

## CLOUD SERVICES AGREEMENT

This Cloud Services Agreement (the “Agreement”) is an agreement between the Company (as defined below, or “We,” “Us,” “Our”) and you, whether individually or on behalf of an entity, as applicable and identified in the Grant Letter (“Customer,” “You,” “Your,” or “Yourself”). Company and Customer may each be referred to in this Agreement as a “Party” or together as the “Parties.”

By accessing or using the Cloud Services, You agree to this Agreement on behalf of You and Users and You represent and warrant that You have full authority to bind You and Users to this Agreement. If You do not agree to this Agreement, You may not access or use the Cloud Services, and You must immediately notify Us to cancel the Cloud Services identified in the Grant Letter without accessing or using the Cloud Services. In the event You purchase from an Authorized Partner, the terms of this Agreement apply to Your use of the Cloud Services and prevail over any inconsistent provisions in Your agreement with such Authorized Partner.

If You are accepting this Agreement on behalf of another person or other legal entity, You represent and warrant that You have full authority to bind that person or legal entity to this Agreement. If You have not paid for a subscription to the Cloud Services, such services are deemed an *Evaluation Product* under Section 12.

Capitalized terms used in this Agreement have the meaning assigned to them in Section 15 or elsewhere in this Agreement.

### 1. RIGHT OF USE AND RESTRICTIONS

- 1.1 **Right to Access and Use.** Subject to the terms of this Agreement, We grant You a limited, revocable, nonexclusive, nontransferable, non-assignable, non-sublicensable worldwide right to access and use the Cloud Services described in the Grant Letter during the applicable Subscription Period solely for Your internal business purposes in accordance with the Agreement and the entitlements set out in the Grant Letter(s). Use of the Cloud Services depend on the types of subscriptions purchased (e.g., Users) and are subject to the Product Entitlement definitions on the applicable date of Your Grant Letter. You must have an active subscription to the Cloud Services in order to continue to receive access to the Cloud Services. User-based subscriptions may not be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users that have been terminated or otherwise no longer use the Cloud Services.
- 1.2 **Affiliates.** You may permit Affiliates to use the Cloud Services in accordance with this Agreement, provided that You are responsible and fully liable for each Affiliate’s compliance with this Agreement.
- 1.3 **Access Software.** If We provide Software to You to access the Cloud Services, You must access the Cloud Services with that Software. Such Software is provided to You subject to the EULA, which applies with respect to any Software. Such Software may include, without limitation, APIs, cloud connectors, key agents, integrators, and extensions that may be used to access or integrate with the Cloud Services. Any conflict or inconsistency between the EULA and this Agreement will be resolved in favor of the EULA if it relates to Software, and this Agreement as it relates to Cloud Services or other matters.
- 1.4 **Developer Portal APIs Provided as a Service.** You may use any APIs and instructions that We may make available through Our developer portal in accordance with this Agreement for integration of Our Cloud Services with non-Company applications for Your internal, non-commercial, non-production network environment use only, except as otherwise mutually agreed in writing. We have no responsibility, and You are wholly responsible for any API integration by You with non-Company applications or for any third parties processing of data sent via API at Your direction. APIs ARE PROVIDED "AS IS" WITH NO WARRANTY WHATSOEVER,

EXPRESS, OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

1.5 **Managing Parties.** If You enter into a contract for a third-party to manage Your information technology resources (“Managing Party”), You may authorize the Managing Party to use the Cloud Services on Your behalf, provided that:

- (a) the Managing Party only uses the Cloud Services for Your internal business operations;
- (b) the Managing Party agrees in writing to be bound by this Agreement;
- (c) You provide Us with written notice that a Managing Party will be using the Cloud Services on Your behalf; and
- (d) You remain responsible for all use of the Cloud Services by the Managing Party.

1.6 **Restrictions.** You will not, and will not allow Users or any third parties to:

- (a) license, sublicense, access, use, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Cloud Services available to any third-party;
- (b) modify, decompile, reverse engineer, or copy the Cloud Services, or any of their components;
- (c) access or use the Cloud Services to build or support any products or services competitive with the Cloud Services;
- (d) use the Cloud Services to conduct fraudulent activities;
- (e) attempt to gain unauthorized access to the Cloud Services, engage in any denial-of-service attacks, or otherwise cause immediate, material, or ongoing harm to Us, the provision of the Cloud Services, or to others;
- (f) impersonate or misrepresent an affiliation with a person or entity;
- (g) access or use the Cloud Services for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without Our express written permission;
- (h) falsely identify Yourself or provide any false information to establish any account that will be used to gain access to and/or use of any Company Products;
- (i) use the Cloud Services to initiate or propagate Malware;
- (j) use the Cloud Services as an HTTP server that allows third-party relay or proxy of web traffic; or
- (k) use the Cloud Services in a manner that violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement.

Each of (a) to (k) is a “Prohibited Use”. A Prohibited Use is a material breach of this Agreement, as determined in Our sole discretion.

1.7 **Right to Use Customer Data.**

- (a) You grant Us a non-exclusive, royalty-free right and license to access and use the Customer Data as necessary during the Subscription Period:
  - (i) for Us to provide the Cloud Services and Support to You during the Subscription Period; and
  - (ii) for administering this Agreement, including assuring that the right number of subscriptions and/or User accounts have been issued.

## 2. YOUR OBLIGATIONS

- 2.1 **Access.** You are responsible for all activity occurring under Your Cloud Services and Support accounts. You will provide Us with all information and assistance required to supply the Cloud Services or enable Your use of the Cloud Services. You will immediately notify Us of any unauthorized account use or other suspected security breach, or unauthorized use, copying or distribution of Cloud Services, Documentation or Customer Data.
- 2.2 **System Administrator.** As needed, You will provide Us contact information for Your system administrator, who is authorized to provide the information required to configure and manage the Cloud Services (“System Administrator”). Depending on the Cloud Services purchased, We may provide You with a confidential access code to the administration tool, which may only be accessed by the System Administrator.
- 2.3 **Updated Information.** You must provide current and complete Users’ information as necessary for Us to manage Your account.

## 3. TECHNICAL SUPPORT SERVICE

We will provide Support to You in accordance with the applicable Service Schedule. The Support and/or any Support terms may be updated from time to time; however, provided that the updates do not materially reduce the level of performance, functionality, or availability of the Support during the Subscription Period.

