Security Risks as some risks may require bespoke services and/or solutions to address, manage or remediate, including as follows: (a) any vulnerability for which a custom patch or fix is required; (b) any 3rd party service vulnerability (SaaS tools, APIs, connected vendor systems, etc.); (c) software design and development issues; (d) hardware design and development issues; (e) phishing domain/sites takedown; or (f) dark web leaked accounts. 6. The Customer acknowledges and agrees that whilst the Software is automated in many respects, certain features and functions still require the Customer's active use, monitoring and/or interaction for them to be used effectively, efficiently and/or at all.
2. LICENSING	The Company hereby grants to the Customer during the Term (as defined in Section 3 below Licence) a limited, revocable, non-exclusive, non-transferable right and licence to use the Software (the "Software Licence") subject to the following terms and conditions (and otherwise in accordance with the remaining provisions of this Agreement): (a) the Customer may only use the Software to identify, analyse and remediate Security Risks with the Customer's own Identity Management System for its internal operations, as existing at the commencement of the Term of this Agreement ("Purpose"); (b) the Customer may only use the Software with its own Identity Management System, and not for any third party customer and/or as an agency or bureau service; (c) if the Customer's Identity Management System is on Azure Entra ID, the Software may only be used in connection with up to the number of unique tenants created by the Customer as agreed at the time of entering into this Licence; (d) the Customer may not integrate the Software (including the API and the Agent) with any standalone products, software or services, including third party software, that are not approved in writing by the Company; and (e) the Customer is only entitled to use the Software for the Purpose during the Term.
3. TERM	The "Term" of this Agreement commences on the Commencement Date and continues until the earlier of: 1. the date being [12 months] from the Commencement Date ("End Date"), as such End Date may be extended in accordance with Section 4 below (each, an ("Extended End Date")); and 2. the date on which this Agreement is validly terminated.
4. EXTENSION OF THE END DATE	1. Subject to paragraphs 3 and 6 below, the End Date will be automatically extended for a period of [twelve (12) months] at a time, commencing immediately following the last day of the then-current End Date (each being an "Extended Term"). 2. The Customer must pay the applicable Licence Fee (as increased under Section 7.7) for

	each Extended Term in accordance with Section 7 below. 3. Either party may, at least sixty (60) days before the then-current End Date, give the other party a written notice electing not to extend the End Date in accordance with paragraph 1 above. 4. If the End Date is extended in accordance with paragraph 1 above, all further references to the End Date in this Agreement will be taken to be a reference to the End Date as extended. 5. For the avoidance of doubt, the End Date can be extended any number of times in accordance with paragraph 1 above. 6. The extension of the End Term pursuant to paragraph 1 above is subject always to earlier termination of this Agreement in accordance with the terms and conditions of this Agreement or as otherwise permitted by law.
5. IMPLEMENTATION SERVICES	1. The Company will provide the Customer with reasonable installation and integration services to set up the Software for use by the Customer with its Identity Management System ("Implementation Services"). 2. The scope of the Implementation Services will depend on whether the Customer's Identity Management System is an Active Directory or Azure Entra ID, and includes the matters set out in paragraphs 3 – 5 below. 3. If the Customer's Identity Management System is an Active Directory, the Customer's domain controller must be connected to the Internet. If it is not connected to the Internet, the Customer must deploy the Company's proxy software on a virtual machine (hosted by the Customer) that is connected to both the Internet and the domain controller. 4. The Customer must follow the Company's instructions and directions for completing the Implementation Services, including setting any software and network permissions that are necessary to enable the Software to operate normally and as intended. 5. As part of the Implementation Services the Company will provide an onboarding session to the Customer to teach the Customer how to use the Software. The onboarding session will be arranged by the Company and will ordinarily occur at the same time or in the same session when the Company sets up the Software for use by the Software.
6. SUPPORT SERVICES	The Company agrees to provide support services in accordance with the General Terms and Conditions and the Service Level Agreement, a copy of which is annexed to the General Terms and Conditions and marked Annexure 1 ("Support Services").
7. FEES	1. The Customer agrees to pay the Company a licence fee in consideration for the provision of the Software Licence, being an annual fee, payable in advance, in accordance with the arrangements in this section 7 ("Licence Fee"). 2. The Licence Fee for the [first year (12 months)] of the Term is \$[Insert] plus applicable Taxes (as that term is defined in the General Terms and Conditions). 3. The Licence Fee is calculated based on the following formula: <i>Licence Fee = User Limit x Per User Fee</i> it being acknowledged that, as at the Commencement Date: (a) the number of Active Users (as defined in Section 7.8(a) below) is [Insert] ("User Limit"); and (b) the Per User Fee (as defined in Section 7.8(b) below) charged by the Company is \$[insert] plus Taxes. 4. The Licence Fee may increase in accordance with Sections 7.5 and 7.7 below. 5. At the end of each [month][quarter] during the Term, the Company will determine the highest number of Active Users in that [month][quarter] ("Actual User Count") and if that number is greater than the User Limit, the Company may charge, and the Customer must pay, a "Top-Up Licence Fee" to the Company calculated by using the following formula: <i>Top-Up Licence Fee = (Actual User Count – User Limit) x Per User Fee</i> 6. For the avoidance of doubt, the Customer is not entitled to a refund of any portion of the Licence Fee because the Actual User Count for a particular [month][quarter] during the Term is lower than the User Limit. 7. If the End Date is extended under Section 4.1 above, the Licence Fee payable in respect of the Extended Term will be calculated as follows: (a) the User Limit to apply at the commencement of the Extended Term will be as the parties may agree in writing prior to the commencement of the Extended Term or, failing such agreement, will be the Actual User Count as determined for the [average of the final three

	(3) months][final quarter] leading up to the applicable End Date or Extended End Date; and (b) the Per User Fee will be as agreed in writing by the parties prior to the commencement of the Extended Term, or, failing such agreement, it will be increased as at the commencement of each Extended Term at the rate of the Prevailing CPI (as defined in the General Terms and Conditions). For the avoidance of doubt, the Licence Fee and Top-Up Licence Fee shall be calculated by reference to the Per User Fee as increased under this section 7.7 (and all references to the Licence Fee and Top-Up Licence Fee in this Agreement shall be read in line with such increase). 8. For the purposes of this Agreement: (a) “Active User” means a unique user whose account details and credentials are stored or maintained on the Customer’s Identity Management System and that is not marked as ‘deactivated’ or ‘disabled’ on the Identity Management System; and (b) “Per User Fee” means the Company’s monthly licence fee charged per Active User. 9. The Company may issue an invoice for any fees, including the Licence Fee and the Top-Up Licence Fee, as soon as they become payable. 10. All invoices issued by the Company must be paid within [thirty (30)] days of the date of its invoices unless otherwise agreed in writing by the Company.
--	---

By signing below the Customer and Company agree to be bound by the terms of the Principal Terms and Conditions and the attached General Terms and Conditions.

