CybSafe Terms and Conditions

These current CybSafe Terms and Conditions apply to organisations who have requested access to the CybSafe service, either direct from CybSafe or from one of its authorised resellers.

Thank you for signing up to use our Services! By agreeing an order which references these Terms and Conditions ("Terms") or clicking to accept them, or by using or accessing the Services (whichever is earlier), you agree to these Terms and other parts of this Agreement as defined in Section 1.1 below.

Certain capitalised terms (like 'CybSafe', and 'Services') are defined in Section 24, and others are defined in context elsewhere in these Terms.

Please note that CybSafe may modify this Agreement as described in Section 22 below. Section 20.1 provides for the automatic renewal of subscriptions. If you have purchased CybSafe through one of our authorised resellers or channel partners, these Terms apply subject to the provisions of Section 16 below.

If you are accepting these Terms on behalf of a legal entity (such as your employer), you confirm that: (i) you have full legal authority to do so; (ii) you have read and understand these Terms; and (iii) you agree to these Terms on behalf of the legal entity that you represent.

CybSafe is a 'software as a service' platform that educates, nudges and provides real-time, tailored cyber assistance for users so that they can be secure in their daily digital lives. It provides security behaviour, culture and risk reporting metrics that allows its customers to pre-empt security problems. It's designed for a modern workforce and a hybrid working environment. For more information please visit: https://www.cybsafe.com/

1.   Definitions and interpretation

1.1 This Agreement consists of the Order, these Terms (which include the schedules appended to them), and any applicable Service-Specific Terms ("this Agreement").

2.   Subscription Allocation

2.1 Subject to the Customer purchasing the Subscription Allocation in accordance with these Terms, the restrictions set out in this Section 2 and the other terms and conditions of this Agreement, CybSafe grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services in accordance with the Documentation during the Subscription Term and any Renewal Period solely for the Customer's internal business operations, based on the analysis, monitoring or processing of data from the Customer's own Authorised Users, systems, networks, and devices. This includes the right, as part of the Customer's authorised use of the Services, to download and use any mobile applications associated with the Services which are made available by CybSafe to the Customer for use in connection with the Services.

2.2 The Customer shall ensure that the maximum number of Authorised Users that the Customer authorises to access and use the Services shall not exceed the number of Licences it has purchased from time to time. The Customer will not allow any Licence to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User will no longer have any right to access or use the Services.

2.3 Except to the extent specified in the Order, Authorised Users may include employees, agents and independent contractors of an Affiliate of the Customer. If an Affiliate wishes to have its own account for the Services or wishes to be billed separately for use of the Services, this will require a separate Order to be agreed between CybSafe and the Affiliate.

3.   Upgrading, Downgrading, Adding Subscription Allocation

3.1 If the Customer wishes to upgrade to a higher subscription plan with a greater Subscription Allocation, or purchase an add-on to its Subscription Allocation, the Customer may do so by agreement in writing with CybSafe and the Order shall be deemed to have been amended accordingly. The Customer shall pay to CybSafe the relevant additional Subscription Fees for such higher plan or add-on. If the upgrade occurs part way through the Subscription Term or any Renewal Period (as applicable), such Subscription Fees shall be pro-rated from the date of activation of the higher plan or add-on by CybSafe for the remainder of the Subscription Term or then current Renewal Period (as applicable).

3.2 If the Customer wishes to downgrade to a subscription plan with a lower Subscription Allocation, the Customer may do so by means of the Services user interface and the downgrade will take effect as of the commencement of the next Renewal Period. The lower Subscription Fees will be charged as from the commencement of that Renewal Period. Downgrades must be requested 60 days before the commencement of the Renewal Period. The Customer will not be entitled to any prorating for downgrades for the remainder of the Subscription Term or (as applicable) Renewal Period during which it notifies CybSafe of its decision to downgrade.

3.3 The Customer may, from time to time during any Subscription Term, purchase additional Licences in excess of the number set out in the Order and CybSafe shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this Agreement. If the Customer wishes to purchase additional Licences, the Customer may do so by means of the Services, provided that the Customer shall pay to CybSafe the relevant then-current fees for such additional Licences. Such fees shall be pro-rated from the date of activation by CybSafe for the remainder of the Subscription Term or then current Renewal Period (as applicable).

