

Terms of Service (SaaS)

CONTENTS

| | |
|---|----|
| 1. Definitions and Interpretation | 3 |
| 1.1 Definitions | 3 |
| 1.2 Interpretation | 5 |
| 2. Nature of these Terms, Ordering, Hierarchy | 5 |
| 3. License | 6 |
| 3.1 License Grant | 6 |
| 3.2 License Terms and Restrictions | 6 |
| 4. Services | 6 |
| 4.1 Setup | 6 |
| 4.2 Operation of the Software | 7 |
| 4.3 Support | 7 |
| 4.4 Training | 8 |
| 4.5 Further Services | 8 |
| 4.6 Handling of Customer Data | 8 |
| 4.7 Subcontractors | 9 |
| 5. Service Levels | 9 |
| 5.1 Severity Levels | 9 |
| 5.2 Definition of Service Levels | 10 |
| 5.3 Service Levels Reporting | 11 |
| 5.4 Service Credits | 11 |
| 6. Responsibilities of Customer | 13 |
| 7. Fees, Invoices and Payment | 13 |
| 7.1 Recurring Fee | 13 |
| 7.2 Additional Usage Metrics units | 14 |
| 7.3 Amendment of Fees | 14 |
| 7.4 Invoices | 14 |
| 7.5 VAT | 14 |
| 7.6 Taxes | 14 |
| 7.7 Payment Default | 14 |
| 8. Confidential Information | 15 |
| 9. Data Protection | 16 |
| 10. Intellectual Property | 16 |
| 11. Representations and Warranties | 16 |
| 12. Third Party Rights Indemnity | 17 |
| 13. Limitation of Liability | 17 |
| 14. Insurance | 18 |
| 15. Force Majeure | 18 |
| 16. Audit | 18 |
| 17. Term and Termination | 18 |
| 17.1 Term of the Orders | 18 |
| 17.2 Ordinary termination of Orders | 19 |
| 17.3 Termination for cause | 19 |
| 17.4 Effect of termination | 19 |
| 18. Various Provisions | 19 |
| 18.1 Publicity and Marketing | 19 |

| | | |
|------|--------------------------------------|----|
| 18.2 | Notices | 20 |
| 18.3 | Severability | 20 |
| 18.4 | Non-Waiver | 20 |
| 18.5 | Assignment | 20 |
| 18.6 | Entire Agreement and Hierarchy | 20 |
| 18.7 | Amendments | 20 |
| 19. | Governing Law and Jurisdiction | 20 |

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms:

"Administrators" means certain designated employees of the Customer who belong to the Customer's IT department.

"Affiliate" means any person which, directly or indirectly, controls, is controlled by or is under common control with another person, and for the purposes of this definition, **"control"** (including, with correlative meanings, the terms "controlled by" or "under common control") means the power to direct or cause the direction (through the election or appointment of the persons who direct) of the management and policies of any person, whether through the ownership of securities, by contract or otherwise.

"API" means the Software's application programming interfaces provided by the Service Provider for usage by the Customer.

"API Documentation" means the description of the Software's API provided by the Service Provider as part of the web application.

"Available" has the meaning assigned to such term in Clause 5.2.1(a), and **"Availability"** shall be read correspondingly.

"Business Day" means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open for the transaction of banking business in Biel, Switzerland, if the term "Business Day(s)" is used in relation to the Service Provider, or at the corporate seat of the Customer, if the term "Business Day(s)" is used in relation to Customer, respectively.

"Confidential Information" means all information and data, and all documents and other tangible materials and things which record it, relating to or used in a Party's business, whether or not owned by a Party or any of its Affiliates, which is not generally known to the public or to the other Party or its competitors, and was disclosed by a Party (the **"Disclosing Party"**) to the other Party (the **"Receiving Party"**). Confidential Information does not include any information that:

- (a) is in or comes into the public domain other than as a result of a disclosure by the Receiving Party;
- (b) was known to the Receiving Party or in its possession prior to its being furnished by or on behalf of the Disclosing Party, unless furnished by the Disclosing Party during a request for proposal and/or in the negotiations phase leading up to the conclusion of any Order;
- (c) becomes available to the Receiving Party from a source other than the Disclosing Party, without such disclosure being a breach of confidentiality; or
- (d) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

"Customer Data" means all information and data provided by or on behalf of the Customer to the Service Provider by way of using the Software. All Customer Data shall be Confidential Information.

"Customer's Interfaces" has the meaning assigned to such term in Clause 6(a).

"Fees" shall mean the fees or other charges for the Services performed by Service Provider pursuant to these Terms.

"Force Majeure Event" has the meaning assigned to such term in Clause 15.

"Incident" means any unavailability of the Software and any deviation of the Software's functionality from the functionality described in the Software's Reference Manual and the API Documentation.

"Instance" means an instance of the Software operated for the Customer.