EXECUTED AS AN AGREEMENT on the Date written above.

EXECUTED for and on behalf of **Dela Security Inc.** by its)
duly authorised officer:

Marco Afzali – Sole Director and Secretary

EXECUTED for and on behalf of [Insert Customer name])
by its duly authorised officer(s):)
)

Signature of Director / Company Secretary / Authorised Officer

Signature of Director / Company Secretary / Authorised Officer

Print Name

Print Name

GENERAL TERMS AND CONDITIONS

The Principal Terms and Conditions (including any annexures thereto) and these General Terms and Conditions constitute “**this Agreement**”. Any terms used in these General Terms and Conditions which are defined in the Principal Terms and Conditions will have the meaning as set out in the Principal Terms and Conditions.

TERMS AND CONDITIONS

1. Definitions and Interpretation

Definitions

1.1 In this Agreement, unless the context otherwise requires or provides, expressions used in the Licence shall have the meanings given to them in the Licence and the following expressions will have the meanings given to them below:

“**Active Directory**” means a database or directory or set of services that store, manage and control user permissions and access to a computer system and/or network, including access to resources on such system or network;

“**Azure Entra ID**” means Microsoft Azure Entra ID, a cloud-based identity and access management service that allows organisations to control user access to both cloud and on-premises applications;

“**Business Day**” means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in California, United States of America;

“**Business Hours**” means 9:00am to 5:00pm on a Business Day in California, United States of America;

“**Customer Data**” means all data and information that is provided to or collected by the Company in connection with the provision of the Services relating to the Customer and its operations, business, customers, suppliers, distributors, personnel, consultants, advisors, assets and transactions in whatever form such information may exist and which is provided to the Company in relation to this Agreement, and includes any:

- (a) data or information relating to the Customer’s goods or services, such as the Customer’s product information, codes, facts, figures, pictures, graphics, images and any other materials;
- (b) data or information relating to the Customer’s personnel and property, including all forms of tangible and intangible property;
- (c) data or information relating to the Customer’s customers, such as contact details; and
- (d) such data or information provided by, or collected from, a third party at the Customer’s direction or request,

regardless as to whether such data or information is provided by, or collected from, the Customer and/or the Customer’s suppliers of goods and services;

“**Confidential Information**” means, in respect of each party (a “**Disclosing Party**”), all:

- (a) information which is proprietary to, about or created by the Disclosing Party including, without limitation, any business plans, pitches, marketing, branding, forecasts, staffing, recruitment and all other information which is used or created by the Disclosing Party in relation to its business;
- (b) information which relates to any actual or potential business, property or transaction (including this Agreement) in which the Disclosing Party may be or has been concerned or interested or information the disclosure of which could be detrimental to the interests of the Disclosing Party;
- (c) information which is designated as being Confidential Information by the Disclosing Party;
- (d) information which from all the relevant circumstances could reasonably be assumed by the other party to be confidential and proprietary to the Disclosing Party or to any third party with whose consent or approval the Disclosing Party uses that information;
- (e) any such information which is commercially sensitive or price sensitive; and
- (f) the provisions and subject matter of this Agreement;

Fees means any fees, monies or other payments that are payable under this Agreement, including the Licence Fee and the Top-Up Licence Fee set out in the Principal Terms and Conditions;

“**Force Majeure Event**” means strikes, lock-outs or other labour disputes, riots, civil disturbance, actions or inaction of governmental authorities, epidemics, pandemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, computer downtime, disruptions to public utilities, nuclear disasters or default of a common carrier;

“Harmful Effect” means any “back door”, “time bomb”, “logic bomb”, “Trojan Horse”, “worm”, “drop dead device”, “DoS attacks”, “DDoS attacks”, “virus” or any other malware, spyware, adware, ransomware, malicious program or code, vulnerability, exploit or computer software routine or instruction having the effect of permitting unauthorised access to or use of any computer systems, networks, software or data, and/or disabling, damaging, corrupting, interrupting or erasing, or disrupting or impairing the normal operation of any part of a computer system, network, software or data;

“Identity Management System” means the system used by the Customer to manage its users’ access to its technology environment, being either an Active Directory or Azure Entra ID, as applicable;

“Intellectual Property Rights” means any and all intellectual and industrial property rights subsisting in any part of the universe in any and all media (whether now known or created in the future) including, without limitation, rights in the nature of copyright, registered design or other design right, trade mark, patent rights, circuit layout rights, trade secrets and any corresponding proprietary rights (whether registered or common law) under the laws of any jurisdiction;

“Personal Information” means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not,

and includes information that is regarded and/or deemed to be “personal information” under any applicable Privacy Laws;

“Prevailing CPI” means the percentage change in the consumer price index number as published from time to time by the US Bureau of Labour Statistics (CPI) obtained by dividing: (i) the CPI for the month ending before the date on which such change is required to be calculated under this Agreement with (ii) the CPI for the month ending before the date on which the percentage change was last required to be calculated under this Agreement (and if there has been no prior calculation required under this Agreement, then the CPI for the month ending before then-current End Date);

“Privacy Laws” means all laws relating to the protection of Personal Information in force from time to time in the applicable jurisdiction to this Agreement;

“Security Risks” means security vulnerabilities and/or misconfigurations of a computer network, system and/or software;

“Services” means the services provided by the Company to the Customer under this Agreement, including the Implementation Services and the Support Services as set out in the Principal Terms and Conditions;

“Service Outputs” means any outputs, documentation, reports or results generated by the Software, the Services or the Company in connection with this Agreement;

“Software” means any computer software and/or application provided by the Company, including any documentation or manuals relating to such software or application, and (where the context permits or requires) includes the Software, the API and the Agent as set out in the Principal Terms and Conditions;

“Software Upgrades” means any upgrade that enhances, expands or provides additional features and functionalities to the Software, including the addition of more Selected Competitions;

“Service Level Agreement” means the additional details concerning the provision of the Support Services by the Company, including the method(s) through which support requests can be made, the expected remedial/response actions to a support request and any estimated timelines, as set out in the annexure to these General Terms and Conditions and marked Annexure 1 (and as may be updated by the Company from time to time);

“Taxes” means taxes, levies, imposts, charges and duties (including stamp and transaction duties and any ad valorem taxes such as VAT, but excludes income tax) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them; and

“Update” means any updates, patches or fixes to the Software provided by the Company to overcome defects, bugs or faults in the Software, but excludes any Software Upgrades.

