

## COVERTSWARM SECURITY SERVICES AGREEMENT

### Terms and Conditions for the provision of Services

Updated 5<sup>th</sup> February 2026.

These terms and conditions govern Customer's purchase and use of the Security Services (as defined below).

These Terms and Conditions, along with any applicable Sales Order, Schedules, and CovertSwarm Policies, set out the agreement (collectively, the "**Agreement**") between the Customer (as set forth on a Sales Order) and CovertSwarm, and shall be effective as of the Commencement Date.

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 with the provision of the Security Services under 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) the Policies;
- (c) the main body of these Terms and Conditions for the provision of Services; and
- (d) any additional Terms and Conditions for the provision of the Portal (as applicable).

### 1. Definitions and Interpretation

For the purposes of the Agreement for the provision of the Security Services, the following capitalised terms shall have the meanings set forth below:

**"Attack Plan"** means an agreed specific scope of work within the CovertSwarm portal, that describes the target Relevant System(s), team(s) 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, shall mean any entity under common control, effective control, or owns or controls greater than 50% of the shares of an entity.

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

**"Applications"** means any software, tools, or platforms provided by CovertSwarm to deliver the the Portal.

**"Applicable Law" or "Applicable Laws"** refers to laws that apply to a party or activity by operation of law and is independent of the governing law of this Agreement.

**"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" (and Users)** means the named users on the CovertSwarm portal as added by and authorised by the Customer to use the Security Services. The Customer shall be liable for the acts and omissions of the Authorised Users and the Authorised Affiliates as if they were its own; 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 Portal; and (and shall ensure all Authorised Affiliates and Authorised Users shall) always comply with the Policies and all other provisions of this Agreement and will all Applicable Laws, rules, and regulations, including without limitation, laws and regulations regarding export and export controls.

**“Business Day”** means a day other than a Saturday, Sunday or bank or public holiday in the subject jurisdiction where the Security Services are offered.

**“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 Portal by or on behalf of Customer, or by any Authorised User.

**“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, on, 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 the CovertSwarm entity that is providing the Security Services under the Agreement being either CovertSwarm Inc., located at 1007 N Orange St, 4th Floor 333, Wilmington, Delaware, 19801, USA or CovertSwarm Limited registered in England and Wales whose registered office is at International House, 36-38 Cornhill, London EC3V 3NG, as applicable to the Customer’s Sales Order.

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time, including (where applicable) the UK General Data Protection Regulation (“**UK GDPR**”), the Data Protection Act 2018 and EU and United States laws and regulations, including applicable U.S. state laws and regulations, 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.

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

**“Fees”** means the fees payable by the Customer to CovertSwarm for the use of the Service 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 Portal is provided on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis) as such may be set forth in a Sales Order.

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

**“Insolvency Event”** means, in relation to a party if such party (a) becomes insolvent, as that term may be defined under Applicable Law, or is unable to meet its debts as they mature; (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors; (c) is adjudicated bankrupt or makes an assignment for the benefit of its creditors generally; (d) fails to deny or contest the material allegations of an involuntary petition filed against it pursuant to any Applicable Law relating to bankruptcy, arrangement or reorganization, which is not dismissed within sixty (60) Business Days; or (e) applies for or consents to the appointment of any receiver for all or any portion of its property

**“Intellectual Property Rights”** means (a) patents, (b) copyrights, moral rights, works of authorship (including copyrights in computer software), (c) trademarks, service marks, Internet domain names, trade dress, and trade names, together with all goodwill associated therewith, (d) registrations, applications, renewals and extensions for any of the foregoing in (a)-(c), (e) Trade Secrets, and (f) rights of privacy and publicity. For purposes of this Agreement, “Trade Secrets” means all information constituting trade secrets under the federal Defend Trade Secrets Act of 2016, and/or any other applicable trade secrets laws or regulations. All Intellectual Property Rights in and to the Portal (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 Portal, 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 provision. 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 Portal (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.

**“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 Portal) 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 or other open-source license, 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)) as of 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 Portal 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 Portal 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 Portal (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 Portal (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](https://www.covertswarm.com/privacy-policy) (the “**Privacy Policy**”).

