

# TERMS & CONDITIONS

## CovertSwarm Limited – Terms and Conditions for the provision of Services

These terms and conditions govern the Customer's purchase and use of the Security Services.

These terms and conditions were last updated on 25<sup>th</sup> July 2024. Unless amended as set out in the Sales Order, they form part of the Agreement between the Customer and CovertSwarm, which shall come into effect on the Commencement Date.

The Customer may not access the Security Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

In the event of any conflict in respect of the provisions of the Agreement and/or the documents referred to in it, the following order of priority shall prevail (in descending order of priority):

- (a) Sales Order;
- (b) Data Processing Agreement;
- (c) the Policies;
- (d) the main body of these Terms and Conditions for the provision of Services; and
- (e) Schedule 1 of these Terms and Conditions for the provision of Services.

### 1. Definitions and Interpretation

1.1. For the purposes of this Agreement the following capitalised terms shall have the meanings set forth below:

**"Attack Plan"** means an agreed specific scope of work within the Offensive Operations Centre, that describes the target Relevant System, team involved, and success criteria for an attack and which is mutually agreed between the parties before the work begins.

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, has the meaning given in the Corporation Tax Act 2010, s 1124 and Controls, Controlled and under common Control shall be interpreted accordingly.

**"Agreement"** means these terms and conditions together with each Sales Order and any other document referred to herein.

**"Authorised Affiliate"** means those Affiliates of Customer, if any, who are listed in the Sales Order, or agreed between the parties in writing as being entitled to access and use some or all of the Security Services.

**"Authorised Users"** means the named users on the Offensive Operations Centre as added by and authorised by the Customer to use the Security Services.

**"Business Day"** means a day other than a Saturday, Sunday or bank or public holiday in England.

**“Commencement Date”** means the date set out in a Sales Order on which the Security Services shall commence.

**“Customer”** means the company or other legal entity named in the Sales Order.

**“Customer Content”** means any Material owned, licensed or used by the Customer or its Authorised Affiliates or otherwise provided, directly or indirectly, by the Customer to CovertSwarm (and any modifications to that material).

**“Customer Data”** means all data (in any form) that is provided to CovertSwarm or uploaded or hosted on the SaaS Service by the Customer or by any Authorised User (but excluding Feedback as defined in paragraph 6.4 of Schedule 1).

**“Customer Systems”** means the Customer’s web applications, web servers, web software applications, software applications, network servers, network, storage, and any other devices, applications, or IT assets.

**“Confidential Information”** means information of a confidential nature in any form or medium, whether disclosed orally or in writing before or after the date of this Agreement (together with any reproductions of such information) including (but not limited to) information relating to the business affairs, personnel, finances, systems, processes, methods of operation, plans, products, developments, trade secrets, know how, clients or suppliers of the disclosing party or any of its Affiliates or any details relating to this Agreement, Personal Data, Customer Content or any other information that is proprietary or confidential and is labelled or identified as such.

**“CovertSwarm”** means CovertSwarm Limited, incorporated and registered in England and Wales with company number 12564314 whose registered office is at CovertSwarm Limited., International House, 36-38 Cornhill, London EC3V 3NG

**“CovertSwarm’s Standard Pricing Terms”** means CovertSwarm’s standard pricing terms for the SaaS Service, as amended by CovertSwarm from time to time, and as at the date of this Agreement the latest version available at <https://subscribe.covertswarm.com>.

**“Data Protection Legislation”** means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**“Data Processing Agreement”** the data processing agreement, which is incorporated by reference into this Agreement, which sets out the basis on which CovertSwarm will process Customer Personal Data the latest version of which is available at [www.covertswarm.com/legal-documents/](http://www.covertswarm.com/legal-documents/).

**“Documentation”** means (i) the description of the SaaS Services (as updated from time to time); and (ii) the relevant instructions as to how to use the SaaS Services made available by CovertSwarm.

**“Fees”** means the fees payable by the Customer to CovertSwarm for the use of the Security Services as specified in the Sales Order.

**“Force Majeure Event”** means an event or sequence of events beyond a party’s reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations under this Agreement, including without limitation war, revolution, terrorism, riot or civil commotion; strikes, lock outs or other industrial action, epidemic or pandemic, whether of the affected party’s

own employees or others; blockage or embargo; interruption or failure of IT, telecommunications or internet or utility services; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions.

**“Free or Trial Service”** means where the SaaS Service is provided on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis).

**“Initial Term”** the initial subscription term as set out in the Sales Order.

**“Insolvency Event”** means, in relation to a party: (a) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to that party; (b) an order is made for the appointment of an administrator to manage the affairs, business and property of that party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of that party, or notice of intention to appoint an administrator is given by that party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); (c) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of that party, or if any other person takes possession of or sells that party's assets; (d) that party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or (e) that party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software and source code, database right, topography rights, moral rights, and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**“Material”** means any methodology or process, documentation, data or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, diagrams, operations manuals, training materials and instructions (including any modifications thereto).

**“Non-Supplier Materials”** means Materials provided, controlled or owned by or on behalf of a third party the use of which is subject to a separate agreement or licence between the Customer and the relevant third party (including such Non-Supplier Materials which may be linked to, interact with or used by the SaaS Service) and all other Materials expressly identified as Non-Supplier Materials in this Agreement.

**“Open Source Software”** means any software subject to a version of the General Public Licence, together with any other ‘open source’ software falling within the Open Source Definition issued by the Open Source Initiative ([www.opensource.org/docs/osd](http://www.opensource.org/docs/osd)) at the date of this Agreement and any ‘free software’ as defined by the Free Software Foundation ([www.gnu.org/philosophy/free-sw.html](http://www.gnu.org/philosophy/free-sw.html)) at the date of this Agreement.

**“Permitted Downtime”** means (a) scheduled maintenance; (b) emergency maintenance; or (c) downtime caused in whole or part by a Force Majeure Event.