4.   Services

4.1 The Customer may specify one or more Administrators by means of the Services. The Customer agrees that Administrators have its authority, and CybSafe may rely on that authority, in respect of instructions or choices made by, and any communications or notifications provided to, any Administrator in connection with the Services.

4.2 The Services and the Documentation continue to evolve. CybSafe may change the Services (including by changing, adding or removing features) at any time. In the event that CybSafe considers them sufficiently substantial, such changes will be notified to the Customer. CybSafe shall use reasonable endeavours to ensure that any such modification does not materially overall adversely affect the use of the Services by CybSafe's customers generally. Any such change shall apply to CybSafe's customers generally, not targeted to Customer alone.

4.3 CybSafe may share information about its future plans for the Services. Any statements about those future plans are an expression of intent, but not binding, and the Customer acknowledges that it does not rely on them when purchasing its subscription and that its purchase is not contingent on any future features or functionality. Decisions to purchase Subscription Allocation shall not be based on the potential for delivery of any future functionality or features.

4.4 The Customer acknowledges that (i) any reference in the Order or Documentation to the Services supporting any languages other than English ("Supported Languages") refers only to modules of CybSafe Content and certain other material presented to Authorised Users (and not to any other materials such as account creation, onboarding or administration communications with Customer or Authorised Users); and (ii) CybSafe will use commercially reasonable endeavours to make such modules and other material available in Supported Languages specified in the Order within three months of being initially made available in English.

5.   Free Services; Early Access

5.1 CybSafe may from time to time make available some or all of the Services as Free Services. CybSafe may terminate or suspend the provision of Free Services at any time with or without notice. Where access is provided on a free trial basis, unless the Customer purchases a paid subscription to the Services before the end of the free trial, CybSafe may permanently delete Customer Data at the end of the trial, and CybSafe will not be obliged to recover it. To the extent that CybSafe specifies any additional terms and conditions to the Customer in the course of registering for a free trial, those terms will apply as well as these Terms.

5.2 From time to time, CybSafe may invite the Customer to try, at no charge, Early Access. Any Early Access will be clearly designated as beta, pilot, limited release, non-production, trial or by a similar description. Early Access is provided for evaluation purposes and not for production use, is not fully supported, is subject to change in CybSafe's sole discretion, and may be subject to additional terms. Unless otherwise determined by CybSafe, no Order is specifically required to enable Customer's use of Early Access. Early Access may contain material defects and to the maximum extent permitted by law, Early Access is provided "as is" and as available, exclusive of any warranty, representation or guarantee.

6.   Customer Data; Data Protection

6.1 CybSafe and the Customer agree that, for the purposes of Data Protection Laws, each of CybSafe and the Customer (to the extent it processes Personal Data) processes Personal Data as a data controller in its own right. Nothing in this Agreement is intended to construe either CybSafe or the Customer as the data processor of the other with respect to Personal Data.

6.2 The collection, use, and disclosure of Personal Data by CybSafe is subject to the CybSafe Privacy Notice. The Customer acknowledges that the Services include facilitating the Customer designing and sending Authorised Users simulated cyber security attack communications, and the Customer shall ensure that Authorised Users are apprised of the CybSafe Privacy Notice prior to their first engagement with such communications.

6.3   Each party shall comply with its obligations set out in Schedule 1 regarding processing of Personal Data.

6.4   CybSafe routinely undertakes regular backups of the Services (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make CybSafe responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by applicable law, CybSafe shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data. Without prejudice to CybSafe's obligations under Data Protection Laws:
(a)   In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against CybSafe shall be for CybSafe to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by CybSafe in accordance with its standard archiving procedure; and
(b)   CybSafe shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by CybSafe to perform services related to Customer Data maintenance and back-up).

6.5 Customer Data may be exported from the Services by the Customer at any time during the Subscription Term, to the extent set out in the Documentation.