**“Portal”** means the cloud service (the CovertSwarm Portal) to which the Customer may subscribe together with the Support Services, or as set forth in a Sales Order.

**“Relevant Target”** Customer Systems and any other systems in respect of which Customer requests or permits CovertSwarm to perform the Security Services.

**“Renewal Term”** means a period of time equal to the Initial Term, as detailed in Section 3.1.

**“Representatives”** means either party’s representatives as defined in Section 11.2 (i).

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

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

**“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 simulated 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, the Customer Systems by automated technology or by CovertSwarm’s professional service team, the Portal, as such are further set out in a Sales Order.

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

**“Service Day”** a unit of subscribed service, comprising either human effort (7.5 hours), automated processes, or a combination thereof, to deliver outputs equivalent to one day of human work. Service Days may include custom or standardised tasks, research, reconnaissance, attacks, advanced reporting, and service management, adjusted to reflect shared or pre-invested efforts across customers.

**“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 commencing on the Commencement Date and ending on termination or expiration, for whatever reason, of this Agreement.

**“Territory”** worldwide except for Russia, China, Iran, North Korea and any other country subject to embargo by the United Kingdom, the United States, or the European Union (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.

## 2. Provision of Services

Subject to this Agreement, CovertSwarm shall provide the Security Services and/or the Portal, as applicable, as such services may be more fully set out in a Sales Order.

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

- 3.1. 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 gives CovertSwarm 3 (three) months written notice, such notice to expire at the end of the Initial Term or any Renewal Term; or CovertSwarm provides Customer with written notice of termination of this Agreement before the end of the Initial Term or Renewal Term.
- 3.2. The Customer acknowledges that CovertSwarm shall be entitled to modify the features and functionality of the Services. CovertSwarm shall use reasonable efforts to ensure that any such modification does not materially adversely affect the use of the Security Services(s) by CovertSwarm's customers generally.
- 3.3. **Customer Responsibility for Target Selection:** CovertSwarm may surface, discover or highlight potential targets or vulnerabilities during reconnaissance activities, but CovertSwarm will act only on the explicit, written instructions provided by Customer via the Portal or other mutually agreed written channel. Customer alone is responsible for selecting and authorising the Relevant Targets listed in the Portal for each Attack, and for the accuracy and completeness of all Relevant Target information supplied to CovertSwarm.
- 3.4. **No Third-Party Consent Requirement.** Customer is solely responsible for obtaining any permission or authorisation from any third party in respect of any Relevant Target. CovertSwarm is not obliged to obtain, verify, or retain any third-party consents or evidence of authorisation prior to performing an Attack. The absence of third-party consent does not relieve Customer of liability under this Agreement.
- 3.5. **Portal Confirmation as Binding Authorisation.** By confirming an Attack in the Portal, an authorised person listed in Customer's Execution Authority Register provides Customer's binding written authorisation for CovertSwarm to commence the Attack in accordance with the Portal entry and the Rules of Engagement. CovertSwarm may rely on Portal confirmations and need not seek further evidence of authorisation.
- 3.6. **Irrevocable Waiver and Assignment of Risk.** Customer hereby irrevocably and perpetually waives, and shall procure that its affiliates and Authorised Affiliates irrevocably waive, any and all claims, demands, causes of action, damages, losses, liabilities, fines, penalties and expenses (including reasonable legal fees) against CovertSwarm, its officers, employees, agents, contractors and suppliers that arise out of or relate to any Attack performed in accordance with Customer's Portal confirmation or other written instruction.
- 3.7. **Attack Related Indemnity.** Subject to Section 3.7 Customer shall indemnify, defend and hold harmless CovertSwarm, its officers, employees, agents, contractors and suppliers from and against any and all liabilities, losses, damages, costs and expenses (including reasonable legal fees) arising out of or resulting from: (i) any claim by a third party arising from an Attack where such Attack was performed in accordance with Customer's Portal confirmation or other written instruction; or (ii) Customer's failure to obtain any third party authorisations or consents (save as expressly addressed in Section 4.2 (iii); or (iii) Customer's provision of inaccurate or incomplete Relevant Target information.