**“Permitted Purpose”** means use solely for the Customer’s internal business operations and also for the internal business of operations of the Authorised Affiliates identified in the Sales Order, in each case in accordance with the applicable Documentation and this Agreement. Permitted Purpose expressly excludes any of the following

to the maximum extent permitted by law: (a) copying, reproducing, publishing, distributing, redistributing, broadcasting, transmitting, modifying, adapting, editing, abstracting, storing, archiving, displaying publicly or to third parties, selling, licensing, leasing, renting, assigning, transferring, disclosing (in each case whether or not for charge) or in any way commercially exploiting any part of the Security Services or Documentation; (b) permitting any use of the SaaS Service or Documentation in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties or making the SaaS Service or Documentation (or any part) available to any third party or allowing or permitting a third party to do any of the foregoing (other than to the Authorised Affiliates for the Permitted Purpose)); (c) combining, merging or otherwise permitting the SaaS Service (or any part of it or any Application) to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or (d) attempting to reverse engineer, observe, study or test the functioning of or decompile the Applications or the SaaS Service (or any part), except as expressly permitted under this Agreement.

**“Personal Data”** shall have the meaning set out in the relevant Data Protection Legislation.

**“Policies”** means each of the following:

- (a) CovertSwarm’s policy on acceptable use of the Services (as updated from time to time), which as at the Commencement Date is the latest version available at <https://www.covertswarm.com/cs-acceptable-use-policy> (the **Acceptable Use Policy**); and
- (b) CovertSwarm’s privacy policy in relation to the Services (as updated from time to time), which as at the Commencement Date is the latest version available at [www.covertswarm.com/privacy-policy](http://www.covertswarm.com/privacy-policy) (the **Privacy Policy**).

**“Purchased Authorised User Accounts”** mean the number of Authorised Users who may use the SaaS Services.

**“Relevant Systems”** as defined in clause 3.2 (a).

**“Renewal Term”** means a period of time equal to the Initial Term, as detailed in clause 2.1.

**“Representatives”** means either party’s representatives as defined in clause 9.2 (a).

**“Rules of Engagement”** means the engagement & communications methods between the parties during the initial kick-off meeting, and agreed in writing.

**“SaaS Service”** means the cloud service (The Offensive Operations Centre) to which the Customer may subscribe together with the SaaS Support Services.

**“SaaS Service Hours”** means 24 hours a day, seven days a week excluding Permitted Downtime.

**“SaaS Support Services”** means the support services provided by CovertSwarm to the Customer via email being support on Mondays to Fridays during the hours of 09:00 to 18:00 GMT.

**“Sales Order”** means the Customer’s order for the Security Services.

**“Security Services”** means cyber attacks, training, consulting, implementation, red teaming engagement, scans, vulnerability assessments, penetration tests or any other security tests performed by CovertSwarm against, or in relation to, Customer Systems by automated technology or by CovertSwarm’s professional service team, the SaaS Service, as further set out in the Sales Order.

**“Service”** means either the SaaS Service or Security Services.

**“Subscription Period”** the period for which the Security Services are taken and for which the Fees are payable, as set out in the Sales Order.

**“Term”** means the period of commencing on the Commencement Date and ending on the date of termination, for whatever reason, of this Agreement.

**Territory** worldwide except for Russia, China and North Korea (and any other territories decided by CovertSwarm from time to time).

**“Third Party System”** means the systems and all materials relating to such systems owned by a third party.

**“UK Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**“User”** means an individual who is authorised by Customer or an Authorised Affiliate to use the Security Services, and to whom Customer (or CovertSwarm at Customer’s request) has supplied a user identification and password. Users may only include Customer’s and Authorised Affiliates’ employees, agents and contractors.

- 1.2. Headings are included in this Agreement for ease of reference only and shall not affect interpretation or construction.
- 1.3. Words denoting persons include a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.
- 1.4. Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done.
- 1.5. Any Schedules form part of this Agreement and shall have effect as if set out in full in the body of the Agreement. Any reference to this Agreement includes the Schedules.
- 1.6. A reference to legislation is a reference to that legislation amended, extended, re-enacted or consolidated from time to time.
- 1.7. A reference to a party includes that party’s personal representatives, successors and permitted assigns.

## **2. Term and Scope of Agreement**

2.1. This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms, continues in force for the Initial Term. On the expiry of the Initial Term, this Agreement shall automatically continue for further consecutive periods of the same duration as the Initial Term (Renewal Term) unless the Customer:

2.1.1 gives CovertSwarm written notice as follows:

- (i) Initial Term or Renewal Term of 1 (one) month: 10 (ten) days’ notice;

- (ii) Initial Term or Renewal Term of more than 1 (one) month but less than 12 (twelve) months duration: 1 (one) month's notice; and
- (iii) Initial Term or Renewal Term of 12 (twelve) months or more: 3 (three) months' notice;

such notice to expire either upon the end of the Initial Term or the Renewal Term; or

2.1.2 CovertSwarm provides Customer with written notice of termination of this Agreement before the end of the Initial Term or Renewal Term.

2.2 The Customer acknowledges that CovertSwarm shall be entitled to modify the features and functionality of the Security Services. CovertSwarm shall use reasonable endeavours to ensure that any such modification does not materially adversely affect the use of the Security Services(s) by CovertSwarm's customers generally. CovertSwarm may, without limitation to the generality of this clause 2.2, establish new limits on the Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the Security Service, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by update to the relevant impacted contractual documents.

### 3. Use of Services and obligations

3.1. CovertSwarm shall:

- (i) perform the Security Services in accordance with the highest level of care, skill and diligence in accordance with best practice in CovertSwarm's industry;
- (ii) perform the SaaS Service in accordance with the additional terms set out in Schedule 1;
- (iii) perform the Security Services in accordance with the Rules of Engagement and the Sales Order;
- (iv) not perform any Security Services in connection with any of the Customers' personnel devices and shall notify the Customers' Representative immediately in the event of any breach of this obligation;
- (v) not engage with any Customer personnel in connection with the Security Services without first obtaining the prior written approval of the Customer's Representative (such consent not to be unreasonably withheld or delayed) and shall notify the Customer's Representative immediately in the event of any breach of this obligation;
- (vi) not perform the Security Services in connection with any Third Party System without obtaining the prior written consent of the Customer's Representative (such consent not to be unreasonably withheld or delayed) and shall notify the Customer's Representative immediately in the event of any breach of this obligation; and
- (vii) use its best endeavours to eliminate or minimise any impact the Security Services may have on the Relevant Systems.