## 4. PRIVACY AND USE OF DATA

- 4.1 Each Party must comply with applicable laws governing the collection, use and disclosure of Personal Data and must obtain consents required with respect to the handling of Personal Data. Unless a separate written agreement has been executed between the Parties, Your use of the Cloud Services shall be deemed to be Your agreement to the Data Processing Agreement (“DPA”) as set out in full on Our website, available at: [https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity\\_Customer\\_Data\\_Processing\\_Agreement.pdf](https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity_Customer_Data_Processing_Agreement.pdf). In the event of any conflict between the terms of the DPA and the Agreement, the terms of the DPA will take precedence.
- 4.2 You grant Us a non-exclusive, irrevocable, worldwide, perpetual right and license to use, reproduce and disclose Threat Data and deidentified material for improvement of products and services; research to enhance understanding of Malware, threats, and vulnerabilities; and to improve overall security. This includes without limitation compiling statistical and performance information and making such information publicly available. We retain all rights in Threat Data and aggregated and anonymized data.
- 4.3 You agree that Company Products, Services, Software, hardware, appliances, or Support may employ applications and tools to collect Customer Data. You agree that such collection of Customer Data may be necessary to provide You and End Users with the relevant functionalities. You may be required to uninstall, disable, or cease use of the above to stop further Customer Data collection, including under the circumstances described in Section 5 below. Your use of Company Products and Services is further subject to our Company Privacy Notice.
- 4.4 You represent and warrant that You:
  - (a) have the legal rights and applicable consents to provide Customer Data to Us;
  - (b) have provided any required notices and have obtained any consents and/or authorizations (including any required from Users) related to Your use of any Company Products and Our processing of Customer Data (including any Personal Data); and
  - (c) will comply with all applicable laws, rules, and regulations for collecting, processing, and transferring Customer Data to Us.

- 4.5 You have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. The Cloud Services rely on Customer Data supplied by You, and We are not liable for the content of Customer Data. Except as required under applicable law, We do not assume any duty or obligation to correct or modify Customer Data. Except as provided in this Agreement, You retain all right, title, and interest in and to Customer Data.
- 4.6 Without prejudice to Sections 4.1 to 4.5 above, You are responsible and liable for: (a) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer Data, including any Malware contained in the Customer Data; and (b) You and Users' use of any Company Product in a manner that is inconsistent with this Agreement.
- 4.7 To the extent You disclose or transmit Customer Data to a third-party, We are no longer responsible for the security, integrity, or confidentiality of such content outside of Our control.

## 5. TERM; TERMINATION; SUBSCRIPTION PERIODS

- 5.1 **Term.** This Agreement will continue until terminated in accordance with this Agreement. If any Subscription is in effect when the Term of this Agreement terminates or expires, this Agreement will remain in effect solely for the purposes of the Subscription until the Subscription expires or terminates.
- 5.2 **Termination for Cause.** Either Party may terminate this Agreement immediately for cause if:
- (a) the other Party breaches this Agreement and has failed to remedy a remediable breach within thirty (30) days of receipt of a notice from the first Party specifying the breach and requiring it to be remedied, or if the breach is incapable of remedy;
  - (b) the other Party or its property is subject to insolvency or receivership procedures;
  - (c) the other Party becomes insolvent or unable to pay its debts as they mature;
  - (d) the other Party makes an assignment for the benefit of creditors; or
  - (e) the other Party becomes the subject of any other proceeding under any bankruptcy, insolvency, or debtor's relief law.
- 5.3 **End-of-Life.** Your right to access and use the Cloud Services, and any features of the Cloud Services, are subject to the End-of-Life Policy located at: [https://www.skyhighsecurity.com/wp-content/public/legal/EOL\\_Policy-Skyhigh%20Security.pdf](https://www.skyhighsecurity.com/wp-content/public/legal/EOL_Policy-Skyhigh%20Security.pdf). Upon the End-of-Life date of a Cloud Service or any feature of a Cloud Service (as described in the End-of-Life Policy), Your right to access and use the applicable Cloud Service or feature will terminate.
- 5.4 **Suspension or Termination of Cloud Service by the Company.** Notwithstanding any provision to the contrary contained herein, We may suspend or terminate the Cloud Services:
- 5.4.1 immediately if We consider it necessary to prevent or terminate any actual or suspected Prohibited Use; or
  - 5.4.2 upon notice to You if:
    - 5.4.2.1 You commit a material breach of this Agreement;
    - 5.4.2.2 We receive notice from an Authorized Partner that You are in material breach of the Agreement (including Your Agreement with the Authorized Partner);
    - 5.4.2.3 We reasonably determine that the volume of data being transmitted or processed through the Cloud Services under Your account is significantly greater than the average use or may cause degradation of the Cloud Services for You or other customers; or
    - 5.4.2.4 there is a threat to the security and integrity of the hosted environment or Customer Data.

Suspension or Termination of Cloud Services by Us will be without prejudice to any rights or liabilities accruing before or during the suspension, including Your obligation to pay fees.

- 5.5 **Termination Obligations.** After termination of a Subscription Period for a particular Cloud Service, You agree that We have no obligation to retain Customer Data for that Cloud Service, which may be permanently deleted as part of Our record and information management practices and in accordance with applicable laws. If any Customer Data is stored by the Cloud Service, You are solely responsible for retrieving that Customer Data.