- 3.7 **Exception for gross negligence and wilful misconduct.** Nothing in Sections 3.5 or 3.6 shall require Customer to indemnify or waive claims arising from CovertSwarm's proven gross negligence or wilful misconduct, or to the extent that a final judgment by a court of competent jurisdiction determines that CovertSwarm materially breached criminal law by acts that cannot be effectively indemnified under applicable law.
- 3.8 **No warranty as to legality.** CovertSwarm provides no warranty, representation or assurance that any Attack is legal in all circumstances. Customer is solely responsible for ensuring the legality of each Attack in the jurisdictions and context applicable to the Relevant Targets it selects and for obtaining any regulatory or third-party permissions required.
- 3.9 **Survival.** The waivers, indemnities and obligations in this Section 3 survive termination or expiry of this Agreement for a period of 24 months.

#### 4. Use of Services and obligations

- 4.1. CovertSwarm shall:
  - (i) perform the Security Services with care, skill and diligence in accordance with CovertSwarm's industry;
  - (ii) provide the Portal;
  - (iii) perform the Security Services in accordance with the Rules of Engagement and the Sales Order;
  - (iv) 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, as soon as reasonably practicable, in the event of any breach of this obligation; and
  - (v) use its best endeavours to minimise any impact the Security Services may have on the Relevant Target.
- 4.2. Customer acknowledges and agrees:
  - (i) that the Security Services may (i) attempt to breach, and may successfully breach, Relevant Targets; (ii) cause the Relevant Target to crash, or modify the Relevant Target and/or their contents; (iii) cause the loss or corruption of data and software; and/or (iv) otherwise adversely affect the Relevant Target or such other systems;
  - (ii) where the Relevant Target 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;
  - (iii) where the Relevant Target 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 Target, 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 Target and/or loss of or corruption to data and software and (iii) with the exception of claims arising due to CovertSwarm's gross negligence or wilful misconduct, 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 (i) or (ii) of this Section 4.2(iii);
  - (iv) 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 Target

(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 Target;

- (v) no act or use of the Security Services delivered by CovertSwarm will constitute a breach of the Computer Fraud and Abuse Act, the Computer Misuse Act (1990), or similar laws. This applies to both CovertSwarm and its employees and individuals who perform the Security Services;
- (vi) 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;
- (vii) CovertSwarm provides Services on a monthly entitlement basis unless otherwise stated in the Sales Order. The Customer must agree an Attack Plan for each month. If they do not, CovertSwarm may deliver either (a) a previously agreed fallback Attack Plan or (b) passive external OSINT analysis. The Customer may request to combine monthly entitlements for later use, but only with CovertSwarm's explicit written approval. If the Customer cancels or requests to reschedule planned work with fewer than five (5) Business Days' notice, CovertSwarm will make reasonable efforts to reassign the work. If this is not possible, the relevant entitlement will be deemed delivered and no refund or credit will be due.;
- (viii) CovertSwarm delivers its Security Services globally. The Customer may request that specific services, tests, or attack activities be delivered from particular regions or geographic locations, but such requests are subject to CovertSwarm's availability and must be agreed in advance in writing. CovertSwarm does not guarantee regional delivery unless expressly confirmed; and
- (ix) Customer acknowledges and agrees that outputs, results, and reports of the service (such outputs, results, and reports, the "**Analyses**") are provided by CovertSwarm "as-is," without warranty of any kind, whether express or implied, oral or written. CovertSwarm expressly disclaims and makes no representation or warranty of any kind regarding the use, quality, completeness, or nature of the Analyses, including with respect to title, legality, or other quality, continued availability, and/or suitability for any specific purpose. Customer is solely responsible for its use of such Analyses.

4.3. The Customer shall at all times and in all respects:

- (i) perform its obligations in accordance with the terms of this Agreement;
- (ii) co-operate with CovertSwarm in all matters arising under this Agreement or otherwise relating to the performance of the Security Services;
- (iii) inform CovertSwarm in a timely manner of any matters which may affect the provision of the Security Services; and
- (iv) not cause, by act or omission, CovertSwarm to breach any obligations under law.

4.4. 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.

4.5. 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 CovertSwarm portal. 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 Target when such access was made in connection with an authorised Security Services unless such a claim is based on the gross negligence or wilful misconduct of CovertSwarm.