Interpretation

1.2 In this Agreement, unless the context otherwise requires or permits:

- (a) where any word or phrase is given a defined meaning, then other parts of speech and grammatical forms of that word or phrase will have a corresponding meaning;
- (b) references to the singular includes the plural and vice versa;
- (c) reference to parties means the parties to this Agreement and to a party means a party to this Agreement;
- (d) references to a party will include as the context requires that party’s respective agents, representatives, advisors, subcontractors, executors, administrators and successors;
- (e) references to a successor to a party includes its successors, assigns and licensees and all further successors,

assigns and licensee of the relevant party or such successors, assigns or licensees;

- (f) references to a person includes any other entity recognised by law;
- (g) references to this Agreement includes any annexures and schedules to this Agreement and any other document expressly incorporated as part of this Agreement;
- (h) references to any annexures, schedules or other documents in this Agreement, include references to those documents as varied from time to time;
- (i) references to any legislation or legislative provision will include modifying, consolidating, or replacing legislation or legislative provisions;
- (j) references to proceedings include litigation, arbitration and investigation;
- (k) references to a "breach of warranty" includes that warranty not being complete, true or accurate;
- (l) references to "\$", "USD", or "dollars" is a reference to the lawful tender for the time being and from time to time of the United States of America;
- (m) the words "including" and "includes" and similar words are not words of limitation;
- (n) every covenant, provision, representation, warranty, obligation or an agreement applying to, binding or given by more than one person will bind them jointly and each of them severally;
- (o) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (p) a provision of this Agreement is not to be construed adversely against a party solely on the ground that the party or its solicitors were responsible for the preparation of this Agreement or of a particular provision of this Agreement; and
- (q) if the day on which any act, matter or thing is to be done under or pursuant to this Agreement is not a Business Day, that act, matter or thing may be done on the next Business Day.

1.3 In the event of and to the extent of any conflict between what is stated in the Principal Terms and Conditions, the General Terms and Conditions or any annexure/schedule to this Agreement, the following is the order in which they shall have priority in descending order of importance:

- (a) the Principal Terms and Conditions;
- (b) any annexures and schedules to this Agreement (if any); and
- (c) these General Terms and Conditions.

2 Grant of Software Licence

- 2.1 The Company grants to the Customer the Software Licence on a non-exclusive and non-transferable basis, unless otherwise stated to the contrary in the Software Licence, for the Customer and Authorised Users to use the Software solely for the Purpose, subject to and in accordance with the terms and conditions of this Agreement. For the avoidance of doubt, the terms of the Software Licence apply to any Updates and Software Upgrades provided by the Company, and any references to the Software shall be taken to be references to the Software as improved by any Updates and/or Software Upgrades (unless expressly stated otherwise).
- 2.2 The Customer acknowledges and agrees that the Software is provided by the Company on the basis that it is used only for the Purpose as set out in the Licence, and the Customer acknowledges and accepts that the Software is suitable and fit for the purpose to which it is used.
- 2.3 The Customer must not sell, lease, assign, sub-contract, sub-licence or otherwise transfer or deal with this Agreement, the Software Licence or the Software in whole or in part without the prior written consent of the Company.
- 2.4 The Customer acknowledges and accepts that due to the wide variety of issues, problems and matters that could arise with its Identity Management System the Company does not warrant or guarantee that the Software will always be able to resolve or rectify the relevant issue, problem or matter raised by the Customer, including the removal or rectification of any Harmful Effects affecting the Customer's Identity Management System, and/or that the Software will be able to respond to an issue, problem or matter within a certain amount of time and/or that the Software will be able to provide any number of suggested solutions on how to deal with the issue, problem or matter, including a solution that removes a Harmful Effect.
- 2.5 The Customer must not:
 - (a) use the Software for any purpose other than the Purpose;
 - (b) knowingly use the Software in any way that might damage the reputation of the Company or the goodwill or other rights associated with the Software;

- (c) except as expressly permitted by this Agreement, show or demonstrate the Software to any third party or otherwise enable any third party to have access to the Software or Documentation by any means;
- (d) introduce, transmit or upload any Harmful Effect into the Software or the Company's computer systems and/or networks; and
- (e) except as expressly permitted by this Agreement:
 - (i) reproduce, make error corrections to or otherwise modify or adapt the Software or create any derivative works based upon the Software;
 - (ii) decompile, disassemble or otherwise reverse engineer the Software or permit any third party to do so;
 - (iii) modify or remove any copyright or proprietary notices on, or any digital rights management technology used to protect, the Software;
 - (iv) use the Software in any way that is against the law or contrary to any rules or policies of any regulatory authority that are applicable; or
 - (v) work around any technical limitations in the Software.

- 2.6 The Company reserves the right to track the Customer's use of the Software to ensure that the Customer's use of the Software is in compliance with this Agreement and to ensure that the Software is functioning properly.
- 2.7 The Company may, from time to time, implement a Software Upgrade or Update as the Company (in its sole discretion) determines to be appropriate, including any Software Upgrade to allow increases to the number of Selected Competitions available through the Software, and such Software Upgrade or Update shall be implemented free of charge to the Customer. The Customer shall do all that is reasonably required to assist the Company with implementing a Software Upgrade or Update insofar as it affects the Software.
- 2.8 The Company may at its sole and absolute discretion and with prior notice to the Customer, install, implement or deploy any Software Upgrade or Update free of charge to the Customer if it deems that the Software Upgrade or Update is necessary or appropriate in the circumstances, or that it would be convenient or efficient to do so.

3 Provision of the Services generally

- 3.1 The Company shall provide the Services during the Term:
 - (a) using reasonable skill and care; and
 - (b) in accordance with any applicable laws.
- 3.2 The Customer acknowledges and accepts that the correctness, accuracy, reliability and completeness of the Services, including the Service Outputs, relies substantially on:
 - (a) the Customer's compliance with the terms and conditions of this Agreement, including the compliance with any instructions and directions of the Company concerning the use of the Software;
 - (b) the availability, correctness, accuracy, relevance, reliability and completeness of any Customer Data used by the Customer, including Customer Data uploaded to or processed by the Software, and which the Company has no control over prior to it being provided to or collected by the Company; and
 - (c) the availability and maintenance of an active and stable Internet connection.

4 Implementation Services & Support Services

- 4.1 The purpose of the Implementation Services is to setup and configure the Software. Where applicable, and prior to the Company commencing the Implementation Services, the Company and the Customer can agree in good faith any requirements or plans for the setup and configuration of the Software and/or the provision of the Implementation Services.
- 4.2 Where it is expressly stated in this Agreement that the Company is to test any part of the Software as part of the Implementation Services, the Company shall undertake such testing on terms that it deems to be appropriate.
- 4.3 The Customer acknowledges and accepts that the Support Services are provided for the primary purpose to restore and maintain the functionality of the Software, including services to diagnose a problem with the Software such as the inability to use the Software, and are services aimed to maintain the Software. The Support Services will be provided in accordance with the Service Level Agreement, it being noted that any estimated times or timeframes set out therein are estimates only and are non-binding (unless otherwise stated therein).
- 4.4 The Company may modify and/or update the Service Level Agreement from time to time, and it shall give the Customer notice of the same (as applicable).
- 4.5 The Customer agrees to ensure that all requests for Support Services must be made in accordance with the Service Level Agreement (as applicable).
- 4.6 The Customer agrees that the Company is not required to provide any Support Services to the extent related to any of the following activities of the Customer:

- (a) problems arising from third party products or services, including hardware and software, which are used with the Software and not supplied by the Company or approved in writing by the Company;
 - (b) attempts to use the Software in a manner contrary to the Company's instructions provided to the Customer in writing or by any other recorded format (such as videos) or any instructions available on the Software;
 - (c) Internet connection or network issues unrelated to the Company;
 - (d) data retrieval or extraction techniques not provided for by the architecture of the Software; and
 - (e) modifications or alterations to the Software not authorised or carried out by the Company.
- 4.7 The Customer acknowledges and accepts that due to the wide variety of issues, problems and matters that could arise, the Company does not warrant or guarantee that the Support Services will always be able to resolve or rectify the relevant issue, problem or matter raised by the Customer within a certain amount of time and/or that a solution may always be available.
- 4.8 Unless the Company otherwise agrees in writing, the Customer must not request or permit any other person other than the Company (or its employees or contractors under its control) to provide any implementation, installation, maintenance or support services in respect of the Software.

5 Intellectual Property

- 5.1 The Customer agrees that all rights, title and interests, including Intellectual Property Rights, in the Software provided or procured by the Company in relation to, or in connection with, this Agreement are absolutely and unconditionally reserved to the Company or the relevant third party that holds those rights, title and interests. The Customer must not claim ownership of the Intellectual Property Rights in any such Software.
- 5.2 The Software is licensed, not sold, and nothing in this Agreement constitutes a transfer of title or of any Intellectual Property Rights to the Customer in or to the Software.
- 5.3 The Customer must not challenge, directly or indirectly, the right, title and interest of the Company in and to the Software.
- 5.4 The Customer must notify the Company in writing of all circumstances surrounding any unauthorised use of the Software by any person or entity as soon as practicable after the Customer becomes aware of such unauthorised use.
- 5.5 If any person makes any claim against the Customer alleging that the Customer's use of the Software infringes any Intellectual Property Right in the Software the Customer must immediately notify the Company in writing and:
- (a) not make any admissions or take any action in relation to the claim without the Company's written consent;
 - (b) permit the Company to control any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim (at the Company's reasonable cost (to be pre-approved by the Company whenever practicable)); and
 - (c) co-operate with, assist and act at all times in accordance with the reasonable instructions of Company (at the Company's reasonable cost (to be pre-approved by the Company whenever practicable)), in relation to the claim and any subsequent investigations, negotiations, settlement and dispute resolution proceedings.
- 5.6 The Company reserves its proprietary and commercial rights regarding the Software, Documentation and Confidential Information owned or licensed by the Company to the extent such rights are not expressly granted to the Customer in this Agreement.
- 5.7 The Customer grants to the Company a limited, non-exclusive, non-transferable and revocable licence to access and use the Customer Data for the purpose of this Agreement, including assisting and/or facilitating the provision of the Services. The Customer must take reasonable steps to ensure that the Customer Data is free from any Harmful Effects and must immediately notify the Company if it reasonable suspects, or is aware, of the existence of any Harmful Effects in the Customer Data.

6 Payments & Invoicing

- 6.1 The Customer must pay the Fees due to the Company in accordance with the Principal Terms and Conditions. The requirement to pay the Fees within the time as set out in this Agreement is an essential term of this Agreement and entitles the Company to exercise all rights that are available in respect of a breach of an essential term as construed under the general law.
- 6.2 Unless otherwise stated in this Agreement, all Fees due and payable by the Customer under this Agreement must be paid within 30 (thirty) days of receipt by the Customer of the Company's invoice.
- 6.3 If the Customer disputes any invoice (or part thereof), it must provide written notice thereof to the Company within 7 (seven) days Business Days of receipt of the relevant invoice, including an explanation of the dispute, and the parties shall, in good faith, attempt to resolve such dispute as soon as reasonably practicable. Nothing in this clause exempts the Customer from paying the disputed invoice (or the disputed portion of such invoice) during the period of such dispute.
- 6.4 If an invoice has been issued to the Customer, and the Customer has failed to pay undisputed amounts in such invoice within the relevant date for payment, then in addition to any other rights the Company may have under this Agreement, interest shall be chargeable by the Company on such late payment by the Customer, and such interest rate shall be 8% (eight per cent) and shall be compounded monthly from the date for payment.

6.5 The parties acknowledge and agree that:

- (a) unless otherwise expressly stated in this Agreement, the consideration due or payable for any supply of any goods, services or any other things under this Agreement, including the Fees, has been calculated without regard to, and is exclusive of, any Taxes;
- (b) if any Taxes are imposed on any supply made under this Agreement, the supplying party, the Company, may recover from the recipient party, the Customer, in addition to any consideration payable for the supply, the Taxes provided that the supplying party has provided to the recipient party an Invoice;
- (c) if the recipient party is required to pay any Taxes in accordance with this clause 6 or in connection with any goods, services or any other things under this Agreement, the recipient party will pay the Taxes at the same time as the consideration is due for the supply of goods, service or any other thing under this Agreement; and
- (d) if the Customer pays by credit card (to the extent that the Company accepts payment by a credit card facility), the Customer must pay the applicable credit card surcharges.

6.6 The Customer must pay the Fees in USD by electronic funds transfer in accordance with the payment instructions and bank details set out in an invoice issued by the Company, or by such other method as the Company may specify from time to time.

6.7 All amounts due under or in relation to this Agreement are non-refundable and shall be paid in full without any deduction or withholding other than as required by law and the Customer shall not be entitled to assert any credit, set off or counterclaim against Company in order to justify withholding payment of any such amount in whole or in part.

7 Further Responsibilities

7.1 The Customer must:

- (a) provide and procure any and all goods and services, including hardware, software and/or Internet services, needed for the Customer to use the Software, at its own cost, and comply with any technical requirements and instructions given to it by the Company in that respect;
- (b) secure and back-up the Customer Data if it deems that to be necessary or appropriate, regardless of whether such Customer Data has been stored, transmitted or provided to the Company and/or the Software;
- (c) assist the Company in respect of the provision of the Services as and when required by the Company, including the provision of the Customer Data for use by the Company;
- (d) use its reasonable endeavours to ensure the Customer Data is, and will be at all times, accurate, correct, valid, truthful and reliable;
- (e) ensure the provision of the Customer Data does not violate the rights, title and/or interest, including Intellectual Property Rights, of a third party or otherwise give rise to any liability to, or claims by, a third party;
- (f) ensure the Customer Data is provided in a form that is acceptable for use with the Software;
- (g) provide the Company with access to all facilities and information within the Customer's possession or control which is reasonably required by the Company for the purpose of the performance of this Agreement, to allow the Company to assess whether the Customer is in breach of this Agreement or to allow the Company to review and assess the integrity or performance of the Services; and
- (h) make available to the Company on reasonable notice for consultation and guidance staff who are familiar with the Customer's organisation, operations and business practices to the extent reasonably necessary for the performance of this Agreement.