3.2. Customer acknowledges and agrees:

- (a) that the Security Services may (i) attempt to breach, and may successfully breach, the security of Customer Systems and any other systems in respect of which Customer requests or permits CovertSwarm to perform the Security Services ("**Relevant Systems**"); (ii) cause the Relevant Systems to crash, or modify the Relevant Systems and/or their contents; (iii) cause the loss or corruption of data and software; and/or (iv) otherwise adversely affect the Relevant Systems or such other systems;

- (b) where the Relevant Systems to be tested are exclusively allocated to and used by Customer and is under Customer's exclusive control, Customer hereby consents to the Security Services being performed against each Relevant System;
- (c) where the Relevant Systems to be tested are not exclusively allocated to and used by Customer and under its exclusive control, Customer hereby consents on its own behalf to the Security Services being performed against each Relevant System, and warrants that: (i) Customer has obtained the express consent from the owner(s) of, and any other entities with access to and/or control of the Relevant System for CovertSwarm, its agents, contractors and suppliers to perform the Security Services against or in relation to each Relevant System; (ii) the owner(s)/other entities have acknowledged and accepted that it is possible that the Security Services could cause disruption to the Relevant Systems and/or loss of or corruption to data and software and (iii) with the exception of claims arising due to CovertSwarm's negligence or wilful default, the Customer shall indemnify CovertSwarm, its agents, contractors and suppliers from and against any and all costs, expenses, liabilities, claims, losses and damages incurred, suffered or brought against CovertSwarm, its agents, contractors and suppliers in the event that the owner/other entity brings any claim against CovertSwarm, its agents, contractors or suppliers, or in the event that Customer breaches any of the warranties given by it in subparagraphs (ii) or (iii) of this clause 3.2(c);
- (d) Customer will not pursue, and hereby irrevocably and permanently waives, and shall procure that any owner(s) or other entities with access to and/or control of the Relevant Systems (including without limitation any Authorised Affiliates), irrevocably and permanently waive any and all claims against CovertSwarm, its agents, contractors or suppliers as a result of any access or disruption to Relevant Systems;
- (e) no act or use of the Security Services delivered by CovertSwarm will constitute a breach of the Computer Misuse Act (1990). This applies to both CovertSwarm and its employees and individuals who perform the Security Services; and
- (f) any peer-reviewed, new and not previously known vulnerabilities or points of compromise identified within the Customer's network, technology stack or system/s will be disclosed to the Customer within 2 (two) Business Days.

3.3 The Customer shall at all times and in all respects:

- (a) perform its obligations in accordance with the terms of this Agreement;
- (b) co-operate with CovertSwarm in all matters arising under this Agreement or otherwise relating to the performance of the Security Services; and
- (c) inform CovertSwarm in a timely manner of any matters which may affect the provision of the Security Services.

3.4 The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) always comply with all applicable laws relating to the use or receipt of the Security Services, including laws relating to privacy, data protection and use of systems and communications.

3.5 The Customer agrees that it has the necessary authority and consents to authorise the Security Services, as defined in the Attack Plans and the Sales Order, or as set up as automations within the Offensive

Operations Centre. The Customer understands and acknowledges that the Security Services may originate or appear to originate from a CovertSwarm URL or IP Address which could cause the Customer (or the owner of the scan targets) to believe that they are under attack. The Customer agrees not to pursue any claims against CovertSwarm as a result of any access to Relevant Systems when such access was made in connection with an authorised Security Services unless such a claim is based on the gross negligence or willful misconduct of CovertSwarm.

#### **4. Fees and Payments**

- 4.1. The Fees will be invoiced in advance and on the commencement of each Subscription Period. All Fees and invoiced charges are due net 14 (fourteen) days from the invoice date and payable in accordance with the terms set out in the Sales Order. Customer shall provide complete and accurate billing and contact information to CovertSwarm and notify CovertSwarm promptly of any changes to such information. The Fees in respect of the SaaS Service are payable in accordance with Schedule 1.
- 4.2. Except as otherwise stated, this Agreement is non-cancellable and the sums paid non-refundable.
- 4.3. Time for payment is of the essence. If any invoiced amount is not received by CovertSwarm by the due date, then without limiting CovertSwarm's other rights or remedies, (a) those charges will accrue late interest at the maximum rate permitted by law and (b) CovertSwarm may condition future subscription renewals on payment terms shorter than those specified in clause 4.1.
- 4.4. If any amount owing by Customer under this Agreement or any other agreement for Security Services is 30 (thirty) or more days overdue, CovertSwarm may, without limiting CovertSwarm's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement and any other such agreements so that all such obligations become immediately due and payable, and/or suspend the Security Services to Customer until such amounts are paid in full. CovertSwarm will give Customer at least 7 (seven) days' prior notice (such notice to take effect at or at any time after the end of the 30 (thirty) day period referred to at the start of this clause 4.4 or any time thereafter) that Customer's account is overdue before suspending the Security Services to Customer.
- 4.5. CovertSwarm will not exercise its rights under clauses 4.3 or 4.4 above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
  - (a) the Customer shall notify CovertSwarm in writing as soon as reasonably practicable;
  - (b) the Customer's failure to pay the disputed Fees shall not be deemed to be a breach of this Agreement;
  - (c) the Customer shall pay the balance of the invoice which is not in dispute by the due date for payment;
  - (d) to the extent that the Customer is obliged, following resolution of the dispute, to pay an amount, then CovertSwarm may charge interest in accordance with clause 4.3 from the original due date for payment until the actual date of payment;
  - (e) to the extent CovertSwarm is obliged to refund an amount to the Customer, interest shall be added to that amount in accordance with clause 4.3; and
  - (f) once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within 10 (ten) Business Days and where CovertSwarm is required to issue a credit note, it shall do so within 10 (ten) Business Days.