4.6. Customer acknowledges and agrees that the Security Services may involve the use of artificial intelligence systems, features, or technologies, including generative artificial intelligence (collectively, "**AI**").

- 4.7. CovertSwarm may share limited Customer information with third-party AI service providers strictly as necessary to deliver the Security Services. CovertSwarm will ensure that such sharing complies with Data Protection Legislation and that appropriate confidentiality and security obligations are in place with any such provider.
- 4.8. CovertSwarm shall not permit Customer Personal Data to be used to train, improve or enhance any third-party AI model, except where required by law or expressly authorised in writing by the Customer.
- 4.9. CovertSwarm will use only the minimum amount of Customer information required for the relevant AI functionality and will not provide direct personal identifiers to AI systems unless strictly necessary for the agreed Attack Plan.
- 4.10. The Customer acknowledges that AI-generated outputs may contain inaccuracies or incomplete information and agrees that it remains responsible for how it uses and interprets any AI output.

## 5. Licence

- 5.1. 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 Portal during Service Hours; and (ii) copy and use the Documentation as strictly necessary for its use by Authorised Users of the Portal, within the relevant Territory during the Subscription Period for the Permitted Purpose. Customer acknowledges that no liability or obligation is accepted by CovertSwarm (howsoever arising whether under contract, tort, in negligence or otherwise) that the Portal shall meet the Customer's individual needs, whether or not such needs have been communicated to CovertSwarm; that the operation of the Portal shall not be subject to minor errors or defects; or that the Portal 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.

## 6. Fees and Payments

- 6.1. 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 Portal are payable in accordance with any applicable Sales Order.
- 6.2. Except as otherwise stated, this Agreement is non-cancellable and the sums paid non-refundable. 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.
- 6.3. 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 Section 6.1.
- 6.4. 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 Section 6.4 or any time thereafter) that Customer's account is overdue before suspending the Security Services to Customer.

- 6.5. CovertSwarm will not exercise its rights under Sections 6.3 or 6.4 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:
  - (i) the Customer shall notify CovertSwarm in writing as soon as reasonably practicable;
  - (ii) the Customer's failure to pay the disputed Fees shall not be deemed to be a breach of this Agreement;
  - (iii) the Customer shall pay the balance of the invoice which is not in dispute by the due date for payment;
  - (iv) 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 Section 6.3 from the original due date for payment until the actual date of payment; and
  - (v) 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.
- 6.6. 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.
- 6.7. For Customers on a multi-year agreement within the Initial Term, charges will increase annually by 1% plus the applicable regional Consumer Price Index (U.S. CPI for U.S. Customers; U.K. CPI for all others), unless otherwise agreed. At the end of the Initial Term, charges will increase by 2% plus the applicable regional Consumer Price Index, unless otherwise agreed.
- 6.8. 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 in writing, with the Customer.

## 7. Termination

- 7.1. 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 Authorised 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 Section 7.2), 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 Section shall not excuse Customer from Customer's obligation to make payment(s) under this Agreement.
- 7.2. 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.

- 7.3. If Customer terminates this Agreement in accordance with Section 7.2 due to an uncured breach by CovertSwarm, 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 Sections 7.1 or 7.2, 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.
- 7.4. In the event of termination of this Agreement for any reason:
  - (i) the right of Customer, the Authorised Affiliates and the Users to access and any provided Security Services shall terminate immediately; and
  - (ii) 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.
- 7.5. 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.

## **8. Limitation of Liability**

- 8.1. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR ANY MATTER WHICH CANNOT LAWFULLY BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.
- 8.2. EXCEPT FOR THE CUSTOMER'S OBLIGATIONS UNDER SECTION 4.2, PAYMENT OBLIGATIONS UNDER SECTION 6, AND CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11, 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. 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 SECTION 6.
- 8.3. EXCEPT FOR THE CUSTOMER'S OBLIGATIONS UNDER SECTION 4.2, PAYMENT OBLIGATIONS UNDER SECTION 6, AND CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11, 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.
- 8.4. COVERTSWARM SHALL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PERFORM THE SECURITY SERVICES CAUSED BY THE CUSTOMER'S ACTS AND/OR OMISSIONS. NOTHING IN THIS AGREEMENT

SHALL EXCLUDE OR LIMIT CUSTOMER'S LIABILITY FOR FAILURE TO PAY ANY FEES OR OTHER CHARGES OR EXPENSES WHEN DUE.