6.6 CybSafe will notify the Customer without undue delay (but in any event within 72 hours of becoming aware) of any unauthorised access to its Customer Data account (a "Security Incident"), will promptly take all necessary steps to prevent any further loss of Customer Data resulting from the Security Incident, and will provide the Customer with reasonable cooperation in investigating the Security Incident (including, on request and to the extent reasonable, providing the Customer with information regarding the Security Incident).

7.   CybSafe's obligations

7.1   CybSafe shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

7.2 Without limitation, CybSafe shall not be responsible for any Service failure or other issue to the extent caused by any of the following: (i) incorrect operation or use of the Services by the Customer, or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications of Customers facilities or systems); (ii) use of any of the Services other than for the purposes for which it is intended; (iii) use of any Services with other software or services or on equipment with which it is incompatible (unless CybSafe recommended or required the use of that other software or service or equipment in the Documentation); (iv) any act by any third party (including hacking or the introduction of any virus or malicious code, or interference with the Services by any service provider of the Customer); (v) any modification of Services (other than that undertaken by CybSafe or at its direction); or (vi) any breach of this Agreement by the Customer (or by any Authorised User).

7.3   CybSafe warrants that in its provision of the Services and the Professional Services it will comply with all laws and regulations generally applicable to it as a business and a provider of software as a service solutions. CybSafe shall have no obligation to ensure that it or any part of the Services or the Professional Services complies with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors). All decisions that the Customer makes in relation to the information that the Services provides including the CybSafe Content are made at the Customer's own risk. CybSafe does not purport to give advice to the Customer in relation to compliance with laws relating to information security. The Services are intended to provide the Customer with tools and content to help the Customer make its own decisions in relation to its security policies and stance, taking into account other factors with relevance to the Customer's particular circumstances of which the Customer and its advisers should reasonably be aware.

7.4 CybSafe has implemented and maintains a policy for compliance with anti-corruption and anti-bribery laws applicable to it. This policy prohibits the offering or soliciting of any illegal or improper bribe, facilitating payment, gift, to or from any of the Customer's employees or agents in connection with this Agreement. If CybSafe learns of any breach of that policy in respect of the Customer's employees or agents, CybSafe will use reasonable efforts to promptly notify the Customer.

7.5 CybSafe has and will maintain a disaster recovery and business continuity plan. CybSafe does not warrant that the Customer's use of the Services will be uninterrupted or error-free.

7.6 The Customer acknowledges and agrees that CybSafe does not control the security of the Internet and telecommunications providers' networks and that CybSafe shall have no liability for any changes to, interception of, or loss of Customer Data while in transit by means of the Internet or telecommunications providers' networks.

8. Customer's obligations

8.1 The Customer shall:
(a) provide CybSafe with (i) all necessary co-operation in relation to this Agreement; and (ii) all necessary access to such information as may be required by CybSafe in order to provide the Services or the Professional Services;
(b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its use of the Services;
(c) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify CybSafe.
(d) ensure that only Authorised Users use the Services and that the Authorised Users use the Services in accordance with the terms and conditions of this Agreement;
(e) be liable for the acts and omissions of the Authorised Users as if they were its own;
(f) obtain and shall maintain all necessary licences, consents, and permissions necessary for CybSafe, its contractors and agents to perform their Customer-specific obligations under this Agreement.

8.2 The Customer shall not:
(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Applications, CybSafe Content and/or Documentation (as applicable) in any form or media or by any means; or (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Applications; or
(b) access all or any part of the Services and Documentation in order to design, build or improve a product or service which competes with the Services or has features or functionality substantially similar to the Services, or for the purposes of competitive analysis; or
(c) use the Services and/or Documentation to provide services to third parties, or license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party;, or
(d) attempt to hack, defeat, or overcome any encryption technology or security measures regarding the Services or CybSafe's other systems or those of any third party, or gain any unauthorised access to any systems or accounts; or
(e) introduce or permit the introduction of, any malware or vulnerability into CybSafe's network and information systems;
(f) remove any trade mark or copyright notices contained in the Services;
(g) not use the Services for any activity (including display of any Customer Materials) which (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or (iv) is otherwise illegal or causes damage or injury to any person or property,
and CybSafe reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this Section 8.2.