"Intellectual Property" means any trademarks, trade names, business names, brand names, domain names, service marks, copyrights, including any performing, author or moral rights, designs, inventions, patents, franchises, formulas, processes, know-how, technology and related goodwill, and any patent applications, patent registrations, issued patents, continuations in part, divisional applications or analogous rights or license rights therefore, and all other intellectual or industrial property.

"Intellectual Property Rights" means any and all rights in and to Intellectual Property.

"Maintenance Window" has the meaning assigned to such term in Clause 4.2(f).

"Minimum Term" means the minimum term of the Order set out in the Order Form.

"Operating Services" has the meaning assigned to such term in Clause 4.2(a).

"Order" means a contract for the provision of Services subject to these Terms.

"Order Form" means the document with which the Customer places orders to the Service Provider under these Terms.

"Query" means any query made by the Customer using the API or the user interface of the Software.

"Recurring Fee" has the meaning assigned to such term in Clause 7.1.

"Reference Manual" means the technical and user interface documentation of the Software provided by the Service Provider as part of the web application.

"Service Credit" shall mean a service credit owed by the Service Provider pursuant to Clause 5.4.

"Service Hours" means Monday-Friday, 09:00-17:00, excluding public holidays in the Canton of Berne, Switzerland.

"Service Provider's Worker" shall mean any director, officer, employee, agent, representative, contractor or subcontractor of, or under the control and direction, of the Service Provider or an Affiliate of the Service Provider.

"Services" means any services to be provided by the Service Provider to the Customer under these Terms.

"Setup Services" has the meaning assigned to such term in Clause 4.1.

"Severity Levels" or **"Levels"** have the meaning assigned to such terms in Clause 5.1.

"Software" means the software named in the Order Form, which the Service Provider makes available to Customer for use under these Terms.

"Submission" means any submission of the Customer of a file to be analyzed by the Software.

"Support Services" has the meaning assigned to such term in Clause 4.3.

"Tax" means any tax, duty, or levy imposed by any governmental body.

"Threat" means any harmful software or other system commands of any nature that could pose a threat to an IT system of any kind, including (without limitation) viruses, malware, spyware, scareware, ransomware, bots and trojans.

"Threatray Data" means data generated by or made available by the Software (via its user interface or via the API) to the Customer.

"Usage Metrics" means the restrictions on certain metrics of use of the Software set out in the Order Form, such as maximum number of Users, Queries or Submissions.

"User" means a named user permitted to access the Software.

"VAT" means any consumption and use, goods and services, harmonized sales, value-added, sales and other similar Taxes that ultimately are determined to be exigible on Services.

1.2 Interpretation

- (a) Any term denoting the singular shall be interpreted to also denote the plural and vice versa.
- (b) Any reference to a "Clause" shall be deemed to be a reference to a clause of these Terms unless the circumstances provide otherwise.
- (c) "Including" shall be deemed to mean "including (without limitation)".

2. NATURE OF THESE TERMS, ORDERING, HIERARCHY

- (a) These Terms set out the general terms and conditions applicable to the contractual relationship of the Parties. The Parties may enter into one or more Orders under these Terms by executing an Order Form, in which they will specify the Software, the fees to be paid, and any other terms and conditions specific to the Order. The Parties will use the Service Provider's Order Form template. Each Order shall constitute a separate contract between the parties and shall incorporate by reference, and be subject to, the terms and conditions of these Terms.
- (b) In case of a conflict between the terms set out in these Terms and any Order Form, the terms set out in the Order Form shall prevail.
- (c) Lower ranking documents may however deviate from higher-ranking documents (and prevail over the higher-ranking documents) where:

- (i) the higher-ranking document explicitly provides for deviations in lower-ranking documents (e.g. by stating that a provision shall apply "unless otherwise agreed" or similar); or
 - (ii) the lower-ranking document explicitly refers to the provision of the higher-ranking document which it aims to deviate from and explicitly states that it aims to deviate from such provision.
- (d) In case of conflict between terms set out in documents of the same hierarchy level, the terms set out in the document agreed upon later than the other document(s) shall prevail (application of the *lex posterior* rule).
- (e) These Terms shall apply to all Orders to the exclusion of any further general terms and conditions, and any such further terms and conditions shall hereby be excluded, even if included in a purchase order submitted by the Customer or any other communication between the Parties.

3. LICENSE

3.1 License Grant

Upon the execution of a respective Order Form, the Service Provider hereby grants Customer a right to use the Software for its own business purposes as a SaaS solution hosted by the Service Provider, and subject to the terms and restrictions as set forth in Clause 3.2 hereinafter (the "**License**").

3.2 License Terms and Restrictions

- (a) The License is a non-exclusive, non-transferable, non-sublicensable right to use the Software as provided (and hosted) by the Service Provider.
- (b) The License shall begin on the effective date of the Order (as set out in the Order Form) and shall expire upon the date of termination of the Order.
- (c) Customer shall not allow any third parties (except for the Affiliates of the Customer named in the Order Form) to access and/or use the Software or otherwise make the Software available to any such third parties or use the Software on behalf of any such third parties without the Service Provider's prior written consent.
- (d) Customer shall not use any Threatray Data for any purposes other than its own security purposes. While single Threatray Data items may be shared within the security community, the Customer shall not provide any substantial collections of Threatray Data to any third parties or the public.
- (e) The Customer shall not exceed the Usage Metrics set out in the Order Form.
- (f) The Service Provider shall have the right to take any and all measures necessary or useful to prevent or terminate any unauthorized usage by third parties.