## 6. PAYMENTS; TAXES; COMPLIANCE VALIDATION

- 6.1 **Payments.** Unless You are purchasing the Cloud Services through an Authorized Partner, in which case payment obligations will be exclusively between the Authorized Partner and You, You will pay Us the fees for the Company Products within thirty (30) days of the invoice date without any deduction, setoff, or withholding, and except as otherwise specified by Us or Our Authorized Partners in writing, all fees are quoted and payable in United States dollars. Late payments are subject to interest of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is lower. All payment obligations are non-cancelable, and all fees are non-refundable except to the extent expressly provided for in this Agreement. Any ongoing or recurring fees or rates by reference to which such fees are calculated may be increased on an annual basis upon at least 30 days' written notice before any periodic renewal of the Cloud Services. If You believe in good faith that an invoice is incorrect, You must contact Us in writing within thirty (30) days of the date of invoice to request an adjustment or credit. Notwithstanding the foregoing, if You fail to notify us of any disputed amounts and/or otherwise fail to satisfy any undisputed payments within thirty (30) days of the due date, then We may, without any prior notice, suspend and/or revoke the rights granted herein and stop providing the Cloud Services to You and Users.
- 6.2 **Transaction Taxes.** If You purchase the Cloud Services directly from Us for use or resale, You will pay all applicable transaction taxes, including sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by You under this Agreement ("Transaction Taxes"). We will separately state on an invoice the Transaction Taxes that We are required to collect from You under applicable law. You will provide proof of any exemption from Transaction Taxes to Us at least fifteen (15) Business Days before the due date for paying an invoice. If We do not collect the required Transaction Taxes from You but we are subsequently required to remit the Transaction Taxes to any taxing authority, You will promptly reimburse Us for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to Our fault.
- 6.3 **Withholding Taxes.** All payments due from You will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority. If You are required by applicable law to deduct or withhold income taxes from amounts payable to Us under this Agreement ("Withholding Taxes"), You will remit, and provide Us with evidence that You have remitted, the Withholding Taxes to the appropriate taxing authority and pay to Us the remaining net amount. You will provide written notice to Us of the intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days before the due date for any payments under this Agreement and will cooperate with Us to reduce any Withholding Taxes. If We provide You with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then You will apply the lower rate.
- 6.4 If You purchase the Cloud Services through an Authorized Partner, the obligations regarding Transaction Taxes or Withholding Taxes will be the exclusive responsibility of the Authorized Partner or You, and the rules in Section 6.2 and 6.3 do not apply as between the Parties.

- 6.5 **Income Taxes.** Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
- 6.6 **Compliance Validation.** We may request, and You must provide within thirty (30) days from the request date, a system-generated report verifying Your access to and use of the Cloud Services (“System Report”). You acknowledge that the System Report is based on technological features in the Cloud Services to verify access and use verification (including User counts). If the Cloud Services do not contain technological features that provide system-generated use verification, You will take reasonable steps to maintain complete and accurate records of Your use of the Cloud Services sufficient to verify compliance with this Agreement, and within thirty (30) days of Our request, You will provide to Us an accurate Cloud Services access and use verification report for the Cloud Services. We will only request the System Report (or Your prepared Cloud Services access and use verification report) once per year (or earlier if there is a good faith belief by Us that there may be noncompliance) and will not unreasonably interfere with the conduct of Your business. If a System Report or Your prepared Cloud Services access and use verification report identifies that You are out of compliance with this Agreement, You will be required to purchase the additional subscriptions and pay the reasonable costs of the audit and any fees associated with the subscriptions and/or Support. We may also charge an out-of-compliance fee.

## 7. CONFIDENTIALITY

- 7.1 Each Party acknowledges that it may have access to Confidential Information of the other Party in connection with this Agreement, and that each party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third parties or used in violation of this Agreement.
- 7.2 **Confidential Information** as used in this Agreement means any information (regardless of the form of disclosure or the medium used to store or represent it) of a Party (“**Disclosing Party**”), including trade secrets and technical, financial, or business information, data, ideas, concepts, or know-how, that:
- (a) is designated as “confidential” or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or
  - (b) the receiving party (“**Recipient**”) should reasonably have considered to be confidential under the circumstances surrounding disclosure.

However, Confidential Information does not include any information that:

- (a) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
  - (b) is received from a third-party without restrictions on its use or disclosure and not by inadvertence or mistake;
  - (c) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or
  - (d) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.
- 7.3 Each Recipient of Confidential Information under this Agreement must:
- (a) keep the Disclosing Party's Confidential Information confidential and protect it at least to the same extent it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information;
  - (b) not use the Disclosing Party's Confidential Information in any way for its own account or

the account of any third party except to perform its duties, exercise its rights or is otherwise authorized under this Agreement; and

- (c) not disclose the Disclosing Party's Confidential Information except to perform its duties or exercise its rights under this Agreement or as otherwise authorized under this Agreement, provided that:
  - (i) any disclosure made to the Recipient's employees, contractors or agents is on a need-to-know basis; and
  - (ii) the Recipient's employees, contractors, or agents in receipt of the Confidential Information are under an obligation of confidentiality no less stringent than that set forth in this section.

7.4 Notwithstanding the restrictions in Section 7.2, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any court, arbitral, administrative, or legislative body, the Recipient must:

- (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
- (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
- (c) assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.

7.5 You will immediately notify Us if Confidential Information is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threaten to violate the terms of this section, We are immediately entitled to enforce Our rights by specific performance or injunction proceedings, in addition to any other rights or remedies it may have.

7.6 Upon the Disclosing Party's request and upon termination of this Agreement (unless agreed otherwise by the Parties at the time), each Party will return, destroy, or delete permanently (at the Disclosing Party's election) the other Party's Confidential Information.

7.7 On termination of this Agreement, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for five (5) years in accordance with this section.

7.8 **Feedback.** We welcome any comments, suggestions for improvements, and feedback regarding the Cloud Services and other products and services of Us and our Affiliates ("Feedback"). You hereby agree that We own all right, title, and interest in and to the Feedback, including any and all associated Intellectual Property Rights, and that We may use, copy, modify, create Derivative Works based upon, and otherwise exploit the Feedback for any purpose, without notice or attribution to, payment to or consent from You, and You acknowledge that such Feedback will be the Confidential Information of Us, and not You.

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 **Ownership.** Our Company Products, Documentation and the software underlying the Cloud Services are considered Confidential Information. We (or Our licensors) own exclusively and reserve all right, title and interest in and to Company Products, Documentation and the software underlying the Cloud Services, including all related Intellectual Property Rights as well as any Derivative Works. You agree, on behalf of Yourself and any Affiliates, that You and Your Affiliates will take no action inconsistent with Our Intellectual Property Rights.

8.2 **Reserved Rights.** You may not exercise any right, title, and interest in and to any Company Products, Documentation, the software underlying the Cloud Services or any related Intellectual Property Rights, except for the limited access and usage rights granted to You in this Agreement.

This Agreement is not an agreement of sale, and this Agreement does not transfer any title, Intellectual Property Rights or ownership rights to any Company Products, Documentation, or the software underlying the Cloud Services. You acknowledge and agree that the Company Products, Documentation, and the software underlying the Cloud Services, and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the foregoing, and all other improvements, revisions, corrections, modifications, enhancements, releases, detection definition files (or DATs, also referred to as signature files, being the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, content, and other updates in, of, or to the Cloud Services or the software underlying the Cloud Services, all Derivative Works based on any of the foregoing, and all copies of the foregoing are trade secrets and reserved to and proprietary property of Us, having great commercial value to Us.