- 4.6. The Fees and any other charges and expenses payable under this Agreement are exclusive of Value Added Tax and any analogous sales taxes which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 4.7. The Customer acknowledges and agrees that CovertSwarm shall have the right to increase the Fees to take effect from the end of the Initial Term, and each Renewal Term at the UK RPI (Retail Price Index) + 2%, unless otherwise agreed between the parties.
- 4.8. All travel, accommodation (and associated subsistence), document reproduction, or other expenses incurred by CovertSwarm under this Agreement will be charged on a time and materials basis, agreed in advance, with the Customer.

## **5. Termination**

- 5.1. CovertSwarm may temporarily suspend Customer's, the Authorised Affiliates' and/or the Users' passwords, accounts, and access to or use of the Security Services if Customer, or any of the Authorised Affiliates or the Users violate any provision of this Agreement, or if in CovertSwarm's reasonable judgement, the Security Services or any component thereof are about to suffer a significant threat to security or functionality. CovertSwarm will use reasonable endeavours to provide advance notice to Customer of any such suspension in CovertSwarm's reasonable discretion based on the nature of the circumstances giving rise to the suspension. CovertSwarm will use reasonable efforts to re-establish the affected Security Services as soon as reasonably practical after CovertSwarm determines, in its reasonable discretion, that the situation giving rise to the suspension has been rectified. Without affecting any other rights or remedies CovertSwarm may have (including without limitation any termination rights it may have under clause 5.2), CovertSwarm may terminate this Agreement if any of the foregoing causes of suspension is not rectified within 30 (thirty) days after CovertSwarm's initial notice thereof. Any suspension or termination by CovertSwarm under this clause shall not excuse Customer from Customer's obligation to make payment(s) under this Agreement.
- 5.2. A party may terminate this Agreement (i) upon written notice to the other party if the other party commits a material breach of this Agreement and fails to remedy that breach within 30 (thirty) days of receipt of written notice from the other party specifying the breach and requiring its remedy, or (ii) if the other party suffers an Insolvency Event.
- 5.3. If Customer terminates this Agreement in accordance with clause 5.2, CovertSwarm will refund Customer any prepaid fees covering the remainder of the Initial Term, or Renewal Term (as applicable), after the effective date of termination. If CovertSwarm terminates this Agreement in accordance with clauses 5.1 or 5.2, then without prejudice to CovertSwarm's other rights and remedies, Customer must pay within 30 (thirty) days all amounts that have accrued prior to such termination, as well as all sums that would have been payable for the Security Services ordered under this Agreement had this Agreement continued for the remainder of the Initial Term or then current Renewal Term (as applicable), plus related taxes and expenses. In no event will termination, for any reason, relieve Customer of its obligations to pay any Fees payable to CovertSwarm for the period prior to the effective termination date. Customer agrees that if they are in default under this Agreement, Customer may not use those Security Services ordered.
- 5.4. In the event of termination of this Agreement for any reason:
  - (a) the right of Customer, the Authorised Affiliates and the Users to access and any provided Security Services shall terminate immediately; and

- (b) Customer shall return or destroy (at CovertSwarm's option) all CovertSwarm Confidential Information in its possession or under its, its Authorised Affiliates' and/or the Users' control and all copies of such information.

5.5. Upon request by Customer made within 30 (thirty) days after the effective date of termination or expiration of this Agreement, CovertSwarm will make the Customer Content available to Customer for export or download up to the end of such 30 (thirty) day period. After that 30 (thirty) day period, CovertSwarm will have no obligation to maintain or provide Customer Content and will thereafter delete or destroy all copies of Customer Content in CovertSwarm systems or otherwise in CovertSwarm's possession, unless required by law to retain the Customer Content.

## **6. Limitation of Liability**

- 6.1. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF THAT PARTY, EITHER PARTY'S LIABILITY IN TORT OR FOR FRAUDULENT MISREPRESENTATION OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR RESTRICTED BY APPLICABLE LAW. IN ADDITION, NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT CUSTOMER'S LIABILITY FOR FAILURE TO PAY ANY FEES OR OTHER CHARGES OR EXPENSES WHEN DUE.
- 6.2. EXCEPT FOR THE CUSTOMER'S LIABILITY UNDER CLAUSE 3.2 (C)(iii), IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED (I) THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE SECURITY SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE THE FIRST INCIDENT OUT OF WHICH ANY LIABILITY UNDER THIS AGREEMENT AROSE, IF THE FIRST SUCH INCIDENT OCCURS ANY TIME AFTER THE FIRST ANNIVERSARY OF THE COMMENCEMENT DATE OR (II) IF THE FIRST SUCH INCIDENT OCCURS ANY TIME BEFORE THE FIRST ANNIVERSARY OF THE COMMENCEMENT DATE, THE TOTAL AMOUNT PAYABLE BY CUSTOMER UNDER THIS AGREEMENT FOR THE SECURITY SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTH PERIOD COMMENCING ON THE COMMENCEMENT DATE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER CLAUSE 4.
- 6.3. EXCEPT FOR THE CUSTOMER'S LIABILITY UNDER CLAUSE 3.2 (C)(iii), IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, BUSINESS, REPUTATION/GOODWILL, LOSS OF USE, LOSS OF OR CORRUPTION OF DATA, LOSS OF PRODUCTION, LOSS OF CONTRACT OR LOSS OF OPPORTUNITY (IN EACH CASE WHETHER DIRECT OR INDIRECT), OR FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL LOSS OR DAMAGE, FOR BUSINESS INTERRUPTION OR FOR PUNITIVE DAMAGES, IN EACH CASE WHETHER AN ACTION IS IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF SUCH PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING OR IF SUCH PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.
- 6.4. COVERTSWARM SHALL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PERFORM THE SECURITY SERVICES CAUSED BY THE CUSTOMER'S ACTS AND/OR OMISSIONS.