4. SERVICES

4.1 Setup

The Service Provider shall set up the Software for Customer's use, which shall comprise the following Services (collectively, the "**Setup Services**"):

- (a) initial account setup;
- (b) provision of access to the Software.

4.2 Operation of the Software

- (a) The Service Provider shall provide the Software to Customer as a SaaS solution accessible over the Internet (the "**Operating Services**"). The Software shall be accessible to Customer in its then current version. The interconnection point (the "**Interconnection Point**") shall be the interface of the router connecting the data center used by the Service Provider for the hosting of the Software to the Internet. The Service Provider shall not be responsible for the availability of the connection between the Interconnection Point and Customer's network or clients.
- (b) The Service Provider will operate one (1) Instance for the Customer.
- (c) The Service Provider will update the Software to new versions at its discretion and make those updates available to Customer. Updates that will substantially change the existing features of the Software shall be notified to Customer reasonably in advance.
- (d) The Service Provider reserves the right to amend the Software's Reference Manual. Such amendments will not materially decrease the scope of operation or functionality of the Software (to the extent such functionality is in practice used by the Customer) except as specifically agreed by Customer.
- (e) The Service Provider shall be free in amending the Software's API at any time. Any amendment of the API making necessary changes in the Customer's Interfaces, and any deprecation of API functionality, shall be announced to the Customer three (3) months in advance. The Customer will then have to update the Customer's Interfaces within such timeframe.
- (f) The Service Provider shall notify the Customer reasonably in advance of planned outages of the Software (each a "**Maintenance Window**") during which the Software will be unavailable. The Service Provider reserves the right to use shorter announcement periods should this be unavoidable due to technical or security reasons.

4.3 Support

- (a) The Service Provider shall support to the Customer's Administrators (the "**Support Services**").
- (b) As part of the Support Services, the Service Provider shall render the following Services with respect to the then current version of the Software:
 - (i) continuously monitor for Severity Level 1 Incidents and disruptions of the access to the Software in its sphere of responsibility;
 - (ii) receive Incident reports from the Customer;
 - (iii) analyze and remedy all Incidents reported by the Customer or recognized by the Service Provider's monitoring tools in line with the Service Levels.
- (c) Incidents may be reported by the Customer by using the following communication vectors:

- (i) Service Provider will make available a ticketing system, which may be operated by a third party, that needs to be used to log all Incidents.
- (ii) Service Provider reserves the right to change the ticketing system at any time and shall notify Customer at least 3 months prior to any change.
- (d) All Incident reports shall be accompanied by a reasonable detailed description of the steps leading to the Incident.
- (e) Should an analysis of Incidents reported by the Customer show that such Incidents are not due to the Software or the operation thereof by the Service Provider, then the Customer shall remunerate the Service Provider's respective efforts on a time and materials basis at the then-current rates of the Service Provider.

4.4 Training

The Service Provider shall give initial trainings in the usage of the Software to the extent set out (and as limited by) the Order Form.

4.5 Further Services

- (a) An Order for the provision of the Software includes the Setup Services, the Operating Services and the Support Services.
- (b) If the Customer wishes to receive additional services from the Service Provider, the Parties may at any time enter into additional Orders for such additional services, which will be governed by these Terms.

4.6 Handling of Customer Data

The Service Provider shall:

- (a) store Customer Data in the data centre location(s) (the "**Data Centre Location(s)**") set out in the Order Form; if not specified, the location is the European Union.
- (b) not store any Customer Data outside the Data Centre Location(s) without Customer's express prior written consent, it being understood that the Service Provider's Workers located outside of the Data Centre Location may have access to Customer Data when rendering Services under the Agreement. Notwithstanding the foregoing, it is understood that:
 - (i) certain elements of Customer Data may be subject of service provision by other cloud providers that are used by the Software, which might lead to Customer Data being temporarily stored outside of the Data Centre Location (it being understood however that all such third-party providers shall not permanently store any such data);
 - (ii) monitoring logs may be stored temporarily outside of the Data Centre Location; and
 - (iii) Service Provider workers may have to temporarily download certain datasets in order to fix errors arising in the usage of the Software (i.e. for debugging purposes) or for product development analysis purposes, which temporary storage of data shall be deleted promptly once the respective issue has been fixed or analysis made.