7.2 In connection with the use of the Software, the Customer must not:

- (a) use the Software as a bureau service that makes the Software available, directly or indirectly, for the benefit of a third party;
- (b) use the Software in any manner that violates any person's right of privacy or confidentiality, including by way of collecting personal information about a third party without obtaining their consent;
- (c) infringe, or risk the infringement of, the Intellectual Property Rights or moral rights of another person; or
- (d) discriminate against, defame, slander or undermine the good name of another person, including the Company, or facilitate, assist or encourage such conduct by a third party.

8 Data and Confidentiality

Customer Data

8.1 The Company may require the collection and/or storage of Customer Data to enable the Customer to use the Software

and/or for the Company to be able to provide the Services. The Company may also collect, store or transmit Customer Data as part of an incidental process of providing the Services, including the storage of Customer Data on its own servers or in the cloud for up to 90 days or longer for its internal purposes or as required by law. However, the Software and the Services are not a general data storage or back-up service, and the Company is not required to extract or provide copies of the Customer Data to the Customer merely because of a Customer request or it is convenient for the Customer. To the extent the Company is in possession of Customer Data, the Company may take all reasonable measures that it deems appropriate to protect the security of the Customer Data as required under this Agreement, including by encrypting and/or anonymising the Customer Data for storage in a secure cloud environment. The parties acknowledge and agree that as between the Company and the Customer, the Customer is the legal owner of the Customer Data.

- 8.2 In all circumstances, it is not the Company's responsibility to verify the accuracy, relevance, reliability or correctness or of the Customer Data, including the integrity and veracity of the source for such Customer Data, and the Company gives no warranties or guarantees concerning those matters.
- 8.3 In relation to Customer Data that is in the possession of the Company, the Company must not:
- (a) use any Customer Data other than for the purposes of fulfilling its obligations under this Agreement;
 - (b) allow any unauthorised access to the Customer Data;
 - (c) sell, let for hire, assign rights in or otherwise dispose of or exploit any Customer Data;
 - (d) alter the Customer Data in any way, other than in the course of providing the Services; or
 - (e) disclose the Customer Data to a third party unless compelled by law.
- 8.4 The Customer further acknowledges and agrees that the Customer Data may be modified and/or altered when used in conjunction with the Software, including when it is stored or processed in or by the Software, and the Customer accepts the risks involved such that it is its sole responsibility to back-up the Customer Data before using it with the Software.

Personal Information

- 8.5 The Software may when used by the Customer, or the Company may, as part of providing the Services and processing the relevant Customer Data, result in the collection, processing, storage and/or use of Customer Data that contains Personal Information, and to the extent it does then clauses 8.6 to 8.8 below shall apply to the maximum extent permitted by law.
- 8.6 Where the Customer Data contains Personal Information, the parties must each take reasonable steps to protect that information in accordance with the relevant Privacy Laws related to the handling of Personal Information. Each party agrees to comply with, and ensure that its personnel (including officers, employees and subcontractors), comply with the requirements of this clause.
- 8.7 The Company shall only collect, process, store and/or use Personal Information in connection with fulfilling its obligations under this Agreement, including the provision of the Software and the Services, and insofar as it is permitted under this Agreement.
- 8.8 The Customer must ensure that it has obtained the necessary consents and permissions, in writing where practicable, from any individuals whose Personal Information is uploaded, stored or transmitted by or to the Software, the Services, or is to be provided to or collected by the Company as part of providing the Services. The Customer is deemed to have made a representation to the Company that the Customer has complied with this clause 8.8, and the Company will rely on such representation. The obligation on the Customer under this clause is an essential term of this Agreement and entitles the Company to exercise all rights that are available in respect of a breach of an essential term as construed under the general law.

Confidentiality

- 8.9 Each party ("**Recipient**") agrees at all times during and for so long as is legally permissible after the Term to keep confidential the Confidential Information of the other party and will not disclose or discuss the same without the prior written approval of that other party, except:
- (f) as specifically provided by this Agreement;
 - (g) to the extent permitted or required by law;
 - (h) to the extent required to perform any of the Recipient's obligations under this Agreement;
 - (i) to the extent required to instruct the Recipient's professional advisers in relation to the preparation, completion and performance of this Agreement;
 - (j) where the information is or becomes public knowledge, but not if it is because the Recipient has contravened a confidentiality obligation under this clause 8.9, and such public knowledge is notified and agreed in writing by the parties;
 - (k) where the information was known to the Recipient before the date of this Agreement and such prior knowledge is

notified and agreed in writing between the parties; or

- (l) where the information becomes known to the Recipient after the date of this Agreement other than as the result of a breach of duty of confidentiality to the other party and such subsequent knowledge is notified and agreed in writing between the parties.

8.10 The Recipient must not sell, transfer, assign or otherwise dispose of or grant any licence in relation to any Confidential Information or make available copies (whether by photocopying, photographic reproduction or by electronically recorded data) of any Confidential Information to any person other than with the prior written consent of the other party.

9 Warranties, Disclaimers and Indemnities

9.1 The parties each hereby warrant, represent and undertake to the other that:

- (a) it has the full right, power and authority to enter into and perform this Agreement and to grant and license all rights and benefits hereby granted and licensed to the other party;
- (b) it will not do anything which violates or infringes the rights, title or interest, including the Intellectual Property Rights, of the other party;
- (c) it will not do anything which may embarrass the other party or bring the other party into disrepute; and
- (d) it will comply with any applicable laws, regulations, standards and guidelines applicable to the provision or use of the Services as the case may be.

9.2 In relation to any Customer Data that is uploaded to or processed by the Software, or that is provided or procured by the Customer to the Company, the Customer hereby warrants at all times that the Customer has the necessary legal rights, consent, authority or permission to use the Customer Data in that manner.

9.3 The Customer hereby acknowledges and accepts:

- (a) that the performance of the Software and the Services, including the integrity of the Service Outputs, will depend on the Customer's compliance with this Agreement;
- (b) that the performance of the Software and the Services, including the integrity of the Service Outputs, will depend on the availability of Customer Data that may not be within the Company's control, nor may it be the Company's responsibility to procure such Customer Data;
- (c) certain Service Outputs will need to be stored on the Customer's software and the Customer is responsible for ensuring that those Service Outputs are properly stored and can be retrievable;
- (d) due to the nature of the Software, it is not possible to guarantee that the Software, including the Service Outputs, will prevent, protect and secure from, detect, assess, identify, remove and/or rectify all Harmful Effects;
- (e) the mere inability of the Software and/or the Support Services to provide a solution to an issue, problem and/or other matter, including the mere unavailability of such solution, or the mere non-compliance with any part of the Service Level Agreement, is not a breach of this Agreement by the Company;
- (f) the mere generation of Service Outputs does not mean that the Service Outputs will always be correct, accurate, reliable or complete, as new or undisclosed information or data may affect the correctness, accuracy, reliability and/or completeness of the same;
- (g) that the Company has not expressed an opinion or provided advice that use of the Software by the Customer will produce any particular Service Outputs or other results, including the prevention or protection from all Harmful Effects and/or the generation of any financial gains for the Customer and/or the avoidance of any financial losses for the Customer;
- (h) that unless expressly stated to the contrary in this Agreement, the Company is under no obligation to interpret, extrapolate, construe, represent, decipher, analyse, comment, translate, apply or advise on the Service Outputs;
- (i) that it must exercise its own judgment in relation to the suitability or appropriateness of the Software, including the Service Outputs, especially when using or choosing to rely on those matters; and
- (j) the Software will be provided online/remotely, and will not, under any circumstances, be provided at the Customer's premises or any other location identified by the Customer.