## **7. IPR Mutual Indemnity**

- 7.1. CovertSwarm will indemnify Customer from and against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the use of a Service in accordance with this Agreement infringes or misappropriates such third party's Intellectual Property Rights (a "Claim Against Customer"), and will indemnify Customer from any damages, legal fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer, provided Customer (a) promptly gives CovertSwarm written notice of the Claim Against Customer, (b) gives CovertSwarm sole control of the defence and settlement of the Claim Against Customer (except that CovertSwarm may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), (c) does not make any admissions or statements or settle or attempt to settle any Claim Against Customer without the prior written consent of CovertSwarm, and (d) give CovertSwarm all reasonable assistance, at CovertSwarm's expense, in connection with the defence and/or settlement of any Claim Against Customer. If CovertSwarm receives information about an infringement or misappropriation claim related to a Service (whether from Customer or any other person), CovertSwarm may at its discretion and at no cost to Customer (i) modify the Service so that it no longer infringes or misappropriates(ii) obtain a license for Customer's, the Authorised Affiliates' and the Users' continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's, the Authorised Affiliates' and the Users' subscriptions for that Service upon 30 (thirty) days' written notice and refund Customer any prepaid fees covering the remainder of the Initial Term or Renewal Term (as applicable) of the terminated subscriptions. The above defence and indemnification obligations do not apply to the extent a Claim Against Customer arises from Customer Content, Customer Applications, or Customer's breach of this Agreement.
- 7.2. Customer will indemnify, defend and hold harmless CovertSwarm and the CovertSwarm Related Parties from and against any claim, demand, suit or proceeding made or brought against CovertSwarm or a CovertSwarm Related Party by a third party alleging that Customer Content or Customer Applications, or Customer's Authorised Affiliates' or a User's use of any Service, Customer Content or Customer Applications infringes or misappropriates a third party's Intellectual Property Rights or violates applicable law (a "Claim Against CovertSwarm"), and will indemnify CovertSwarm and the CovertSwarm Related Parties from any damages, legal fees and costs finally awarded against CovertSwarm or a CovertSwarm Related Party as a result of, or for any amounts paid by CovertSwarm or a CovertSwarm Related Party under a court-approved settlement of, a Claim Against CovertSwarm, provided CovertSwarm (a) promptly gives Customer written notice of the Claim Against CovertSwarm, (b) gives Customer sole control of the defence and settlement of the Claim Against CovertSwarm (except that Customer may not settle any Claim Against CovertSwarm unless it unconditionally releases CovertSwarm and the CovertSwarm Related Parties of all liability), (c) does not make any admissions or statements or settle or attempt to settle any Claim Against CovertSwarm without the prior written consent of Customer, and (d) gives Customer all reasonable assistance, at Customer's expense, in connection with the defence and/or settlement of any Claim Against CovertSwarm.
- 7.3. This clause 7 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this clause 7.

## **8. Insurance**

CovertSwarm shall hold insurance cover with a respectable insurer to an appropriate value to cover the liability assumed by it under this Agreement. On request, but no more frequently than once in any 12-month period, CovertSwarm will provide the Customer with evidence of such insurances.

## **9. Confidentiality**

- 9.1 Each party undertakes that it shall keep any Confidential Information concerning the other party and its Affiliates confidential and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by clause 9.2.
- 9.2 A party may:
- (a) subject to clause 9.5, disclose any Confidential Information to any of its employees, officers, representatives or advisers (**Representatives**) who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that such party must ensure that each of its Representatives to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause 9 as if it were a party;
  - (b) disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction to be disclosed; and
  - (c) subject to clause 9.5, use Confidential Information only to perform any obligations under this Agreement.
- 9.3 Each party recognises that any breach or threatened breach of this clause 9 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the parties agree that the non-defaulting party may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 9.4 This clause 9 shall bind the parties during the Term.
- 9.5 To the extent any Confidential Information is Personal Data, such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with the provisions of the Data Processing Agreement.

## 10. Data Protection

Where, in connection with this Agreement, CovertSwarm processes Customer Personal Data on behalf of the Customer, the provisions of the Data Processing Agreement (located at [www.covertswarm.com/legal-documents](http://www.covertswarm.com/legal-documents)) shall apply to both parties.

## 11. Anti-bribery and corruption

- 11.1. For the purposes of this clause 11, the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and guidance published under it.
- 11.2. Each party shall ensure that it and each person referred to in clauses 11.2 (i) to 11.2 (iii) (inclusive) do not, by any act or omission, place the other party in breach of any Bribery Laws. Each party shall comply with all applicable Bribery Laws, ensure that it has in place adequate procedures to prevent any breach of this clause 11 and ensure that:
- (i) all of its personnel;
  - (ii) all others associated with it; and
  - (iii) each person employed by or acting for or on behalf of any of those persons referred to in clauses 11.2 (i) and/or (ii),

involved in performance of obligations under this Agreement so comply.

11.3. Without limitation to clause 11.2, neither party shall in connection with the performance of this Agreement make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

11.4. Each party shall immediately notify the other party as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 11.

## **12. Notices**

12.1. To request termination of the Security Services in accordance with this Agreement, Customer must submit a termination request to CovertSwarm at the address specified in the respective Sales Order, or by email to sales@covertswarm.com.

## **13. Force Majeure**

13.1. Notwithstanding any other provision of this Agreement, neither party shall be liable to the other if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by a Force Majeure Event.

13.2. As soon as reasonably practicable after becoming aware of a Force Majeure Event the party affected by the Force Majeure Event shall notify the other person, providing reasonable details of the Force Majeure Event, its impact on its obligations under this Agreement and its anticipated duration.

13.3. The terms of clauses 13.1 and 13.2 shall not apply in respect of any failure by Customer to pay any Fees or other charges when due under this Agreement.