- (c) The Service Provider will only use Customer Data as necessary to perform the Services and will not use the Customer Data for any other purpose, it being understood that the Customer will use analytics solutions to analyze the Customer's usage of the Software with the aim of improving the Software.
- (d) The Service Provider will use industry best practices in handling Customer Data, operating a secure data centre and in providing the Services. The Service Provider will use encryption of the Customer Data in transit (i.e. between the Customer's networks and the servers on which the Software is operated) and at rest. In no event will the Service Provider use data protection practices that are less stringent than what a prudent service provider would use in comparable circumstances.
- (e) If the Service Provider becomes aware that any Customer Data within the Service Provider's possession, whether pursuant to providing the Services or otherwise, has been misappropriated or otherwise accessed, used or disclosed contrary to Applicable Privacy Laws or these Terms (collectively, a "**Data Breach**"), Service Provider shall promptly notify Customer of the Data Breach and provide all reasonable assistance to Customer in responding to the Data Breach.
- (f) Notwithstanding the foregoing, the Service Provider shall have the right to use any data resulting from the testing, detonation, and analysis actions performed on files uploaded by the Customer to the Software ("**Derivative Data**") for any purpose, and may share any such data with third parties, provided that Derivative Data shall under no circumstance contain any content of any files uploaded by the Customer. It is the common understanding of the Parties that this Clause 4.6(f) shall not be interpreted to in any form limit the Service Provider's obligations as to the handling, or the confidentiality of, Customer Data; instead, it is the aim of this Clause 4.6(f) to allow the Service Provider to use technical data resulting from the Software's processing of the Customer Data to improve the Software and the Service Provider's products, and to use such technical data for its threat intelligence services and share such technical data with its other customers.

4.7 Subcontractors

- (a) The Service Provider may subcontract any part of its Service provision under the Agreement (e.g. by usage of a third party cloud platform vendor) and/or otherwise use third party vendors to render its Services under the Agreement without the prior consent of Customer.
- (b) The Service Provider shall be and remain wholly liable for the acts and omissions of any subcontractors as if such acts and omissions had been made by the Service Provider.

5. SERVICE LEVELS

5.1 Severity Levels

In these Terms, the following Severity Levels shall apply:

- (a) Level 1: The Software is not Available.

- (b) Level 2: Mission-critical functionality of the Software is not available or materially impaired, which has a material impact on Customer's business, and there is no work-around available.
- (c) Level 3: Other Incidents.

5.2 Definition of Service Levels

The provision of the Software and the other Services of the Service Provider shall be subject to the following service levels (collectively, the "**Service Levels**"):

5.2.1 Availability

- (a) The Software shall be deemed "**Available**" if it is up and running on the Service Provider's infrastructure and the router that connects the Service Provider's infrastructure to the Internet is reachable from outside the data center where the Software is hosted.
- (b) The Availability of the Software shall be measured by the Service Provider as a monthly average over each calendar month and shall be calculated based on the following formula:

$$a = \frac{t - w - dt}{t - w} \cdot 100$$

where:

- a: Availability in the relevant calendar month [%]
- t: Time in the relevant calendar month [cumulated, in minutes]
- w: Actual downtime resulting from Maintenance Windows during the relevant calendar month [cumulated, in minutes]
- dt: Downtime of the Software in the relevant calendar month outside of Maintenance Windows [cumulated, in minutes]
- (c) Downtimes due to Force Majeure Events shall be excluded from the above calculation. For the purposes of the calculation of the Availability, the Software shall be deemed available during such downtimes.
- (d) Recurring Fees shall be reduced pro rata temporis in case of downtime equal to or greater than one day per occurrence, regardless of cause, it being understood however that in case of Service Credits being owed, the reduction as per this Clause 5.2.1(d) shall only be owed to the extent it exceeds the Service Credits owed.
- (e) The Service Provider warrants an Availability of the Software of 99% per calendar month.

5.2.2 Reaction Times

- (a) The time elapsed between an Incident becoming known to the Service Provider and the Service Provider starting analysis on the cause of the defect or disruption (the "**Reaction Time**") shall be measured by the Service Provider.

- (b) Reaction Times shall start once notice regarding an Incident has been received by the Service Provider. In case of notices delivered outside of Service Hours, the respective Reaction Time shall begin at the beginning of the following block of Service Hours.
- (c) Reaction Times shall end once the Service Provider has started to analyze the cause for the defect or disruption.
- (d) The Service Provider shall assign to each Incident the respective Severity Level.
- (e) Reaction Times shall only run during Service Hours.
- (f) It is vital that the Customer raises every issue via the Service Provider's support communication vectors set out in Clause 4.3(c). If an issue is not raised in this way, the Reaction Time do not apply.
- (g) The Service Provider shall in case of defects in the Software or disruptions of Customer's access to the Software adhere to the following Reaction Times:

| Severity Level | Reaction Time |
|----------------|----------------------------------|
| Level 1 | 1 hour |
| Level 2 | 4 hours |
| Level 3 | 2 Service Provider Business Days |

5.3 Service Levels Reporting

The Service Provider shall track the time in the relevant calendar month, the Maintenance Windows and the downtime of the Software and provide the resulting Availability to the Customer on a monthly basis on an automated platform.