## 9. General Indemnification

- 9.1. This Section 9 applies to intellectual property and general commercial claims only and does not limit or affect the Customer's obligations under Section 3.6
- 9.2. 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. CovertSwarm shall have no liability or obligation under this Section 9 in respect of (and shall not be obliged to defend) any Claim Against Customer which arises in whole or in part from: (i) any modification of the Security Services or the Portal (or any part) without CovertSwarm's express written approval; (ii) any Non-Supplier Materials; (iii) any Customer Data; (iv) any Free or Trial Services (or the SaaS Support Services provided in connection with them); (v) any Open Source Software; (vi) any breach of this Agreement by the Customer; (vii) installation or use of the Portal (or any part) otherwise than in accordance with this Agreement; or (vii) installation or use of the Portal (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by CovertSwarm. The provisions of this subsection set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any Claim Against Customer.
- 9.3. Customer will indemnify, defend and hold harmless CovertSwarm and its affiliates, and their respective officers, directors, employees, agents and contractors from and against any claim, demand, suit or proceeding made or brought against CovertSwarm or a CovertSwarm Related Party by a third party (i) 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 Laws, or (i) due to or related to a breach by Customer of Customer's representations, warranties, or obligations under the Agreement (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.

- 9.4. This Section 9 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 Section 9.

## **10. Insurance**

CovertSwarm shall hold insurance cover with a licensed and qualified 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.

## **11. Confidentiality**

- 11.1. 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 Section 11.2.
- 11.2. A party may:
  - (i) subject to Section 11.5, 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 Section as if it were a party;
  - (ii) 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
  - (iii) subject to Section 11.5, use Confidential Information only to perform any obligations under this Agreement.
- 11.3. 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 Portal or its express rights and obligations under this Agreement.
- 11.4. CovertSwarm shall implement technical and organizational security measures in accordance with good industry practice.
- 11.5. The provisions of this Section shall not apply to information which:
  - (i) is or comes into the public domain through no fault of CovertSwarm, its officers, employees, agents or contractors;
  - (ii) is lawfully received by CovertSwarm from a third party free of any obligation of confidence at the time of its disclosure;
  - (iii) is independently developed by CovertSwarm (or any person acting on its or their behalf), without access to or use of such Confidential Information; or
  - (iv) is required by law, by court or governmental or regulatory order to be disclosed.

## **12. Survival**

Notwithstanding the expiration or termination of this Agreement for any reason, the provisions of Sections 4, 6, 7, 8, 9, 11, 16, and 17 shall survive such expiration or termination.

## **13. Anti-bribery and corruption**

Each party hereto shall comply with all applicable export control, anti-bribery, and anti-corruption laws and regulations.

#### **14. Notices**

All notices hereunder shall be sent to the address (including email address) of the respective party as set forth in the applicable Sales Order.

#### **15. Force Majeure**

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

#### **16. Non-solicitation**

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 Section 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 the Term and for a period of twelve months after termination (howsoever caused) or expiry of the Agreement.

#### **17. Applicable Law**

The governing law and forum for disputes depend on where the Customer is principally based, as set out below:

##### **(a) United States Customers**

If the Customer's principal place of business is in the United States of America, this Agreement and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws rules. The parties irrevocably submit to the exclusive jurisdiction of the state and federal courts located in Delaware.

##### **(b) All Other Customers**

If the Customer's principal place of business is outside the United States of America, this Agreement and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales."

#### **18. Assignment**

Except as provided in this Section, 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. 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.

#### **19. No waiver; Cumulative Rights**

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. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law. 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.

## **20. Relationship of Parties**

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.

## **21. General**

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) (collectively, a "**Representation**") other than as expressly set out in this Agreement. 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. 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. This Agreement is not intended, expressly or implicitly, to confer on any other person or entity any rights, benefits, remedies, obligations or liabilities. Headings are included in this Agreement for ease of reference only and shall not affect interpretation or construction. 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. 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.

[End of Terms and Conditions]