8.3 The Customer shall ensure that the number of Authorised Users does not exceed the Subscription Allocation at any time. Without prejudice to any other right or remedy of CybSafe, in the event the Customer is in breach of this Section then Customer shall be liable to pay for the number of Authorised Users above the Subscription Allocation for the relevant period during which infringement occurred.

8.4 The Customer shall not directly or indirectly export, re-export, or transfer the Services or Professional Services to any countries or individuals prohibited under any export laws, or permit use of the Services or Professional Services by any countries or individuals countries or individuals prohibited under any export laws. Without limitation, the Customer shall comply with the export laws of the United Kingdom and United States in using the Services and obtain any permits, licences and authorizations required for such compliance. The Customer represents that neither it nor any of its Affiliates (nor any officer or persons associated with the Customer or any Affiliate) is named on any United Kingdom or U.S. government list of persons or entities prohibited from receiving exports.

9. Suspension

9.1 CybSafe may suspend access to the Services (or any part, including any Integration) to all or some of the Authorised Users if:
(a) CybSafe suspects that there has been any unlawful use or any misuse of the Services or breach or threatened breach of Section 8 or 10 of these Terms;

(b) the Customer fails to pay any sums due to CybSafe (or, as applicable, the Channel Partner) by the due date for payment (except in circumstances of a good faith dispute in accordance with Section 13.9); or

(c)   required by law, by court or governmental or regulatory order.

9.2   Where the reason for the suspension is suspected misuse of the Services or breach of this Agreement, without prejudice to its rights under Section 20.2 CybSafe will take steps to investigate the issue and may restore or continue to suspend access at its discretion.

9.3   In relation to suspensions under Section 9.1(b) access to the Services will be restored promptly after CybSafe receives payment in full and cleared funds.

9.4   Subscription Fees shall remain payable during any period of suspension notwithstanding that the Customer, or some or all of the Authorised Users may not have access to the Services.

10.   Integrations

10.1   Depending on the Customer's Subscription Allocation, the Customer acknowledges that Integrations may enable or assist it to access and correspond with certain Non-CybSafe Services and that it does so solely at its own risk. CybSafe makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any Non-CybSafe Service or any transactions or operations completed with or by means of any Non-CybSafe Services, even if a Non-CybSafe Service is identified as being compatible with, certified by, or validated by CybSafe. Except to the extent agreed otherwise in an Order in respect of a non-standard Integration to be developed by means of the provision of Professional Services by CybSafe, Integrations shall be effected by means of the Customer using CybSafe's standard Integration materials as set out in the Documentation.

10.2   To the extent that the Customer activates or uses any Integration, the Customer hereby gives CybSafe express permission to access and use information from any account maintained by the Customer with the provider of any Non-CybSafe Services, solely for the purposes of this Agreement, including to generate Aggregated Data.

10.3   To the extent that any service or feature is completed by means of any Non-CybSafe Services, the same is governed by the contract between the Customer and the provider of the Non-CybSafe Service, and not this Agreement.

10.4   Integrations are provided on the basis of a standard deployment of the Non-CybSafe Services, and any API provided by the operator of the Non-CybSafe Services, as they exist on the Commencement Date. CybSafe shall use reasonable endeavours to continue such Integration but makes no warranty that any Integration shall remain throughout the Subscription Term. Without limitation, CybSafe may cease to provide an Integration of the Non-CybSafe Service where the provider of such service ceases to make available the means to connect to such service on what CybSafe considers to be a reasonable commercial or technical basis. The Customer will in its use of any Integration abide by any terms of service of any Non-CybSafe Services. If a Non-CybSafe Service is enabled for the Customer's use of the Services, the Customer acknowledges that Customer Data that will be shared with the provider of the Non-CybSafe Service. CybSafe will not be responsible or liable for any use, disclosure, modification or deletion of Customer Data that is transmitted to, or accessed by, a Non-CybSafe Service.