5.4 Service Credits

5.4.1 Breach of Availability Service Level

- (a) In case of a breach of the Service Level regarding the Availability of the Software in a given month as warranted by the Service Provider in Clause 5.2.1, the Service Provider shall owe a Service Credit as follows:

| Availability reached in the relevant month | Service Credit issued for the month as a percentage of the Recurring Fee (pro rated to a calendar month). |
|--|---|
| < 99% | 1.5% |
| < 98.5% | 3% |
| < 97% | 10% |

- (b) Should the Availability of the Software be less than 97% on a three months' rolling average, then Service Provider shall promptly analyze the reasons for such low Availability and take the necessary measures to correct the low Availability. Should the Availability not return to at least 98.5% (measured per month) within two months after the 97% threshold has been breached, then the Customer shall have the right to terminate the Order for cause without adhering to any notice period, which right

shall exist irrespective of whether the Minimum Term has already expired. In case of such termination for cause, any pre-paid Fees shall be reimbursed pro rata temporis. The termination right shall expire if not exercised within 30 days after it has arisen.

5.4.2 Breach of Reaction Times Service Level

In case of a breach of the Service Level regarding the Reaction Times warranted by the Service Provider in Clause 5.2.2, then the Service Provider shall owe the following Service Credits. The applicable percentage (i) relates to the pro-rata Recurring Fee for a month and (ii) depends on the number of occurrences (i.e. the number of Severity Level 1 and 2 Incidents) per month ("n"). The number ("n") is separately calculated for Severity Level 1 and 2 Incidents.

| Reaction Time actually achieved on average per month | Service Credit (n > 3) | Service Credit (n <= 3) |
|---|----------------------------------|-----------------------------------|
| Severity Level 1 | | |
| > 1 hour | 2 % | 1 % |
| > 2 hours | 4 % | 2 % |
| > 3 hours | 6 % | 4 % |
| Severity Level 2 | | |
| > 4 hours | 1 % | 0.5 % |
| > 5 hours | 2 % | 1 % |
| > 6 hours | 4 % | 2 % |

Example:

If there have been 2 Severity Level 1 Incidents and 6 Severity Level 2 incidents in a given month, and the average Reaction Time was lower than the warranted Reaction Time for both of the categories, then for (i) the breach of the average Severity Level 1 Response Time service level, the Service Credit in the right-hand column (n <= 3) and for (ii) the average Severity Level 2 Response Time service level, the Service Credit in the left-hand column (n > 3) shall apply, respectively.

5.4.3 Credit Mechanism

The Service Credits shall be credited to Customer on the next following invoice for the Recurring Fees.

5.4.4 Cap

In any case, the Service Credits for any given month shall not exceed 15% of the pro rata Recurring Fee for such month.

5.4.5 Full and Final Remedy

The Service Credits provided for in this section shall be full and final remedy for the relevant breach of the warranted Availability and Reaction Times.

6. RESPONSIBILITIES OF CUSTOMER

- (a) The creation, operation and maintenance of the Customer-side interfaces to the Software's API (the "**Customer's Interfaces**") shall be the sole responsibility of the Customer. The Customer shall only use the API as described in the API Documentation.
- (b) The Customer shall also be solely responsible for any data conversions necessary to integrate the Software with its systems.
- (c) The Customer shall use the Software solely in accordance with the restrictions set out in these Terms, the Order and/or any other contractual documents applicable between the parties as well as in accordance with the technical specifications set out in the Reference Manual and the API Documentation.
- (d) The Customer shall promptly notify the Service Provider after becoming aware of any Incident.
- (e) The Customer is aware that the Software is a complementary solution for the identification and analysis of Threats and is no replacement for state-of-the-art IT security software, measures and protocols, and the Customer shall be fully responsible for adequately protecting its systems by employing up-to-date security software and implementing adequate security measures and protocols.
- (f) Furthermore, the Customer shall:
 - (i) provide the Service Provider with such information, co-operation, assistance, facilities and resources as reasonably required and requested by the Service Provider to enable it to perform the Services;
 - (ii) act reasonably and in good faith and give prompt attention to any matter raised by the Service Provider, particularly relating to Customer's obligations and/or the performance of the Services;
 - (iii) implement reasonable and appropriate business continuity and disaster recovery measures to mitigate against any reasonably foreseeable risks;
 - (iv) maintain and be responsible for Customer Data back-up and relevant restoration measures; and
 - (v) notify the Service Provider promptly of any concerns or issues that Customer has with the Services provided by the Service Provider.

7. FEES, INVOICES AND PAYMENT

7.1 Recurring Fee

- (a) The Recurring Fee shall cover the making available and use of the Software, as limited by the Usage Metrics set out in the Order Form. It shall be invoiced at the beginning of each respective invoicing period set out in the Order Form.
- (b) In case of the Order beginning or ending during the invoicing period, the Recurring Fees shall be invoiced on a pro-rata basis.

7.2 Additional Usage Metrics units

Should the Customer require additional Usage Metrics units, then the Service Provider will offer the Customer such additional units based on its then-current price list.