## 9. WARRANTIES; EXCLUSIONS; DISCLAIMERS

- 9.1 **Warranty.** We warrant that during the Subscription Period, the Cloud Services will perform substantially in accordance with the associated Documentation. Your sole and exclusive remedy for a breach of the foregoing warranty is, at Our option, the repair or replacement of the Cloud Service, or for Us to cause a refund in the form of a credit on a pro-rata basis for the period in which the Cloud Service did not materially comply. This warranty is conditioned upon You providing Us prompt written notice of the Cloud Services' non-conformance and using the Cloud Service as provided in this Agreement and the Documentation.
- 9.2 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS SECTION, TO THE EXTENT ALLOWED BY APPLICABLE LAW, WE EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY, CONDITION OR OTHER IMPLIED TERM AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. WE MAKE NO, AND SPECIFICALLY DISCLAIM ANY, WARRANTY OR REPRESENTATION THAT THE CLOUD SERVICE: (A) WILL BE UNINTERRUPTED, COMPLETELY SECURE, ERROR-FREE, FAIL SAFE OR FREE OF VIRUSES; (B) WILL MEET YOUR BUSINESS REQUIREMENTS OR OPERATE WITH YOUR CURRENT SYSTEMS; (C) WILL COMPLY WITH ANY PARTICULAR LAW; OR (D) WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK OR OTHERWISE PROVIDE COMPLETE PROTECTION AGAINST ANY SECURITY THREATS VULNERABILITIES. YOU WILL NOT MAKE ANY REPRESENTATION OR OTHER STATEMENT OR UNDERTAKE ANY ACT OR OMISSION INCONSISTENT WITH THIS SECTION. YOU ASSUME TOTAL RESPONSIBILITY FOR THE SELECTION OF THE CLOUD SERVICES TO ACHIEVE YOUR INTENDED RESULTS AND FOR YOUR USE OF THE RESULTS OBTAINED FROM THE CLOUD SERVICES. WE DO NOT WARRANT THAT THE CLOUD SERVICES WILL MEET YOUR REQUIREMENTS. IF APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OF SOME OR ALL OF THE ABOVE IMPLIED WARRANTIES, THE ABOVE EXCLUSIONS WILL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
- 9.3 **No Guarantee.** NO DATA TRANSMISSION OVER THE INTERNET CAN BE GUARANTEED TO BE SECURE. CUSTOMER ACKNOWLEDGES THAT WE ARE NOT RESPONSIBLE FOR ANY INTERCEPTION OR INTERRUPTION OF ANY COMMUNICATIONS THROUGH THE INTERNET, NETWORKS, OR SYSTEMS OUTSIDE OUR CONTROL AND THAT THE CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. YOU AGREE THAT YOU ARE RESPONSIBLE FOR MAINTAINING THE SECURITY OF YOUR NETWORKS, SERVERS,

APPLICATIONS AND ACCESS CODES. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, LOSS OF CUSTOMER DATA OR DAMAGES RESULTING FROM THOSE PROBLEMS.

- 9.4 High-Risk Systems Terms.** OUR PRODUCTS MAY FAIL AND ARE NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH-RISK SYSTEMS. WE HAVE NO RESPONSIBILITY FOR, AND YOU WILL INDEMNIFY, DEFEND AND HOLD HARMLESS US, OUR AFFILIATES AND REPRESENTATIVES FROM ALL CLAIMS, SUITS, DEMANDS, AND PROCEEDINGS ALLEGING, CLAIMING, SEEKING, OR ASSERTING, ANY LIABILITY, LOSS, OBLIGATION, RISK, COST, DAMAGE, AWARD, PENALTY, SETTLEMENT, JUDGMENT, FINE OR EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM OR IN CONNECTION WITH YOUR USE OF OUR PRODUCTS ON OR IN A HIGH-RISK SYSTEM, INCLUDING THOSE THAT COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL-SAFE OR FAULT-TOLERANT FEATURES TO THE HIGH-RISK SYSTEM, OR ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF THE HIGH-RISK SYSTEM DEPENDS OR DEPENDED ON THE FUNCTIONING OF THE CLOUD SERVICES, OR THAT THE FAILURE OF ANY OF OUR PRODUCTS CAUSED A HIGH-RISK SYSTEM TO FAIL.
- 9.5 Third Parties.** Company Products may contain or otherwise interface with certain third-party products, services or applications and rely on such third-party products, services, or applications to enable or perform certain functionality of the Company Products, including Malware definitions or URL filters and algorithms. We make no warranty as to the operation of any third-party products or the accuracy of any third-party information.

## **10. LIMITATION OF LIABILITY**

- 10.1 NO CONSEQUENTIAL DAMAGES.** SUBJECT TO SUBSECTION 10.3 BELOW, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND OR FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, COSTS OF OBTAINING SUBSTITUTE PRODUCTS OR SERVICES, BUSINESS OR SYSTEM INTERRUPTION, DENIAL OF ACCESS OR DOWNTIME, ANY LOST OR DAMAGED DATA OR SYSTEMS OR ASSOCIATED RESTORATION COSTS, NOR WILL WE BE LIABLE FOR ANY DAMAGES RELATING TO CLAIMS THAT THE PRODUCTS DID NOT OPERATE INTERRUPTION- OR ERROR-FREE, OR DID NOT PROTECT AGAINST ALL THREATS, IN ALL CASES REGARDLESS OF LEGAL THEORY AND WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.
- 10.2** SUBJECT TO SUBSECTION 10.3 BELOW, EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL FEES RECEIVED BY COMPANY FOR THE APPLICABLE PRODUCTS PURCHASED UNDER THE TERMS OF THIS AGREEMENT AND ATTRIBUTABLE TO THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.
- 10.3 THE LIMITATIONS IN SECTIONS 10.1 AND 10.2 ABOVE DO NOT APPLY TO LIABILITY ARISING FROM (A) YOUR FAILURE TO PAY ALL AMOUNTS DUE, OR (B) YOUR BREACH OF YOUR CLOUD SERVICES ACCESS RIGHTS GRANTED HEREIN, SECTION 13.2 AND 13.3 (EXPORT), OR SECTION 8.1 (INTELLECTUAL PROPERTY RIGHTS). THESE LIMITATIONS OF LIABILITY APPLY WHETHER SUCH CLAIMS**

ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, INFRINGEMENT, STATUTE OR OTHERWISE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW. THESE LIMITATIONS OF LIABILITY ARE CUMULATIVE AND NOT PER INCIDENT AND THEY SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

## 11. INDEMNIFICATION

11.1 **Customer Indemnification Obligations.** You will unconditionally indemnify, defend, and hold Us, Our Affiliates, and their officers, directors, employees, contractors, and agents (each an Indemnified Party) harmless against any claims, liabilities, and expenses (including court costs and reasonable attorneys' fees) that an Indemnified Party incurs as a result of or in connection with:

- (a) any third-party claims arising from:
  - (i) Customer Data, including without limitation Your failure to follow applicable laws or obtain all necessary consents related to Customer Data;
  - (ii) Your use of the Cloud Services in a manner not expressly permitted by this Agreement;
  - (iii) Our compliance with any technology, designs, instructions, or requirements provided by You or a third-party on Your behalf;
  - (iv) any claims, costs, damages, and liabilities whatsoever asserted by any of Your Representatives; or
  - (v) any violation by You of applicable laws or regulations; and
- (b) any reasonable costs and attorneys' fees required for Us to respond to a subpoena, court order or other official government inquiry regarding Customer Data or Your use of the Cloud Services.

11.2 **Company Indemnification Obligations.**

- (a) We will indemnify and defend You and your Affiliates, and their officers, directors, and employees against any third-party claims asserted in a Covered Country against You in a suit or action if: (i) the claim is for patent infringement or copyright infringement, or for Our trade secret misappropriation; and (ii) the claim is asserted against the Cloud Services alone and not in combination with any non-Company product or service.
- (b) **Exclusions.** Notwithstanding anything to the contrary in this Agreement, We will not indemnify or defend You for claims asserted, in whole or in part, against or resulting from: (i) technology, designs, instructions or requirements provided by You or a third-party on Your behalf; (ii) an infringement claim based on third-party content or any material from a third-party portal or other external source that is accessible to You within or from the Cloud Services; (iii) modifications to the Cloud Services or use of the Cloud Services outside the scope of the applicable Documentation or outside of the entitlements granted under this Agreement; (iv) use of non-current or unsupported versions of the Cloud Services; (v) Customer Data; or (vi) Your continued use of Cloud Services or deliverables after being notified of the infringement claim or after being provided a modified version by Us at no additional cost that is intended to address such alleged infringement
- (c) **Remedies.** If We are unable to resolve a claim referred to in section (a) above on commercially reasonable terms, We may, at Our sole discretion and at Our expense either: (i) procure for You the right to continue using the Cloud Services; (ii) replace the affected Cloud Services with a non-infringing version; (iii) modify the affected Cloud

Services so that they becomes non-infringing; or (iv) if We determine that neither (i – iii) are feasible, then, at Our sole option, We may (a) terminate Your subscription and access to the affected item upon Our receipt of Your written confirmation that You will not use and You have removed all instances of the affected Cloud Services, as applicable; and (b) credit to You the unused pre-paid subscription fees for such products.

THIS SECTION SETS FORTH YOUR SOLE AND EXCLUSIVE REMEDY AND OUR SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THE CLOUD SERVICES OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD-PARTY.

- 11.3 **Indemnification Procedure.** The foregoing indemnification obligations are conditioned upon: (i) the Party entitled to indemnification (“Indemnified Party”) providing the Party required to indemnify (the “Indemnifying Party”), prompt written notice of a claim (an “Indemnified Claim”), (ii) the Indemnified Party must give the indemnifying Party the sole right to control and conduct the defense, and any settlement, of the Indemnified Claim; and (iii) the Indemnified Party provides full and timely cooperation to the Indemnifying Party at the Indemnifying Party’s expense all reasonably requested information and assistance. The Indemnified Party may retain its own counsel to monitor the defense of an Indemnified Claim at its own expense. The indemnifying Party will keep the Indemnified Party reasonably advised of the status of each Indemnified Claim.
- 11.4 **Personal and Exclusive Indemnity.** The foregoing indemnities are personal to the parties and may not be transferred to anyone.

## 12. EVALUATION PRODUCTS AND FREE SERVICES

- 12.1 **Generally.** If You request or We otherwise provide You with a limited trial or evaluation access to the Cloud Services (“Evaluation Product”) or Free Services, the provisions of this Section will apply and prevail over any other conflicting terms of this Agreement. Your use of an Evaluation Product is limited to thirty (30) days (“Evaluation Period”) unless agreed otherwise in writing by Us. During the Evaluation Period, You may access and use the Evaluation Products solely for Your internal evaluation in accordance with the use guidelines and restrictions set forth in Section 1.6 above to decide whether to purchase the right to use the Evaluation Products. At the end of the Evaluation Period, Your right to use the Evaluation Product automatically expires, and You agree to discontinue all use, and destroy any copies, of the Evaluation Product, as applicable.
- 12.2 **No Support Obligation.** We have no obligation to provide any Support for Evaluation Products or Free Services, and We may change or discontinue any Evaluation Products or Free Services at any time without notice. You acknowledge that the Evaluation Products and Free Services may not have been tested or debugged and may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions, and data loss.
- 12.3 **Disclaimer of Warranties.**
- (a) Notwithstanding any provision to the contrary in this Agreement, our obligations under the following Sections of this Agreement shall not apply to Evaluation Products or Free Services: 3 (Technical Support Service), 4 (Privacy and Use of Data), 9.1 (Warranty) and 11.2 (Company Indemnification Obligations). Evaluation Products and Free Services are provided to You solely on an “as is” and “as-available” basis. To the fullest extent permitted by law, We disclaim any and all liability for Your use of the Evaluation Products and Free Services, and We make no other warranties of any kind, express or implied, with respect to the Evaluation Products and Free Services and disclaim all other obligations and liabilities, or express and implied warranties regarding the Evaluation Products and Free Services, including quality, conformity to any representation or description, performance, merchantability, fitness for a particular purpose, non-

infringement; or that the Evaluation Products and Free Services will be free from errors or defects. Evaluation Products and Free Services may be subject to reduced or different security, compliance, and privacy commitments. You assume all risk of use of Evaluation Products and Free Services. If the laws in Your jurisdiction do not allow the exclusion of express or implied warranties, the disclaimer in this section may not apply and the express or implied warranties will be limited in duration to any minimum period required by applicable law, and the aggregate liability of Us and Our licensors will be limited to the sum of fifty (50) United States dollars (or the then-current value in the relevant local currency) in total.