## **14. Non-solicitation**

14.1. The Customer will not, without CovertSwarm's prior written consent, directly or indirectly through an appointed agent solicit or offer employment or any engagement to any member of staff of CovertSwarm who was in the employment of CovertSwarm in connection with the provision of the Security Services, other than by means of an advertising campaign open to all-comers and not specifically targeted at such employees or consultants of the other party ("**Prohibited Conduct**"). In the event of a breach of this clause 14.1 the Customer will pay CovertSwarm liquidated damages equivalent to 100% of the then annual gross salary of the employee concerned. The parties agree that this is a genuine pre-estimate of CovertSwarm's loss. The Prohibited Conduct shall not be engaged in for Term and for a period of twelve months after termination (howsoever caused) or expiry of the Agreement.

## **15. General**

15.1. This Agreement (and any documents referred to in it) contain the whole agreement between the parties relating to the subject matter thereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or

- not) (“**Representation**”) other than as expressly set out in this Agreement. Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract. Nothing in this clause 15.1 shall limit or exclude any liability for fraud.
- 15.2. CovertSwarm may novate, transfer or assign all or any of its rights and/or obligations under this Agreement to any Affiliate or to any person merging with or acquiring the whole or a substantial part of CovertSwarm’s business, and will provide notice to Customer of the same. CovertSwarm may subcontract the performance of its obligations under this Agreement provided that it shall remain primarily liable for performance of its obligations under this Agreement. Except as provided in this clause 15.2, neither party may transfer, novate or assign this Agreement or any of its rights or obligations under this Agreement to a third party without the prior written consent of other party.
- 15.3. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party, the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind the other party in any way.
- 15.4. No variation of this Agreement shall be valid unless it is set out in the Sales Order.
- 15.5. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 15.6. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.
- 16.7. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.7. This Agreement may be executed in any number of counterparts, each of which when executed shall be an original and together shall constitute one and the same instrument.
- 15.8. This Agreement shall be governed by and constructed in accordance with the laws of England and Wales and all disputes arising under this Agreement shall be subject to the exclusive jurisdiction of the English courts.
- 16.11. The Customer shall pay all sums that it owes to CovertSwarm under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 16.12. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

## **SCHEDULE 1 – SAAS SERVICE TERMS**

### **1. SaaS Service Fees**

1.1 The Fees for the use of the SaaS Services shall be stated on the Sales Order.

### **2. Rights of use**

2.1 Upon acceptance of the Sales Order and subject to the terms of this Agreement, CovertSwarm grants the Customer a non-exclusive, non-transferable right to: (i) use the SaaS Service during Service Hours; and (ii) copy and use the Documentation as strictly necessary for its use by Authorised Users of the SaaS Service, within the relevant Territory during the Subscription Period for the Permitted Purpose.

2.2 The Customer acknowledges that use of the SaaS Service is always subject to the Customer's compliance with this Agreement and the requirements identified in this Agreement.

2.3 The Customer acknowledges that the SaaS Service does not include:

2.3.1 any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the SaaS Service);

2.3.2 dedicated data back up or disaster recovery facilities (and the Customer should ensure it always exports Customer Data as required); or

2.3.3 legal, accounting or other professional or regulated services and that, except as expressly stated in this Agreement, no assurance is given that the SaaS Service will comply with or satisfy any legal or regulatory obligation of any person.

### **3. Authorised Users**

3.1 The Customer shall ensure that only Authorised Users use the SaaS Service and that such use is always in accordance with this Agreement. The Customer shall ensure that Authorised Users are, at all times while they have access to the SaaS Service, the employees or contractors of the Customer or the Authorised Affiliates.

3.2 The Customer shall ensure that the number of Authorised Users for the SaaS Service does not exceed the number of Purchased Authorised Users Accounts. The Customer is entitled to remove one individual as an Authorised User and replace them with another individual in accordance with the terms of this Agreement, but Authorised User accounts cannot be shared or used by more than one individual at the same time.

3.3 Without prejudice to any other right or remedy of CovertSwarm, in the event the Customer is in breach of paragraph 3.2 then:

3.3.1 the warranties in paragraph 5.1 shall cease to apply for the duration of the period during which the Customer is in breach of paragraph 3.2; and

3.3.2 the Customer shall be liable to pay for the number of Authorised Users above the number of Purchased Authorised Users Accounts for the SaaS Service for the relevant period during which infringement occurred in accordance with CovertSwarm's Standard Pricing Terms.

- 3.4 The Customer shall:
- 3.4.1 be liable for the acts and omissions of the Authorised Users and the Authorised Affiliates as if they were its own;
  - 3.4.2 procure that each Authorised User (and each Authorised Affiliate) shall keep confidential and not share with any third party their password or access details for the SaaS Services; and
  - 3.4.3 (and shall ensure all Authorised Affiliates and Authorised Users shall) always comply with the Policies and all other provisions of this Agreement.
- 3.5 If any password has been provided to an individual that is not an Authorised User, the Customer shall, without delay, disable any such passwords and affected user accounts in the platform and notify CovertSwarm immediately.
- 3.6 The Customer shall comply (and shall ensure all Authorised Affiliates and Authorised Users comply) with all applicable laws, rules, and regulations governing export that apply to the SaaS Service, the Customer Data and the Documentation (or any part), and shall not export or re-export, directly or indirectly, separately or as a part of a system, the SaaS Service, the Customer Data or the Documentation (or any part) to, or access or use the SaaS Service, the Customer Data or the Documentation (or any part) in, any country or territory for which an export licence or other approval is required under the laws of the United Kingdom, without first obtaining such licence or other approval.