7.3 Amendment of Fees

The Service Provider may increase its Fees once a year, such increase not to exceed the higher of (i) 5% or (ii) the effective rate of inflation (as measured by the consumer price index (*Landesindex der Konsumentenpreise*) published by the Swiss Federal Statistical Office (*Bundesamt für Statistik*)) in any given year. The Service Provider shall announce such Fee increase to the Customer six months in advance, whereupon the Customer shall have the right to terminate the Order as of the effective date of such Fee increase by giving three months' prior written notice.

7.4 Invoices

- (a) Invoices shall be due for payment after thirty (30) days from the receipt thereof.
- (b) All payments to the Service Provider under the Order shall be made in CHF, EUR or USD.

7.5 VAT

All Fees and rates are quoted excluding VAT and Taxes.

7.6 Taxes

- (a) Subject to Clause 7.6(b), in the event that Customer is obliged by local law to withhold withholding Taxes due to cross-border billing, the Customer will pay the charge to the Service Provider less of the required withholding or deduction and shall remit the amount so deducted or withheld to the relevant Tax authority.
- (b) If any withholding or deduction is required pursuant to Clause , the Customer shall pay to Service Provider such additional amount as will ensure that Service Provider receives the same total amount that it would have received if no such withholding or deduction had been required.

7.7 Payment Default

- (a) Customer shall automatically be in default with any payment not received by the Service Provider within thirty (30) days of receipt of the respective invoice.
- (b) Service Provider shall notify Customer's Representative with a default notice and provide ten (10) Business Days to cure the default. If Customer fails to cure the default, Service Provider shall notify Customer's Representative with a second default notice and provide five (5) Business Days to cure the default.
- (c) Should Customer be in default with any payment, then the Service Provider may, after having delivered to Customer two default notices in accordance with Clause 7.7(b) above and having waited for the second late payment curing period provided for by Clause 7.7(b) to end, block Customer's access to the Software. Such blocking of Customer's access shall not constitute a waiver of, or otherwise remove, Customer's obligations to pay the respective Fees.

- (d) Customer shall owe to the Service Provider default interest of 5% p.a. on any payment with which it is in default.

8. CONFIDENTIAL INFORMATION

- (a) The Receiving Party shall keep the Disclosing Party's Confidential Information confidential, and will not, except as set forth in the following paragraph, disclose any of the Disclosing Party's Confidential Information in any manner whatsoever. The Receiving Party has no rights to the Disclosing Party's Confidential Information, except the limited right to use such Confidential Information in connection with the Services. The Receiving Party may only use the Disclosing Party's Confidential Information for purposes directly related to the Services.
- (b) Notwithstanding Clause 8(a), the Receiving Party may disclose the Disclosing Party's Confidential Information only:
 - (i) with the prior written consent of the Disclosing Party;
 - (ii) to its employees, contractors or subcontractors solely for the purpose of assisting the Receiving Party in connection with the Services, but, with respect to subcontractors, only if such subcontractor has been informed of the confidential nature of the Confidential Information and is obligated to maintain its confidentiality upon terms similar to those set out herein; or
 - (iii) as required by applicable law or legal process, in which event the Receiving Party shall give the Disclosing Party prompt notice thereof so that the Disclosing Party may seek a protective order and/or waive the provisions of this Clause 8; provided that in the absence of such order or waiver, if the Receiving Party, in the opinion of its counsel, a copy of which will be provided to the Disclosing Party upon request, would stand liable for contempt or suffer other censure or penalty for failure to disclose, the Receiving Party may disclose such Confidential Information as is legally required without liability hereunder.
- (c) Both Parties agree to keep the terms of these Terms and any Order confidential and will not disclose such terms except to its employees or agents that need to know.
- (d) Upon termination of any Order, or at any time upon request by the Disclosing Party for any reason, the Receiving Party will promptly destroy, cause to be destroyed or deliver to the Disclosing Party all documents (and all copies thereof) and electronic data, regardless of format or medium, furnished to Receiving Party by or on behalf of the Disclosing Party and which contain, in whole or in part, Confidential Information. The Receiving Party continues to be bound by its obligations of confidentiality and non-use hereunder notwithstanding the return or destruction of Confidential Information. Notwithstanding the foregoing, the Receiving Party may retain Confidential Information to the extent that it is required for compliance with applicable laws or its obligations pursuant to these Terms.
- (e) The obligations set out in this Clause 8 shall survive the termination or expiry of any Order.

9. DATA PROTECTION

- (a) Service Provider shall comply (and cause of its subcontractors to comply, if applicable) with all applicable privacy and data protection laws (collectively, "**Applicable Privacy Laws**"). The Service Provider acknowledges that the Customer is required to comply with the Applicable Privacy Laws, and Service Provider shall not, by its act, its omission or any other means, cause Customer to be in violation of Applicable Privacy Laws.
- (b) To the extent that Service Provider obtains any personal information in connection with the Order, Service Provider shall make no use of such personal information except solely as required and only to the extent required, to perform the Services.
- (c) If requested by the Customer, the Service Provider will enter into separate data processing and data export agreements, as required.