11.   Professional Services

11.1   If, in addition to the Services, the Customer requests any Professional Services from CybSafe, CybSafe shall provide such services as agreed between the parties in writing in an Order, project document or work order ("Statement of Work"). Except where a fixed price has been agreed in writing, such Professional Services shall be on a time and materials ("T&M") basis; that is, (i) Customer shall pay CybSafe for all the time spent performing such Professional Services (including all travel time), plus materials, taxes, and reimbursable expenses; and (ii) the rates for such Professional Services shall be CybSafe's then-current standard rates agreed in the Statement of Work. CybSafe shall use reasonable endeavours to meet any performance dates specified in the Statement of Work or any project plan, but any such dates shall be estimates only and time shall not be of the essence. Except where a fixed price is agreed, any monetary limit stated in an estimate or Statement of Work for Professional Services shall be an estimate only for the Customer's budgeting and CybSafe's resource scheduling purposes. If the limit is exceeded, CybSafe will cooperate with Customer to provide continuing services on a T&M basis. CybSafe shall invoice the Customer in advance, unless otherwise set out in the Statement of Work. Charges shall be payable 30 days from receipt of invoice by Customer. CybSafe reserves the right to require a non-refundable fee and/or cost deposit prior to commencement of Professional Services. The Customer shall carry out all Customer responsibilities set out in the Statement of Work in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, CybSafe may adjust any agreed timetable or delivery schedule as reasonably necessary. To the extent that an Order specifies Premium Support, the same shall be considered Professional Services.

11.2 To the extent that any CybSafe personnel provides Professional Services on the Customer's systems or premises, CybSafe shall ensure that such personnel will comply with any of the Customer's security practices and procedures generally prescribed by Customer for service providers having access to such systems or premises, which are specified in the Statement of Work. The Customer acknowledges that compliance with such practices and procedures may delay the commencement or completion of Professional Services.

11.3 CybSafe acknowledges that its personnel involved in provision of Professional Services are not eligible for or entitled to any benefits of employment made available by the Customer to its own employees. As between the Customer and CybSafe, CybSafe is responsible for all statutory obligations arising out of CybSafe's relationship with such personnel.

11.4 Any changes to the scope of Professional Services are subject to agreement between the parties, such changes being specified in a Cybsafe-issued Change Control Note signed by both parties, which shall include any resulting changes to the fees payable or other terms in respect of such changes. CybSafe shall have no obligation in respect of such changes in the absence of such an agreed signed Change Control Note. Except as specified in a Statement of Work, any Professional Services agreed in respect of non-standard Integrations or CybSafe Content shall not include ongoing maintenance or updating of such Integrations or CybSafe Content.

12.   CybSafe Content

12.1   CybSafe shall make available to the Customer certain CybSafe Content as part of the Services or the Professional Services. The Customer acknowledges and agrees that: (a)   the CybSafe Content does not consist of any legal advice or professional advice, and has been prepared as general information based on CybSafe's assessment of good security practice; (b)   whilst CybSafe will use reasonable endeavours to ensure that any guidance on compliance or regulatory matters in the CybSafe Content is accurate and up to date, the Customer should seek appropriate legal advice before taking or refraining from taking any action based on such information; (c) it shall use the CybSafe Content solely in the course of accessing the Services under this Agreement; (d) CybSafe shall have no liability for any other use of the CybSafe Content; and (e) the contents of the CybSafe Content may be accessed for the Customer's own internal business purposes only and the Customer shall not reproduce, copy, distribute or make available any information contained within the CybSafe Content without the prior written consent of CybSafe.

13.   Charges and payment

13.1   The Customer shall pay the Subscription Fees to CybSafe for the Subscription Allocation annually in advance, except as otherwise expressly stated in the Order. Subscription Fees remain payable from the date of the Order (or in the absence of an Order, the Commencement Date) including during any initial set-up or implementation period. This Section 13 does not apply to orders for the Services placed with Channel Partners - Section 16 contains provisions regarding payment and other terms in respect of such orders. All amounts and fees stated or referred to in this Agreement: (i) shall be payable in the currency specified in the Order; (ii) are non-cancellable and non-refundable; (iii) are exclusive of value added tax, which shall be added to CybSafe's invoice(s) at the appropriate rate.