#### **4. Service Levels and Support**

- 4.1 CovertSwarm shall use all commercially reasonable endeavours to achieve uptime in respect of access to the SaaS Service of not less than 99.5% during each month (“**Uptime**”). CovertSwarm shall not be liable for failure to meet the Uptime if such failure is caused as a result of difficulties with the Customer’s own systems, the Customer’s connection to the internet or any other system or link outside the direct control of CovertSwarm.
- 4.2 For the purposes of calculating availability, the Uptime shall not include any period of Permitted Downtime.
- 4.3 The SaaS Support Services shall be available for the SaaS Service to the Customer for the duration of the respective Subscription Period.
- 4.4 CovertSwarm shall use reasonable endeavours to notify the Customer in advance of scheduled maintenance but the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure Event or for other emergency maintenance.

#### **5. Warranties**

- 5.1 Subject to the remainder of this paragraph 5, CovertSwarm warrants that:
- 5.1.1 the SaaS Service shall operate materially in accordance with its description when used in accordance with this Agreement under normal use and normal circumstances during the relevant Subscription Period; and
  - 5.1.2 it shall provide the SaaS Services with reasonable care and skill.



- 5.2 The Customer acknowledges that paragraph 5.1 does not apply to Free or Trial Services or to the SaaS Support Services provided in connection with the same. Without prejudice to CovertSwarm's obligations under this Agreement in respect of Customer Personal Data, Free or Trial Services and the SaaS Support Services provided in connection with the same are provided 'as is' and without warranty to the maximum extent permitted by law.
- 5.3 The SaaS Service may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that CovertSwarm shall have no liability for any such delays, interruptions, errors or other problems.
- 5.4 If there is a breach of any warranty in paragraph 5.1 CovertSwarm shall at its option: use reasonable endeavours to repair or replace the impacted SaaS Service within a reasonable time or (whether or not it has first attempted to repair or replace the impacted SaaS Service) refund the Fees for the impacted SaaS Service which were otherwise payable for the period during which CovertSwarm was in breach of any such warranty (provided such period is at least 30 consecutive days). To the maximum extent permitted by law, this paragraph 5.4 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in paragraph 5.1.
- 5.5 The warranties in paragraph 5.1 are subject to the limitations set out in clause 6 of this Agreement and shall not apply to the extent that any error in the SaaS Service arises as a result of:
- 5.5.1 incorrect operation or use of the SaaS Service by the Customer, any Authorised Affiliate or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications);
  - 5.5.2 use of any of the SaaS Service other than for the purposes for which it is intended;
  - 5.5.3 use of the SaaS Service with other software or services or on equipment with which it is incompatible;
  - 5.5.4 any act by any third party (including hacking or the introduction of any virus or malicious code);
  - 5.5.5 any modification of the SaaS Service (other than that undertaken by CovertSwarm or at its direction); or
  - 5.5.6 any breach of this Agreement by the Customer (or by any Authorised Affiliate or Authorised User).
- 5.6 CovertSwarm may make Non-Supplier Materials available for the Customer's use in connection with the SaaS Service. The Customer agrees that:
- 5.6.1 CovertSwarm has no responsibility for the use or consequences of use of any Non-Supplier Materials;
  - 5.6.2 the Customer's use of any Non-Supplier Materials shall be governed by the applicable terms between the Customer and the owner or licensor of the relevant Non-Supplier Materials;

- 5.6.3 the Customer is solely responsible for any Non-Supplier Materials used in connection with the SaaS Service and for compliance with all applicable third-party terms which may govern the use of such Non-Supplier Materials; and
- 5.6.4 the continued availability, compatibility with the SaaS Service and performance of the Non-Supplier Materials is outside the control of CovertSwarm and CovertSwarm has no responsibility for any unavailability of or degradation in the SaaS Service to the extent resulting from the availability, incompatibility or performance of any of the Non-Supplier Materials;
- 5.7 The Customer acknowledges that no liability or obligation is accepted by CovertSwarm (howsoever arising whether under contract, tort, in negligence or otherwise):
  - 5.7.1 that the SaaS Service shall meet the Customer's individual needs, whether or not such needs have been communicated to CovertSwarm;
  - 5.7.2 that the operation of the SaaS Service shall not be subject to minor errors or defects; or
  - 5.7.3 that the SaaS Service shall be compatible with any other software or service or with any hardware or equipment except to the extent expressly referred to as compatible by CovertSwarm.
- 5.8 Other than as set out in this paragraph 5, and subject to clause 6 of this Agreement, all warranties, conditions, terms, undertakings or obligations whether express or implied by statute, common law or otherwise and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the extent permitted by law.

## **6. Intellectual property**

- 6.1 All Intellectual Property Rights in and to the SaaS Service (including in all Applications, Documentation and all CovertSwarm Materials) belong to and shall remain vested in CovertSwarm or the relevant third-party owner. To the extent that the Customer, any of its Affiliates or any person acting on its or their behalf acquires any Intellectual Property Rights in the Applications, Documentation, CovertSwarm Materials or any other part of the SaaS Services, the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to CovertSwarm or such third party as CovertSwarm may elect. The Customer shall execute all such documents and do such things as CovertSwarm may consider necessary to give effect to this paragraph 6.1.
- 6.2 The Customer and Authorised Users may be able to store or transmit Customer Data using the SaaS Service and the SaaS Service may interact with Customer Systems. The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for CovertSwarm (and each of its direct and indirect sub-contractors) to use, copy and otherwise utilise the Customer Data and Customer Systems to the extent necessary to perform or provide the SaaS Service or to exercise or perform CovertSwarm's rights, remedies and obligations under this Agreement.
- 6.3 To the extent Non-Supplier Materials are made available to, or used by or on behalf of the Customer, any Authorised Affiliate or any Authorised User in connection with the use or provision of any SaaS Service, such use of Non-Supplier Materials (including all licence terms) shall be exclusively governed by applicable third-party terms notified or made available by CovertSwarm or the third party and not by this Agreement. CovertSwarm grants no Intellectual Property Rights or other rights in connection with any Non-Supplier Materials.