10. INTELLECTUAL PROPERTY

- (a) Any and all Intellectual Property Rights pertaining to the Software and to Services performed under the Agreement shall remain the sole property of the Service Provider and/or its third-party service providers.
- (b) The Customer shall retain all Intellectual Property Rights in its Intellectual Property and all information, Customer Data, materials, or software furnished by the Customer to the Service Provider.

11. REPRESENTATIONS AND WARRANTIES

- (a) The Service Provider represents and warrants that the Software shall operate as described in the Software's Reference Manual and the Software's API shall operate as described in the API Documentation.
- (b) The Service Provider makes no representations or warranties with respect to the results generated by the Software. In particular, the Service Provider does not represent nor warrant that:
 - (i) the Software will identify any and all Threats contained in Submissions;
 - (ii) any Threatray Data will be complete and error-free; or
 - (iii) any analysis made by the Software will lead to any usable results.
- (c) The Service Provider disclaims any warranty and liability relating to the results generated by the Software or and (i) if the Software not correctly identify any Threat contained in a Submission (*false negatives*), (ii) if the Software falsely identifies the contents of a Submission as a Threat (*false positives*) or (iii) if the Threat Data does not contain a Threat that may be found in the wild.
- (d) While aspiring to offer non-stop Availability of the Software, the Service Provider cannot represent or warrant that the Software will be Available at all times. The Service Provider does however warrant that the Software will be Available in accordance with the Service Levels set out in these Terms.
- (e) These Terms exhaustively sets out the applicable rights and remedies of the Customer in case of a breach of any of the above warranties.

- (f) Any further warranty shall be excluded.

12. THIRD PARTY RIGHTS INDEMNITY

- (a) Service Provider shall indemnify and hold the Customer harmless from and against all claims related to, arising out of or in connection with any claim by a third party that Customer's use of the Software infringes any Intellectual Property Right. In the event that a final court decision has determined that an infringement of third party rights took place, or if Customer is, due to an interim or final court decision, hindered from using the Software, Service Provider shall, at its option and expense:
 - (i) procure for Customer the right to continue using the infringing Software;
 - (ii) modify the Software to make it non-infringing; or
 - (iii) replace the Software with a non-infringing Software having equivalent functionality.
- (b) The indemnity in Clause 12(a) above shall not be applicable where any infringement is the result of:
 - (i) the combination of the Software with any third-party product not supplied by Service Provider;
 - (ii) the use of the Software in a manner not contemplated by these Terms or the Order.
- (c) With regard to Clause 12(a) above, Customer shall:
 - (i) promptly notify Service Provider after receipt of summons or the commencement of any claim, action or other proceeding by a third party;
 - (ii) keep the Service Provider fully informed with respect thereto;
 - (iii) provide reasonable assistance to Service Provider;
 - (iv) abstain from making any representations, admissions or concessions to or agreements with the third-party claimant concerning the claim; and
 - (v) leave the conduct of negotiations and litigation in connection with such claim to the Service Provider, with Customer reserving the right to receive at its own cost advice from legal counsel of Customer's choosing.
- (d) Clause 13 (Limitation of Liability) shall also apply to the indemnities set out in this Clause 12.

13. LIMITATION OF LIABILITY

- (a) Each Party shall be liable without limitation for any damages arising as a result of gross negligence or intent.
- (b) No Party shall be liable for lost profits, indirect or consequential damages.
- (c) The Service Provider shall not be liable for any damages resulting from any misidentification (false positives or false negatives) of Threats or errors or incompleteness of Threatray Data.

- (d) Each Party's liability with respect to any Order shall be limited to the total of the Fees paid under the Order in the 12 months prior to the event giving rise to the liability.

14. INSURANCE

- (a) During the term of any Order, Service Provider shall maintain, at its own expense, a professional liability insurance policy, such insurance policy to be in an amount of not less than two million Swiss Francs (CHF 2'000'000) for any one claim and in the annual aggregate.
- (b) Service Provider shall upon request of the Customer furnish documentary evidence of the existence of such policies.

15. FORCE MAJEURE

A Party will be excused from delays in delivery and performance of contractual obligations under any Order caused by acts or omissions that are beyond the reasonable control and without the fault or negligence of said Party including delays caused by acts of God or of the public enemy, fires, floods, explosions, epidemics, pandemics quarantine restrictions, lawful acts of public authorities, freight embargoes, interruptions or disruptions of the public transportation, electric or communication infrastructure, civil insurrection or war (each a "**Force Majeure Event**"). The suspension of performance shall be of no greater scope and of no longer duration than is required by the relevant Force Majeure Event. Notwithstanding any other provisions of this section, should the Force Majeure Event hinder a Party from the performance of its obligations for more than one (1) month, the non-affected Party may terminate the affected Order immediately upon written notice to the affected Party.