9.4 The Customer hereby indemnifies the Company and undertakes to keep the Company indemnified (and to hold the Company harmless) against any claim, proceeding, suit or demand that is made, threatened or commenced against the Company by a third party (including an External Provider), and make good against any liability, loss, damage or expense (including legal costs on a full indemnity basis, any monies paid to a third party to settle or compromise a claim or demand, the corruption or loss of the Company's data and the costs of protecting or maintaining any Intellectual Property Rights) which the Company incurs or suffers, as a direct result of any of the following:

- (a) a wilful, unlawful or negligent act or omission by the Customer, including a person acting on behalf of the

Customer or which the Customer may exercise control, which is done in relation to or in connection with this Agreement or the Software; and

- (b) the use of the Software by the Customer, including a person acting on behalf of the Customer or which the Customer may exercise control, that infringes the rights, title or interest, including Intellectual Property Rights, of the Company, or a third party (other than by reason of, or ancillary to, the Company's infringement of such rights, title or interest).

10 Limitation of Liability

10.1 To the maximum extent permitted by law, the Software and Services are provided "as is" and all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise) that are not expressly contained in this Agreement are excluded, including a warranty that the Software will always integrate with the systems, software, hardware or network of the Customer.

10.2 Due to the nature of the Software, the Company cannot warrant or guarantee the following:

- (a) that the Software, including the Service Outputs, will prevent, protect and secure from, detect, assess, identify, remove and/or rectify all Harmful Effects; and/or
- (b) that the Software will be free from interruption, downtime or error, including a technical or administrative error in any Service Outputs and downtime caused by scheduled maintenance of any Software or hosting service, or the loss of an Internet connection. To the extent there is such an interruption, downtime or error, the Customer's sole remedy is (subject to any other remedy that might be set in the Principal Terms and Conditions), where appropriate, for the Company to rectify the error, investigate and introduce (if reasonable in the circumstances) measures to prevent the occurrence of such an interruption, downtime or error in the future and/or provide the Customer with one or more solutions regarding the prevention or mitigation of the effects of such interruption, downtime or error (whether occurring in the past, present or future),

and the Company shall not be liable in respect of the aforementioned matters in this clause 10.2 if they occur to the extent the Company has complied with the terms and conditions expressly set out in this Agreement.

10.3 Where the cause of any malfunction, error or extraordinary operation of the Software is related to an issue to which the Company has no control over, or the rectification of the issue is outside the scope of this Agreement, the Company shall inform the Customer of the malfunction, error or extraordinary operation of the Software but shall not otherwise be liable in respect thereof.

10.4 If the Customer, including a person acting on behalf of the Customer or which the Customer may exercise control for the purposes of this clause, commits any act(s) and/or omission(s) that results in the inability of the Company to provide the Software or the Services, in whole or part, the Customer cannot bring any claims or seek any remedies against the Company for the Company's aforementioned inability to the extent that the Customer's act(s) and/or omission(s) caused such inability of the Company (and even if it is not the sole, primary or dominant cause of the inability). In such circumstances, any deadlines or time period within which the Company must carry out any obligations under this Agreement shall be extended by the additional period taken by the Customer to remedy the relevant act(s) and/or omission(s) causing the Company's inability.

10.5 Subject to clauses 10.1 to 10.4 above and clauses 10.6 to 10.11 below, to the maximum extent permitted by law, the liability of the Company to the Customer for all claims under, arising from, or in relation to a term or condition in this Agreement or its subject matter, regardless of form of action, whether in contract, tort (including negligence), under product liability and consumer protection legislation, under any other statute or regulation, breach of warranty or other legal or equitable grounds (including in each case negligence) ("**Claims**"), shall be limited as follows:

- (a) the maximum aggregate liability shall under no circumstances exceed the Fees actually paid by the Customer to the Company in the twelve (12) months leading up to the date on which the relevant Claim first accrues; and
- (b) despite clause 10.5(a) above, in relation to Claims arising in respect of the Customer Data, including the loss, damage or corruption of the Customer Data: the only liability of the Company shall be, at the Company's reasonable election, to reconstruct or recover the relevant Customer Data (or so much of it as possible in the circumstances), to provide a copy of the relevant Customer Data to the Customer, to pay to the Customer the reasonable costs required to recover or reconstruct (but not to re-collect) the relevant Customer Data and/or a combination of the aforementioned matters.

10.6 To the maximum extent permitted by law, in respect of any loss or damage suffered or incurred by the Customer in relation to, or in connection with, a Harmful Effect, including the interruption or corruption of any Customer Data of the Customer, other than a Harmful Effect that is directly created, introduced or caused by the Company, the Company shall not be liable to the Customer for such loss or damage, and in all circumstances the Customer must look to the relevant third party that created, introduced or caused the Harmful Effect to recover or be compensated for any loss or damage suffered or incurred by the Customer. For the avoidance of doubt, the Company shall not be treated as having created, introduced and/or caused a Harmful Effect merely because the Harmful Effect occurred during the Term and/or in the course of the Customer's use of the Software.