13.2   The Customer shall on the date of execution of the Order (or in the absence of an Order, the Commencement Date) and prior to each Renewal Period provide to CybSafe valid, up-to-date and complete payment card or direct debit details or (solely at CybSafe's discretion) approved up-to-date purchase order information acceptable to CybSafe and any other relevant valid, up-to-date and complete contact and billing details.

13.3 If the Customer provides its payment card or direct debit details to CybSafe, the Customer hereby authorises CybSafe to bill by such means:
(a)   on the date of execution of the Order (or in the absence of an Order, the Commencement Date) for the Subscription Fees payable in respect of the Subscription Term; and
(b)   on each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period,
and the Customer authorises CybSafe to use a third party to process payments, and consents to the disclosure of Customer's payment information to such third party.

13.4 If the Customer does not provide its payment card or direct debit details to CybSafe, CybSafe shall invoice the Customer:
(a) on the date of execution of the Order (or in the absence of an Order, the Commencement Date) for the Subscription Fees payable in respect of the Subscription Term; and
(b)   on or prior to each anniversary of the Commencement Date for the Subscription Fees payable in respect of the upcoming Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice. Failure to provide purchase order information shall have no effect on the Customer's obligation to pay Subscription Fees by the due date.

13.5   If CybSafe has not received payment within 14 days of a notice sent on or after the due date for payment, and without prejudice to any other rights and remedies of CybSafe:
(a) CybSafe may, without liability to the Customer, disable the Customer's account and access to all or part of the Services and CybSafe shall be under no obligation to provide any or all of the Services while the payment concerned remain unpaid; and
(b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% over the then current base lending rate of CybSafe's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

13.6   CybSafe shall be entitled to increase the Subscription Fees, and the fees payable in respect of additional Subscription Allocation, at the start of each Renewal Period by giving the Customer notice of such increase, and the Order shall be deemed to have been amended accordingly, provided that if CybSafe gives the Customer such notice less than sixty (60) days prior to the end of then-current Subscription Term or Renewal Period (as the case may be), the Customer will have fourteen (14) days after the date of that notice to give CybSafe written notice to terminate this Agreement as of the end of the then-current Subscription Term or Renewal Period. For the avoidance of doubt, Subscription Fees will also increase in the event that the Customer adds Licences or upgrades its subscription.

13.7   Subject to the provisions regarding good faith disputes under Section 13.9 below, the Customer shall make all payments under this Agreement without set-off, counterclaim, withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Customer shall, when making the payment to which the withholding or deduction relates, pay to CybSafe such additional amount as will ensure that CybSafe receives the same total amount that it would have received if no such withholding or deduction had been required.

13.8   The Customer may withhold payment of any invoiced amounts that are disputed by it in good faith until the parties reach agreement with respect to such disputed amounts. The withholding of such disputed amounts shall not be deemed a breach of this Agreement nor shall any interest be payable in respect of delay in payment of such amounts. Customer shall promptly (and in no event more than seven (7) days from receipt of invoice) provide written notice to CybSafe of any such dispute prior to withholding such payment, specifying in detail reasonably satisfactory to CybSafe the nature of the dispute and the amount withheld, or else the Customer will be deemed to have approved the invoice and waived any right to dispute the charges. The Customer shall pay all undisputed amounts set forth on such invoice in accordance with this Section. The parties will negotiate in good faith to attempt to resolve such disputes as soon as possible but in any event within thirty (30) days of the Customer notifying CybSafe of the dispute.

13.9   In the event of non-payment or non-compliance with the payment terms in the Agreement, the Customer shall be responsible for all legal, collection and debt recovery fees and costs incurred to CybSafe in enforcing its legal rights, whether contractual or non contractual, against the Customer.