16. AUDIT

Service Provider shall, at full cost of Customer (including the efforts and costs of the Service Provider, which shall be borne by Customer) allow Customer, or its duly authorized representative (which shall not be a competitor of the Service Provider), upon twenty (20) days prior written notice, the right to conduct, during Service Provider's normal business hours, an audit of all information, books, records and accounts which pertain to the rendering of Services, including, but not limited to, access to its facilities, documents, records, procedures, safety and quality audits, and information and records surrounding any Incident. The audit right shall exclude however (i) any and all information pertaining to Service Provider's cost structure and fees paid to any third parties, (ii) any and all information relating to other customers of the Service Provider (including business arrangements with such customers), and (iii) any other proprietary information or business secrets of the Service Provider, including the source code of the Software. Audits may not be conducted more than once during any consecutive twenty-four (24) month period.

17. TERM AND TERMINATION

17.1 Term of the Orders

- (a) Any Order shall enter into force on the effective date set out in the respective Order Form.
- (b) Any Order shall be entered into for the Minimum Term set out in the respective Order Form.

- (c) Any Order shall, after expiry of the Minimum Term, automatically prolong for subsequent periods of the same duration as the Minimum Term (each an "**Extension Term**") unless and until terminated in accordance with these Terms or the terms set out in the Order Form.

17.2 Ordinary termination of Orders

Each Party may terminate any Order for convenience as per the end of the Minimum Term or any Extension Term by giving six (6) months' prior written notice.

17.3 Termination for cause

- (a) If a Party (the "**Non-Defaulting Party**") reasonably believes that the other Party is in default of any of its material obligations under any Order, the Non-Defaulting Party may notify the other Party (the "**Defaulting Party**") in writing of the alleged defaults.
- (b) The Defaulting Party shall, within thirty (30) days of the date of receipt of written notice, remedy or commence to the satisfaction of the Non-Defaulting Party, to remedy such defaults. If the alleged defaults are not cured in this thirty (30) day period, or if the Defaulting Party has not taken steps that are objectively adequate to commence curing the alleged default, the Non-Defaulting Party may terminate the relevant Order without adhering to a notice period by delivery of a written termination notice to the Defaulting Party.
- (c) A Party may terminate any Order immediately upon written notice to the other Party if the other Party ceases to conduct business in the normal course, becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, proceedings seeking relief, reorganization or rearrangement under any laws relating to insolvency, are instituted by or against the other Party, a receiver, liquidator, or trustee is appointed in respect of any property or assets of the other Party or an order is made for the liquidation, dissolution or winding up of the other Party.

17.4 Effect of termination

- (a) The termination of any Order shall have no effect on any other Order.
- (b) Upon termination of any Order:
 - (i) Customer shall pay to Service Provider, within thirty (30) days of such termination, all amounts owed under these Terms; and
 - (ii) each Party shall immediately return to the other Party all Confidential Information and Intellectual Property and all copies, portions and abstracts thereof, that are in its possession or under its control, all as provided for, and within the limits set out, in Clause 8(d).

18. VARIOUS PROVISIONS

18.1 Publicity and Marketing

Service Provider may use the name, logo, trademarks or trade names of Customer in publicity releases, promotional material, advertising, marketing or business-generating efforts.

18.2 Notices

All notices required or permitted under these Terms or any Order will be in writing and will be delivered by e-mail, personally, via first class return receipt requested mail, registered mail, by facsimile, by courier service, or by express mail, addressed as follows, or to such other address as either Party may designate in writing to the other Party from time to time. Any personal delivery will be deemed to be effective upon delivery as shown by the courier receipt.

18.3 Severability

Each provision of these Terms and any Order shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of these Terms or any Order shall in no way affect the validity or enforceability of any other provision hereof. If any provision of these Terms or any Order is determined to be invalid, illegal or unenforceable, the remaining provisions of these Terms or the Order remain in full force and effect if both the economic and legal substance of the transactions that are contemplated in these Terms and any Order are not affected in any manner adverse to any Party.

18.4 Non-Waiver

The waiver of a breach of these Terms or any Order or the failure of a Party to exercise any right under these Terms or any Order shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under these Terms or any Order. The failure of either Party to enforce at any time any of the provisions of these Terms or any Order shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a Party to enforce each and every such provision thereafter.

18.5 Assignment

The Parties shall not assign any Order or any of the rights or obligations thereunder to any third party without the prior written consent of the other Party.

18.6 Entire Agreement and Hierarchy

These Terms and the Orders state the entire agreement of the Parties with respect to the provision of the Services and supersedes and cancels all prior oral or written representations, communications, or agreements between the Parties.

18.7 Amendments

No alteration, amendment, waiver, cancellation or any other change in any term or condition of these Terms or any Order shall be valid or binding on either Party unless agreed in writing.

19. GOVERNING LAW AND JURISDICTION

- (a) These Terms and all Orders shall be subject to the ordinary laws of Switzerland excluding their conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention).
- (b) The ordinary courts in Berne, Switzerland, shall have sole jurisdiction with respect to any and all disputes out of or in connection with these Terms and/or any Order.