10.7 The Customer acknowledges and agrees that the Company shall not be liable for any damage or loss suffered by the Customer as a result of the failure or unavailability of the Software as a result of or caused by (although not being the sole cause) any of the following:

- (a) the unavailability of any Customer Data;
 - (b) the matters contemplated in clauses 10.2 to 10.4 above;
 - (c) scheduled maintenance outside Business Hours, emergency maintenance during Business Hours or any other scheduled update, upgrade or patching of the Software;
 - (d) the occurrence of a Force Majeure Event or orders from government or judicial institutions to halt business activities;
 - (e) a breach of this Agreement by the Customer, including a person acting on behalf of the Customer or which the Customer may exercise control;
 - (f) the occurrence of a matter under which the Company is to be indemnified by the Customer;
 - (g) use or reliance on the Software in contravention of a provision in this Agreement, including the Software Licence; and
 - (h) the use of the Software, including the Service Outputs, by unauthorised third parties.
- 10.8 To the maximum extent permitted by law, in no event will either party have any liability to the other in contract, tort (including negligence) or otherwise arising under or in connection with this Agreement, and the other party hereby waives and releases any claims it might otherwise have to be compensated for in respect of, any of the following:
- (a) loss of revenue, loss of profit, loss of goodwill, loss of reputation, loss of anticipated savings, loss of business, loss of contracts, loss or interruption of connectivity to a computer system or network, loss or corruption of data; and
 - (b) any indirect, special or consequential loss or damage,
- even if the party on whose part liability is alleged has been advised of the possibility of such losses or damages.
- 10.9 Both parties shall use their reasonable endeavours to mitigate any loss, damage, liability, expenses and costs suffered by them under or arising out of this Agreement.
- 10.10 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.
- 10.11 If any condition, statutory guarantee or warranty is implied into this Agreement or applies by operation of law and cannot be excluded but the Company is able to limit its liability for a breach of such condition, statutory guarantee or warranty, the liability of the Company for breach of that condition, statutory guarantee or warranty is limited, to the extent permitted by law, at the Company's discretion, to:
- (a) in the case of goods: the replacement or repair of goods; or the supply of equivalent goods; or the payment of the cost of replacing the goods or having the goods repaired or of acquiring equivalent goods; and
 - (b) in the case of services: the supply of the services again or the payment of the cost of having the services supplied again.
- 10.12 Subject only to clause 10.8 above, nothing in this Agreement shall operate to limit or exclude either party's liability to the other for:
- (a) death or personal injury caused by that party's negligence;
 - (b) any fraudulent or reckless conduct by the other party, or conduct that is otherwise mislead or deceptive; or
 - (c) any other liability which cannot be limited or excluded by law.

11 Termination and Suspension

11.1 An "Event of Default" occurs:

- (a) in relation to the Customer, if:
 - (i) the Customer breaches this Agreement and such breach is either incapable of remedy or the Customer fails to remedy such breach (and provide satisfactory evidence of such remedy to the Company) within ten (10) Business Days of receiving a notice in writing from the Company party specifying the action required of the Customer to remedy the breach;
 - (ii) the Customer persistently behaves in a manner which prevents or impedes the Company from complying with the terms and conditions of this Agreement, and such an occasion has occurred at least three (3) times in the past three (3) months and on each occasion the prevention or impediment has lasted for more than five (5) Business Days after a written notice is issued by the Company demanding the Customer to remedy its behaviour;

- (iii) it breaches the obligations and restrictions on the Customer under clauses 2 (Grant of Software Licence) or 5 (Intellectual Property);
- (iv) the Customer has not made a payment due under this Agreement by the relevant due date or time for payment, the Customer is given notice of such failure to pay, and fails to make the due payment within five (5) Business Days of receipt of such notice, except to the extent that the Customer has disputed the relevant invoice pursuant to clause 6.3 above;
- (v) the Customer has a liquidator, provisional liquidator, bankruptcy trustee or other similar external controller appointed to it;
- (vi) the Customer resolves to wind up or is subject to an order to wind up its affairs or otherwise enters into (or files for) bankruptcy or is subject to an order of bankruptcy;
- (vii) the Customer has a receiver appointed to it or in respect of a substantial proportion of its assets or undertakings; or
- (viii) a court or tribunal makes an order that the Customer be wound up in insolvency or be made bankrupt, unless the Customer successfully appeals such order; and

(b) in relation to the Company, if:

- (i) a court or tribunal makes an order that the Software infringes a third party's Intellectual Property Rights and the Company is unable to, within ninety (90) days of such order, implement a workaround or arrange an appropriate licence to continue to use the Software or substantially similar Software;
- (ii) the Company has a liquidator, provisional liquidator, bankruptcy trustee or other similar external controller appointed to it;
- (iii) the Company resolves to wind up or is subject to an order to wind up its affairs or otherwise enters into (or files for) bankruptcy or is subject to an order of bankruptcy; and
- (iv) a court or tribunal makes an order that the Company be wound up in insolvency or be made bankrupt, unless the Company successfully appeals such order.

11.2 Where an Event of Default occurs in relation to a party, the other party may terminate this Agreement by notice in writing to the party in respect of whom an Event of Default has occurred, and such termination becomes effective on the date that it is given to or served on the relevant party, subject always to any allowable periods for remedy of default by the relevant party.

11.3 The Customer may terminate this Agreement for convenience by notice in writing to the Company and by giving the Company sixty (60) days' notice (although the Company may elect to waive this notice period requirement). For the avoidance of doubt and in consideration for the right to terminate for convenience, if the Customer chooses to exercise its right under this clause 11.3, no fees or charges already paid by the Customer are refundable to it, including fees or charges paid in advance and/or that represent the balance of the unexpired portion of the Term from the date of termination.

11.4 For the avoidance of doubt, the rights of termination under clause 11 are in addition to any other rights remedies (including a right to terminate) the parties may have under the general law which are not expressly excluded by this Agreement.

11.5 Upon termination or expiration of this Agreement for whatever reason:

- (a) the Software Licence granted to the Customer under this Agreement will immediately terminate without further formality;
- (b) the Company shall be entitled to take all action as will result in the Customer no longer being able to use or access the Software;
- (c) the Company must delete the Customer Data from its system except to the extent required by any law, regulation or an industry code of practice; and
- (d) the Company will not have any further obligations to the Customer under this Agreement and is not otherwise required to provide any assistance to the Customer for the purposes of migrating or transitioning to another service, system or software.

11.6 In addition to its rights of termination, the Company may suspend the provision of the Software and/or the Services to the Customer if an Event of Default of the kind described in clauses 11.1(a)(i) to 11.1(a)(iv) above occurs and the Customer fails to remedy that Event of Default (and provide satisfactory evidence of such remedy to the Company) within five (5) Business Days of receiving a notice in writing from the Company party specifying the action required of the Customer to remedy the Event of Default. This clause 11.6 does not apply in circumstances where the Event of Default is determined by the Company, acting reasonably, to be one that is incapable of remedy.

12 **Dispute Resolution**

12.1 In the event of a dispute, controversy or claim ("**Dispute**"), arising out of or in connection with this Agreement, including

any question regarding its existence, validity or termination, but not a dispute referred to in clause 6.3 (disputed invoices) above, the party raising such Dispute must immediately notify the other party of the existence and nature of the Dispute by serving a notice on the other party setting out detailed particulars of the Dispute including, if appropriate, references to documents and provisions which relate to the Dispute, and the parties shall use their best endeavours to immediately resolve the Dispute amicably.

- 12.2 The parties agree that in the event of a Dispute, a party must not commence any court or arbitration proceedings relating to the Dispute until it has made reasonable attempts to resolve the Dispute with the other party as per clause 12.1 above, and not, in any case, before the expiration of twenty-one (21) days after the Dispute was notified to the other party.
- 12.3 Nothing in this clause prejudices the right of either party to seek urgent injunctive, interlocutory or declaratory relief from a court in connection with the Dispute without first having to attempt to resolve the Dispute in accordance with this clause 12.
- 12.4 For the avoidance of doubt, this clause 12 does not apply in relation to the payment or non-payment of any Service Fees under this Agreement.