- 6.4 CovertSwarm may use any feedback and suggestions for improvement relating to the SaaS Service provided by the Customer, the Authorised Affiliates or any Authorised User without charge or limitation (**Feedback**). The Customer hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to CovertSwarm at the time such Feedback is first provided to CovertSwarm.
- 6.5 The Customer hereby waives (and shall ensure all relevant third parties have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to CovertSwarm under this Agreement.
- 6.6 Except for the rights expressly granted in this Agreement, the Customer, any Authorised User, any Customer Affiliate and their direct and indirect sub-contractors, shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the SaaS Service (or any part including the Applications or Documentation) and no Intellectual Property Rights of either party are transferred or licensed as a result of the Agreement.
- 7. Defence against infringement claims**
- 7.1 Subject to paragraphs 7.2 and 7.5, CovertSwarm shall:
- 7.1.1 defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the SaaS Service infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom (an **IP Claim**); and
- 7.1.2 pay, subject to paragraph 7.3, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.
- 7.2 The provisions of paragraph 7.1 shall not apply unless the Customer:
- 7.2.1 promptly (and in any event within five Business Days) notifies CovertSwarm upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
- 7.2.2 makes no comment or admission and takes no action that may adversely affect CovertSwarm's ability to defend or settle the IP Claim;
- 7.2.3 provides all assistance reasonably required by CovertSwarm subject to CovertSwarm paying the Customer's reasonable costs; and
- 7.2.4 gives CovertSwarm sole authority to defend or settle the IP Claim as CovertSwarm considers appropriate.
- 7.3 The provisions of clause 6 of this Agreement shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under paragraph 7.1.
- 7.4 In the event of any IP Claim, CovertSwarm may elect to terminate this Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Fees paid in advance. This paragraph 7.4 is without prejudice to the Customer's rights and remedies under paragraph 7.1.

- 7.5 CovertSwarm shall have no liability or obligation under this paragraph 7 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:
- 7.5.1 any modification of the SaaS Service (or any part) without CovertSwarm's express written approval;
  - 7.5.2 any Non-Supplier Materials;
  - 7.5.3 any Customer Data;
  - 7.5.4 any Free or Trial Services (or the SaaS Support Services provided in connection with them);
  - 7.5.5 any Open Source Software;
  - 7.5.6 any breach of this Agreement by the Customer;
  - 7.5.7 installation or use of the SaaS Service (or any part) otherwise than in accordance with this Agreement and the User Manual; or
  - 7.5.8 installation or use of the SaaS Service (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by CovertSwarm.
- 7.6 Subject to clause 6 of this Agreement, the provisions of this paragraph 7 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

## **8. Customer Systems and Customer Data**

- 8.1 Customer Data shall always remain the property of the Customer or its licensors.
- 8.2 Except to the extent CovertSwarm has direct obligations under the Data Protection Legislation, the Customer acknowledges that CovertSwarm has no control over any Customer Data hosted as part of the provision of the SaaS Service and may not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Service) complies with all applicable laws and Intellectual Property Rights.
- 8.3 If CovertSwarm becomes aware of any allegation that any Customer Data may not comply with the Policies or any other part of this Agreement CovertSwarm shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing from the SaaS Service and/or disclose Customer Data to law enforcement authorities (in each case without the need to consult the Customer). Where reasonably practicable and lawful CovertSwarm shall notify the Customer before taking such action.
- 8.4 Except as otherwise expressly agreed in this Agreement, CovertSwarm shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any data whether during or after the Subscription Period. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's and Authorised Affiliates' businesses. The Customer shall, without limitation, ensure that it backs up (or procures the back up of) all Customer Data regularly (in accordance with its, its Authorised Affiliates and its Authorised User's needs) and extracts it from the

SaaS Service prior to the termination or expiry of this Agreement or the cessation or suspension of the SaaS Service.

- 8.5 CovertSwarm routinely undertakes regular backups of the SaaS Service (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make CovertSwarm responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by applicable law, CovertSwarm shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.
- 8.6 Unless otherwise agreed by the parties in writing, the Customer hereby instructs that CovertSwarm shall within 60 days of the earlier of the end of the provision of the SaaS Service (or any part) relating to the processing of the Customer Data securely dispose of such Customer Data processed in relation to the SaaS Service (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws of the United Kingdom (or a part of the United Kingdom) requires CovertSwarm to store such Customer Data. CovertSwarm shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with this Agreement.

## **9. Confidentiality and security of Customer Data**

- 9.1 CovertSwarm shall maintain the confidentiality of the Customer Data and shall not without the prior written consent of the Customer or in accordance with this Agreement, disclose or copy the Customer Data other than as necessary for the performance of the SaaS Service or its express rights and obligations under this Agreement.
- 9.2 CovertSwarm shall implement technical and organisational security measures in accordance with good industry practice.
- 9.3 CovertSwarm:
- 9.3.1 undertakes to disclose the Customer Data only to those of its officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement or as otherwise reasonably necessary for the provision or receipt of the SaaS Service, and
- 9.3.2 shall be responsible to the Customer for any acts or omissions of any of the persons referred to in paragraph 9.3.1 in respect of the confidentiality and security of the Customer Data as if they were CovertSwarm's own.
- 9.4 The provisions of this paragraph 9 shall not apply to information which:
- 9.4.1 is or comes into the public domain through no fault of CovertSwarm, its officers, employees, agents or contractors;
- 9.4.2 is lawfully received by CovertSwarm from a third party free of any obligation of confidence at the time of its disclosure;
- 9.4.3 is independently developed by CovertSwarm (or any person acting on its or their behalf), without access to or use of such Confidential Information; or

9.4.4 is required by law, by court or governmental or regulatory order to be disclosed,  
provided that paragraphs 9.4.1 to 9.4.3 (inclusive) shall not apply to Customer Personal Data.

9.5 This paragraph 9 shall survive the termination or expiry of this Agreement for a period of five years.

9.6 CovertSwarm shall ensure that Customer Personal Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of CovertSwarm's obligations under the Data Processing Agreement. Paragraphs 9.1 to 9.5 (inclusive) are subject to this paragraph 9.6.