- (b) You acknowledge that We:
  - (i) have not promised or guaranteed to You that any Evaluation Products or Free Services will be announced or made available to anyone in the future;
  - (ii) have not expressed or implied obligation to You to announce or introduce any Evaluation Products or Free Services; and
  - (iii) are not obligated to introduce a product similar to or compatible with Free Services or any updates to any Evaluation Products and Free Services.

#### 12.4 Free Services.

- (a) We are not obligated to finally release any version of the Free Services. You will report to Us unusual, unplanned, or out of the ordinary events observed in a Free Services Access or use of a Free Services is restricted to Your internal performance evaluation of the Free Services in accordance with the use guidelines and restrictions set forth in Section 1.6 above.
- (b) For Free Services that are features or functionality included in a paid subscription for which We no longer charge or which We offer to You at no charge, the Subscription Period for the Free Services continues as long as We make the features or functionality available to You.
- (c) We may, at Our discretion provide Free Services to You before, during or after Your paid subscription to Cloud Services, and subject to the limitations and exclusions set forth in this Section 12, any use is subject to the terms of this Agreement then in effect as long as the Free Services are made available to You.
- (d) Notwithstanding any provision to the contrary in this Section 12, any updates or end-user assistance provided for Free Services may be provided at Our sole discretion and may be discontinued at any time.
- (e) We may elect, at Our sole discretion, to discontinue certain Free Services or particular features of the Free Services at any time (“Free Services Termination”). Free Services are specifically excluded from the End-of-Life-Policy. Instead, We will make commercially reasonable efforts to provide thirty (30) days’ prior notice to You of a Free Services Termination. Upon the effective date of a Free Services Termination, Your right to use the Free Services automatically expires, and You agree to discontinue all use, and destroy any copies, of the Free Services, as applicable
- (f) We have no obligation to retain any Customer Data or other information submitted or collected through the Evaluation Products or Free Services. We may delete any Customer Data and other information at Our own discretion and without prior notice to You.

### 13. COMPLIANCE WITH LAWS

- 13.1 Each Party will comply with all applicable national, state, and local laws and regulations with respect to its rights and obligations under this Agreement, including applicable privacy and export control laws and regulations, the U.S. Foreign Corrupt Practices Act, and any other applicable

anti-corruption laws.

- 13.2 You will not, directly or indirectly, export, re-export, transmit, transfer, permit access to or use any Cloud Services or technical data (or any part of Cloud Services or technical data), any system or service incorporating any Cloud Services, or any other regulated item or information to or in any country to which export, transmission or access is restricted by regulation, statute, or other law, without first complying with all export control laws and regulations that may be imposed by the U.S. government and/or any country or organization of nations within whose jurisdiction You operate or do business and obtaining the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other governmental entity that may have jurisdiction over export or transmission. In addition to the foregoing, You agree that you will not export, transfer, or import the Cloud Services to any person or entity on any of the U.S. Government's Lists of Parties of Concern (<https://www.bis.gov/licensing/guidance-on-end-user-and-end-use-controls-and-us-person-controls>) or applicable international specially designated parties or economic sanctions programs. You hereby certify that You will not use, transfer, or access any Cloud Services, and that such Cloud Services will not otherwise be purposed, re-exported, or retransferred, for end use relating to any nuclear, chemical, or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license or to Cuba, Iran, North Korea, Sudan, or Syria for any reason whatsoever.
- 13.3 You acknowledge and agree that certain Company Products containing encryption may require authorization from the U.S. and other applicable authorities including the European Union, prior to export. You also acknowledge and agree that certain Company Products containing encryption may be subject to import or use restrictions in other countries. Additional information regarding exporting and importing Company Products may be found on Company's "Export Compliance" webpage located at: <https://www.trellix.com/assets/legal/us-export-compliance.pdf>, as updated from time to time.
- 13.4 If We receive notice that You are or become identified as a sanctioned or restricted Party under applicable law, We will not be obligated to perform any of Our obligations under this Agreement if such performance would result in violation of the sanctions or restrictions.

## 14. GENERAL PROVISIONS

- 14.1 **Relationship.** The Parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary, or other special relationship. Neither Party intends this Agreement to benefit or create any right or cause of action in or on behalf of, any person or entity other than the Parties and listed Affiliates. The Agreement is not intended to create a third-party beneficiary of any kind. You must not represent to any third-party that You have any right to bind Us in any manner and You will not to make any representations or warranties on Our behalf.
- 14.2 **Severability.** If a court holds that any provision of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from this Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of this Agreement, which will continue in full force and effect.
- 14.3 **No Waiver; Remedies Cumulative.** A Party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the Party agreeing to the waiver. Notwithstanding any provision of this Agreement to the contrary, We shall have all the rights and remedies provided by law in addition to the rights and remedies set forth in this Agreement and in any other agreement or writing between the Parties. All Our rights and remedies are cumulative

and may be exercised from time to time. Our pursuit of one right or remedy shall not constitute an exclusive election or otherwise preclude or limit its pursuit of any other or additional right or remedy.

**14.4 Force Majeure; Other Excusable Failures or Delays in Performance.**

- (a) Notwithstanding any other provision of this Agreement, neither Party shall be deemed in default or breach of this Agreement or otherwise liable for delays or failures to perform any of its obligations under this Agreement (excluding any payment obligations) to the extent caused by a Force Majeure Event.
- (b) Our failure or delays in Our performance are excused to the extent they result from:
  - (i) Your acts or omissions, or those of Your employees, agents, Users, affiliates, or contractors;
  - (ii) notwithstanding the generality of Section 14.4(b)(i), Your failure or delay in the performance of a specific task, obligation, or responsibility under this Agreement or a Schedule, which task, obligation, or responsibility is a condition or requirement for a task, obligation, or responsibility of Us;
  - (iii) reliance on instructions, authorizations, approvals, or other information from You or Your Representative; or
  - (iv) acts or omissions of third parties (unless directed by Us).