14.   Proprietary rights

14.1   The Customer acknowledges and agrees that CybSafe and/or its licensors own and retain all intellectual property rights in the Services (including the CybSafe Content and the Applications), Professional Services, Deliverables, and the Documentation (together, "CybSafe Technology"), including in any enhancements, modifications and updates to them. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of CybSafe Technology. Any rights not expressly granted in respect of CybSafe Technology in this Agreement are reserved to CybSafe and its licensors.

14.2   CybSafe acknowledges and agrees that the Customer owns and retains all rights to the Customer Materials. This Agreement does not grant CybSafe any ownership rights to Customer Materials. The Customer grants permission to CybSafe to use the Customer Materials in order to provide the Services and Professional Services to the Customer and as otherwise permitted by this Agreement. This Section is without prejudice to CybSafe's rights in respect of Aggregated Data.

14.3   The Applications may contain programming or other items that were developed using Open Source Software. To the extent applicable, CybSafe will, upon the Customer's written request, identify such Open Source Software included in any Applications distributed to the Customer. To the extent required by the licence that accompanies the Open Source Software distributed to the Customer, the terms of such licence will apply in lieu of the terms of this Agreement solely with respect to such Open Source Software, including any provisions governing access to source code, modification or reverse engineering.

14.4   If the Customer provides feedback, suggestions, improvements, or requests for additional functionality related to the CybSafe Technology (collectively, "**Feedback**"), it hereby grants CybSafe the unrestricted, perpetual, irrevocable, royalty-free, worldwide right to use, reproduce, display, perform, modify, transmit, distribute and create derivative works of such Feedback in any way CybSafe deems reasonable, without any attribution or accounting.

15.   Aggregated Data

15.1   The Customer agrees that CybSafe may at any time generate Aggregated Data. CybSafe shall have the right to use any Aggregated Data for any business purpose during or after the term of this Agreement, including to develop and improve CybSafe's products and services (including its community database of security behaviours known as SebDB) and to create and distribute reports and other materials. CybSafe will not disclose Aggregated Data externally (other than to its Affiliates) in a form that identifies Customer, or any Authorised Users, or that contains any persistent identifiers of any of them (such as device identifiers, IP addresses, and cookie IDs). CybSafe acknowledges that Customer is not responsible for CybSafe's use of Aggregated Data. Aggregated Data will not be considered Customer Data or Customer Materials for purposes of this Agreement.

16. Orders through Channel Partners

16.1 In the event that the Customer orders the Services through a Channel Partner:

(a)   these Terms will apply except as set out in this Section 16;

(b)   instead of paying Subscription Fees to CybSafe under Section 13, the Customer will pay to the Channel Partner the applicable amounts in respect of its subscription to the Services as agreed between the Customer and the Channel Partner;

(c)   any request for upgrades, downgrades or adding Licences shall be agreed between the Customer and the Channel Partner, and any corresponding order between the Channel Partner and Cybsafe;

(d)   the automatic renewal provisions in Section 20.1 shall not apply;

(e)   the Customer is responsible for determining with the Channel Partner as to whether the Channel Partner may serve as an Administrator.   As between the Customer and CybSafe, the Customer is responsible for any access by Channel Partner to the Customer's account and Customer Data;

(f)   CybSafe may suspend or terminate the Customer's rights to use and access the Services if CybSafe does not receive payment in full from the Channel Partner in respect of the Customer's subscription to the Services.

(g)   the details of the Customer's entitlement to use and access the Services (including the Subscription Period, the Subscription Fees, and the Subscription Allocation comprised in the subscription) will be as stated in the Order placed with CybSafe by the Channel Partner in respect of the Customer's subscription to the Services, and the Channel Partner (not CybSafe) is responsible for ensuring that such Order corresponds with any order placed by the Customer with the Channel Partner in respect of the Services;

(h)   To the extent that the Customer is entitled to a refund under these Terms, then unless CybSafe otherwise specifies, CybSafe will refund any applicable fees to the Channel Partner and the Channel Partner will be solely responsible for refunding the appropriate amounts to the Customer;

(i)   Channel Partners are not authorised to modify these Terms or make any promises or commitments on CybSafe's behalf, and CybSafe is not bound by any obligations to the Customer other than as set forth in these Terms;