13 Marketing and promotion

The Company may, but is not obliged to, refer to the Customer as being a client of the Company in the Company's marketing and promotional materials and may use any identifier, logo or trade mark that is ordinarily used by the Customer for the sole purpose of identifying the Customer in such marketing and promotional materials. Nothing in this clause permits the Company to make any other representations about the Customer and/or to disclose Confidential Information of the Customer to a third party.

14 Relationship of Parties

- 14.1 The Company's relationship with Customer will be that of independent contractor and supplier. Neither the Company nor Customer will have (and will not represent that it has) any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in the other's name. Nothing stated in this Agreement will be construed as constituting the Company and Customer as partners, or as creating the relationship of employer and employee, master and servant or principal and agent between the Company and Customer.
- 14.2 Neither party will, without the prior written consent of the other, for a six (6) month period after termination or expiry of this Agreement, directly or indirectly solicit or offer employment or otherwise engage any employee of the other party during the course of this Agreement. Nothing in this clause will prevent a party from employing a person who responds to a general advertisement or recruitment agency seeking applications.

15 Force Majeure

- 15.1 Notwithstanding any other provision in this Agreement, no default, delay or failure to perform on the part of any party will be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due entirely to causes beyond the reasonable control of the party charged with such default, including, but not limited to a Force Majeure Event.
- 15.2 In the case of the happening of any such Force Majeure Event, the time for performance required by a party under this Agreement will be extended for any period during which performance is prevented by the event.
- 15.3 If a Force Majeure Event prevents a substantial part of the Software to be available for use by the Customer, the Company, in its absolute discretion, refund a portion of the Fees that has been paid by the Customer and which is reasonably referable to the period in which the Software is unavailable, or it may give the Customer a credit equal to that portion of the Fees and that credit may be applied to reduce any future Fees payable by the Customer to Company under this Agreement.
- 15.4 Notwithstanding the above, if a delay or failure by a party to perform its obligations under this Agreement due to a Force Majeure Event exceeds sixty (60) days, and that delay or failure prevents a substantial part of the Services from being provided by the Company to the Customer, any party may immediately terminate this Agreement on providing notice to the other parties, such notice to take effect ten (10) Business Days after the date of such notice.

16 Notices

All notices and consents required or permitted to be given under this Agreement must be in writing and given by personal service, mail (postage prepaid), or email, (for which proof of sending is retained) to the parties at their address as set out in the Principal Terms and Conditions or to such other address as either party may designate to the other by written notice.

17 Assignment

The Customer may not assign or otherwise transfer its rights or obligations under this Agreement without prior written consent of the Company, such consent not to be unreasonably withheld. This Agreement, including without limitation the rights, consents and waivers granted in this Agreement, will enure to the benefit each party and the successors, licensees and permitted assignees of each party.

18 General

- 18.1 This Agreement may only be amended, supplemented or replaced by a document in writing signed by the parties.
- 18.2 Any failure or delay by one party to compel performance by another party of any of the terms and conditions of this

Agreement does not constitute a waiver of those terms or conditions, nor does it affect or impair the right of the first party to enforce them against the other party at a later time or to pursue remedies it may have for any subsequent breach of those terms or conditions.

- 18.3 A waiver by a party of a provision or of a right under this Agreement is only binding on the party granting the waiver if it is given in writing signed by that party and is only effective in the specific instance and for the specific purpose for which it is given.
- 18.4 A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of any other right.
- 18.5 A party may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Agreement expressly provides otherwise.
- 18.6 Each party must promptly at its own cost do all things (including executing and delivering any and all deeds, agreements and other documents) necessary or desirable to give full effect to the terms of this Agreement and the transactions contemplated by this Agreement.
- 18.7 Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement and any transactions contemplated by this Agreement. The parties will share equally all stamp duty payable in connection with this Agreement and all other agreements and transactions contemplated by this Agreement when due.
- 18.8 This Agreement constitutes the full and complete agreement between the parties relating to the subject matter contained in this Agreement and supersedes any and all previous agreements, understandings, negotiations and representations between the parties in respect of all matters dealt with in this Agreement.
- 18.9 Any provision of this Agreement which is prohibited, unenforceable or invalid in whole or in part is only ineffective to the extent of the prohibition, unenforceability or invalidity and this does not affect the remaining part of that provision or the other provisions of this Agreement, which will continue in full force and effect.
- 18.10 This Agreement may be executed electronically or in one or more counterparts executed by one or more of the parties, each of which counterparts will constitute the one agreement which will be binding on all the parties when one such counterpart has been executed by each party.
- 18.11 Each indemnity in this Agreement is a continuing obligation, separate from the other obligations of a party, and survives termination of this Agreement.
- 18.12 All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.
- 18.13 The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement and will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.
- 18.14 The terms of this Agreement are governed by and construed in accordance with the laws of the State of Delaware, United States of America and the parties submit to the non-exclusive jurisdiction of the Courts of Delaware, United States of America.

Annexure 1

Service Level Agreement*

The Service Level Agreement for the Support Services is as follows (according to whether the Customer nominates support at a 'Core Plan' or 'Diamond Plan' level when ordering the Support Services):

Support Request and Remedial Action	Estimated Time**	Estimated Time**
	Tier 1 - Core Plan	Tier 2 - Diamond Plan
Initial response to support request	Up to 8hrs after a support request is raised and a support ticket is issued during Business Hours	Up to 2hrs after a support request is raised and a support ticket is issued
Investigating issue identified in support request	Up to 24hrs after a support request is raised and a support ticket is issued during Business Hours	Up to 8hrs after a support request is raised and a support ticket is issued
Resolving issue identified in support request	Up to 72hrs after a support request is raised and a support ticket is issued during Business Hours	Up to 24hrs after a support request is raised and a support ticket is issued
Support Request Channel(s)***		
Support Portal	Email	Email / Phone
Support Portal: Jira Service Desk	support@delasecurity.com https://delasecurity.atlassian.net/jira/servicedesk/projects/CS/getting-started	+1 415-963-9951 support@delasecurity.com https://delasecurity.atlassian.net/jira/servicedesk/projects/CS/getting-started
* The Company reserves the right to change and update the matters in this Annexure 1 from time to time, including the right to change the Support Portal that is used, and will notify the Customer when appropriate. ** Whilst the Company will endeavour to comply with these estimated times, they are estimates only and are provided for informational purposes. As such, non-compliance with these estimated times do not constitute a breach of this Agreement. *** The Customer must make requests for the provision of Support Services via the Support Request Channels listed above. The Support Services are primarily provided through the Support Portal which will be treated as the SSOT (Single Source of Truth) such that the Customer must always make support requests via the Support Portal where available.		