**14.5 Governing Law.** All disputes arising out of or relating to this Agreement, or its subject matter will be governed by the following substantive laws, excluding rules relating to conflict of laws:

- (a) the laws of the State of California, if You purchase Company Products in the United States, Mexico, Central America, Canada, South America, or the Caribbean;
- (b) the laws of the Republic of Ireland, if You purchase Company Products in Europe, Middle East, or Africa;
- (c) the laws of Japan if You purchase Company Products in Japan;
- (d) the laws of the Republic of Singapore, if You purchase Company Products in Asia Pacific (including New Zealand but excluding Australia);
- (e) the laws of the State of New South Wales, Australia, if You purchase Company Products in Australia; or
- (f) the laws of the Republic of Ireland if You purchase Company Products in any other country unless another local law is required to apply.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.

**14.6 Jurisdiction.** The following courts will each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject-matter:

- (a) the United States District Court for Santa Clara County and state courts located in the state of California, when California law applies;
- (b) the courts in the Republic of Ireland, when the law of Ireland applies;
- (c) the courts in Japan when the law of Japan applies;
- (d) the courts in the Republic of Singapore when the law of Singapore applies; or
- (e) the courts of New South Wales when the law of New South Wales, Australia applies.

**14.7 Entire Agreement; Order of Precedence; and Amendments.**

- (a) This Agreement, any Schedules, and the Grant Letter constitute the entire understanding, between the Parties, relating to its subject matter and supersede all oral or written proposals, and all communications between the Parties relating to its subject matter. The terms of this Agreement will prevail, notwithstanding any variance with any purchase order or other written instrument submitted by You, whether or not expressly rejected by Us.
  - (b) If there is any conflict or inconsistency between the terms of any document forming this Agreement, the following order of precedence will apply to the extent of the conflict or inconsistency unless expressly agreed otherwise in any subordinate document:
    - (i) The Agreement will prevail over any Service Schedule and Grant Letter; and
    - (ii) The Service Schedule will prevail over the Grant Letter.
  - (c) We reserve the right to amend any terms of this Agreement at any time. Any amendment will be, effective on the posting of an updated version at: [https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity\\_Cloud\\_Services\\_Agreement.pdf](https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity_Cloud_Services_Agreement.pdf).
- 14.8 **Notices.** Any notice given under or in relation to this Agreement must be in writing, signed by or on behalf of the Party giving it, and addressed to Us, “*Attention Legal Department*”, to the applicable address listed in Section 15. We will contact You at the contact information You provide when purchasing or registering for the Cloud Services. Notices will be considered delivered when received if delivered by hand with receipt, the next Business Day after sending it by pre-paid, nationally recognized, overnight air courier with tracking capabilities; or five (5) Business Days after being sent by registered or certified airmail, return receipt required, postage prepaid, to the address mentioned above.
- 14.9 **Additional Documents and References.** References to linked terms in this Agreement are references to the terms or content linked (or the replacement link as We may identify from time to time) as amended from time to time. You acknowledge that the terms or content in the link are incorporated in this Agreement by reference and that it is Your responsibility to review the terms or content in the links referenced in this Agreement.
- 14.10 **Assignment.** You may not sublicense, assign, or transfer Your rights under this Agreement without Our prior written consent. Any attempt by You to sublicense, assign or transfer any of Your rights, duties, or obligations under this Agreement, whether directly, or indirectly by merger or acquisition, will be null and void.
- 14.11 **Notice to U.S. Government Users.** The Cloud Services are considered "*commercial computer software*" and "*commercial computer software documentation*," under DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Cloud Services by the United States Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement.
- 14.12 **Community Forum.** You, Users, and other Customers may exchange ideas and technical insight regarding Company Products on community support pages We may make available from time to time. We do not endorse, warrant, or guarantee any information posted on this site and any use of the information is taken at Your sole risk.
- 14.13 **Survival.** The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 4.2 (Privacy and Use of Data), 5.5 (Termination Obligations), 7 (Confidentiality), 8 (Intellectual Property Rights), 9 (Warranties; Exclusions: Disclaimers), 10 (Limitation of Liability), 11 (Indemnification), 14.5 (Governing Law), 14.6 (Jurisdiction), 15 (Definitions and Interpretation) and this Section 14.13 (Survival).

## 15. DEFINITIONS AND INTERPRETATION

In this Agreement:

**Affiliate** means any entity that Controls, is Controlled by, is under common Control with a Party, or is Controlled by the same parent entity as a Party, where “Control” or “Controlled” means direct or indirect ownership, through one or more intermediaries of more than 50% of an entity’s voting capital or other voting rights.

**Authorized Partner** means any of Our Distributors, Resellers, or other business partners. For the avoidance of doubt, Authorized Partners have no authority to modify any of the terms of this Agreement, and any Company Products purchased through Authorized Partners shall remain governed by and subject to the terms of this Agreement.

**Business Day** means any day other than a Saturday, Sunday, statutory or public holiday in the place where Company Products are provided, or the Professional Services are performed.

**Cloud Services** means the Cloud Services that We provide to You as specified in one or more Grant Letters and that are subject to the applicable Service Schedule. Our Service Schedule 1 references Our Skyhigh Security cloud offerings, and Our Service Schedule 2 references Our Skyhigh Security and Company cloud offerings.

**Company** means:

- (i) **Musarubra US, LLC**, with offices located at 2611 Internet Blvd., Suite 200, Frisco, Texas 75034, USA, if the Cloud Services are purchased in the United States (except as provided in Subsection (vii) below), Canada, Mexico, Central America, South America, or the Caribbean;
- (ii) **Musarubra Ireland Limited**, with its registered offices located at Building 2000, City Gate, Mahon, Cork, Ireland, if the Cloud Services are purchased in Europe, the Middle East or Africa;
- (iii) **Musarubra Singapore Pte Ltd.**, with a trading address located at 38 Beach Road, #23-11 South Beach Tower, Singapore, 189767 with respect to the provision of all Cloud Services and Support purchased in Asia Pacific, but excluding Japan and China (if the Cloud Services are purchased in RMB) or Australia;
- (iv) **Musarubra Japan KK**, with its registered office located at Shibuya Mark City West, 1-12-1, Dogenzaka Shibuya-ku, Tokyo, 150-0043, Japan, if the Cloud Services are purchased in Japan;
- (v) **Trellix (Beijing) Security Software Co. Ltd**, with a trading address at Regus, No. 19 Dongfangdong Orad, Tower D1, DRC Diplomatic Office Building, Chaoyang District, Beijing, China, 100016 if the Cloud Services are purchased in China (in RMB);
- (vi) **Musarubra Australia Pty Ltd.**, with offices located at Level 19, 181 William Street, Melbourne, Vic 3000, Australia, if the Cloud Services are purchased in Australia; or
- (vii) **Trellix Public Sector LLC.**, with offices located at 1640 Boro Place, 3rd Floor McLean, Virginia 22102, USA, if the Cloud Services are purchased by the U.S. Government, or by state or local governments, or healthcare or educational institutions in the United States.

**Company Privacy Notice** refers to Our Privacy Notice, available at: <https://www.skyhighsecurity.com/about/privacy.html>.

**Company Products** means any Cloud Services or Support.

**Covered Country** means any country that is a member of the Berne Convention where the Company (as defined in Section 15) is incorporated.

**Customer Data** means Your Personal Data, sensitive data or other information about You and Users (including Users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers, including information regarding

network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, products installed, components, processes and services information, frequency and details of update of Our components, information about third-party products installed, extracts of logs created by Us, usage patterns of Our products and specific features, etc.

**Derivative Work** means a work that is based on one or more preexisting works (such as a revision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which preexisting work may be recast, transformed, or adapted) which, if created without the authorization of the copyright owner of the preexisting work, would constitute copyright infringement.

**Documentation** means any explanatory materials, such as user manuals, training materials, user guides, product descriptions, regarding the implementation and use of the Cloud Services and that are provided by Us with the Cloud Services or otherwise made generally available by Us in printed, electronic, or online form.

**DORA** means Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011.

**DORA Addendum** means the EU Digital Operational Resilience Act (DORA) Addendum located at: <https://www.skyhighsecurity.com/wp-content/public/legal/Skyhigh-EU-DIGITAL-OPERATIONAL-RESILIENCE-ACT-ADDENDUM.pdf>.

**End User License Agreement** or **EULA** means the standard End User License Agreement available at: [https://www.skyhighsecurity.com/wp-content/themes/skyhigh-security/public/SkyhighSecurity\\_EULA.pdf](https://www.skyhighsecurity.com/wp-content/themes/skyhigh-security/public/SkyhighSecurity_EULA.pdf) which governs Your use of any Software.

**Force Majeure Event** means any event that arises after the commencement of this Agreement that is beyond a Party's reasonable control and that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third-party's), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery or other default by Our vendors, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, epidemics, pandemics, any global, national, or local public health emergency or disease outbreak.

**Free Services** means any features or functionality included in a paid subscription for which We no longer charge or which We offer to You at no charge, in Our sole discretion, or other features or functionality that We make available to You without charge, that is labeled as "Pre-Release," "Limited Release," "Beta," or otherwise identified by Us as experimental, untested, or not fully functional, and which is not a time-limited trial for Your evaluation purposes.

**Grant Letter** means any written (electronic or otherwise) confirmation notice that We issue to You confirming the Company Products purchased and applicable Product Entitlement. The Grant Letter identifies the SKU number, quantity, Subscription Period or Support Period, and any other access and use details.

**High-Risk System** means a device or system that requires extra safety functionalities such as fail-safe or fault-tolerant performance features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. A device or system with a fail-safe feature in the event of failure may revert to a safe condition rather than break down, may include a secondary system that comes into operation to prevent a malfunction, or may operate as a backup in the event of a malfunction. A device or system with a fault-tolerant feature in the event of failure may continue its intended operation, possibly at a reduced level, rather than failing completely. Without limitation, High-Risk Systems may be required in critical infrastructure,

industrial plants, manufacturing facilities, direct life support devices, aircraft, train, boat or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.

**Intellectual Property Rights** means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including:

- (i) copyright, trademark and patent rights trade secrets, moral rights, right of publicity, authors' rights;
- (ii) any application or right to apply for any of the rights referred to in paragraph (i); and
- (iii) all renewals, extensions, continuations, divisions, restorations or reissues of the rights or applications referred to in paragraphs (i) and (ii).

**Malware** means applications, executable code, or malicious content that We consider be harmful.

**Personal Data** means any information relating directly or indirectly to an identified or identifiable individual.

**Product Entitlement** means the license or subscription types set forth in the Grant Letter and defined at: [https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity\\_Product\\_Entitlement\\_Definitions.pdf](https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity_Product_Entitlement_Definitions.pdf).

**Representatives** means a Party's Affiliates, permitted resellers, subcontractors, employees, or authorized agents.

**Service Schedules** mean the applicable Cloud Services terms and conditions in Service Schedule 1 at: [https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity\\_Service\\_Schedule1.pdf](https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity_Service_Schedule1.pdf), and Service Schedule 2 at: [https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity\\_Service\\_Schedule2.pdf](https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity_Service_Schedule2.pdf), which are incorporated by reference herein, as amended from time to time.

**Software** means any software program(s) identified in the Grant Letter or otherwise made available to You and owned or licensed by Us, as the context requires, in object code format, provided by the Parties which may be required for You to access the Cloud Services.

**Skyhigh Security** means cloud-native security platform that converges a set of security solutions (SWG, CASB, ZTNA, DLP, RBI), providing visibility and control over Your data from a unified console.

**Standard** means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP and ETSI.

**Subscription Period** means the period for which You have purchased the right to receive the Cloud Services or the time-period for which You have purchased the right to receive Support, as applicable.

**Support** means the Technical Support services that We provide for the support and maintenance of the Cloud Services, as specified in the applicable Service Schedule.

**Support Period** means the period for which You are entitled to Support, as specified in a Grant Letter.

**Technical Support Terms** means the technical and support terms and conditions available at: [https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity\\_Tech\\_Support\\_and\\_Maint\\_TC.pdf](https://www.skyhighsecurity.com/wp-content/public/legal/SkyhighSecurity_Tech_Support_and_Maint_TC.pdf).

**Threat Data** means non-personally identifying and non-Customer identifying information about Malware, threats, actual or attempted security events, including but not limited to their frequency, source, associated code, general identifiers, attacked sectors and geographies.

**Trellix** provides an industry-leading device-to-cloud security across multicloud and on-premises environments. Our solutions protect data, defend against threats, and provide actionable insights through an open platform and the largest threat telemetry network.

**User** means a unique individual whom You have authorized to use the Cloud Services pursuant to Your access rights under this Agreement, including Your employees, Your Affiliates, subcontractors, authorized agents, and Managed Parties.

-End-