(j)   The amount paid or payable by the Channel Partner to CybSafe in respect of the Customer's access to and use of the Services will be deemed to be the total Subscription Fees and any Professional Services fees paid or due and payable referred to in Section 19.5 below for purposes of calculating the maximum aggregate liability cap in Section 19.5. The total liability of CybSafe under these Terms as set forth in Section 19 states the overall combined liability of CybSafe and the Channel Partner;

(k)   Notwithstanding Section 17.3 below, CybSafe shall be entitled to disclose the Customer's Confidential Information to a Channel Partner for the purposes of administering the Customer's subscription and enforcing the terms of the order or any agreement between the Customer and Channel Partner, and/or between CybSafe and the Channel Partner, including Customer name, account status (active/inactive); number of Authorised Users; overview performance statistics; expiry date of current subscription term.

17. Confidentiality

17.1   Confidential Information means any non-public information provided by one party or its Representatives to the other party or its Representatives hereunder that is either conspicuously identified as confidential or proprietary or should be reasonably understood to be confidential based on the nature of the information or circumstances of the disclosure, including any non-public information relating to the disclosing party's business, assets, affairs, customers, clients, product plans and roadmaps, operations, processes, product information, know-how, designs, trade secrets or software. Details of the Services, and the results of any performance tests of the Services, shall constitute CybSafe Confidential Information; and, Customer Data shall constitute Customer Confidential Information. "Representatives" means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

17.2   The provisions of this Section shall not apply to any Confidential Information that:
(a)   is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Section);
(b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
(c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's reasonable knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
(d) the parties agree in writing is not confidential or may be disclosed; or
(e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

17.3   Each party shall:
(a) not use such Confidential Information except for the purposes consistent with this Agreement, including (in the case of CybSafe) its provision, improvement and maintenance of the Services and its rights in respect of Aggregated Data under Section 15 (collectively, the 'Permitted Purpose');
(b) not disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Section 17; and
(c) implement appropriate technical and organisational security measures in respect of the disclosing party's Confidential Information.

17.4   A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that it informs such Representatives of the confidential nature of the Confidential Information before disclosure, and at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Section.

17.5   A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as practicable.

17.6   Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party not under its control, including in relation to any Integration. CybSafe shall not be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by the Customer's or any Authorised User's failure to apply any facility provided by CybSafe to reduce the risk of unauthorised use of or access to the Services or any failure of any Authorised User to keep secure its authentication credentials for the Services.

17.7   Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.

17.8   CybSafe may publicly identify Customer as a user of CybSafe, and add the Customer's name and logo to CybSafe's list of Customers, its promotional materials and the CybSafe Website. The Customer can opt-out of any future such use by emailing notices@cybsafe.com. CybSafe shall in doing so comply with the Customer's standard trade mark use guidelines to the extent notified to CybSafe in writing. CybSafe will not imply any untrue sponsorship, endorsement, or affiliation between Customer and CybSafe. Upon termination of this Agreement, CybSafe will remove any public references to the Customer from the CybSafe Website but shall not be required to remove any such references from any other materials produced prior to termination.

17.9   Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

17.10   The provisions of this Section 17 shall supersede the terms of any confidentiality agreement or non-disclosure agreement between CybSafe and the Customer and any such confidentiality agreement or non-disclosure agreement shall have no further force or effect with respect to the exchange of Confidential Information after the Commencement Date.

17.11   The above provisions of this Section 17 shall continue to apply after termination or expiry of this Agreement.

18.   Indemnity

18.1 CybSafe shall defend the Customer, its officers, directors and employees against any claim made by a third party (not being an Affiliate of the Customer) that the Customer's use of the Services in accordance with this Agreement infringes any United Kingdom patent issued as of the Commencement Date, copyright, trade mark, or database right, and shall

indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

(a)   CybSafe is given prompt notice of any such claim (but in any event notice in sufficient time for it to respond without prejudice);

(b)   the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to CybSafe in the defence and settlement of such claim, at CybSafe's expense including providing a copy of the claim, all relevant evidence in Customer's possession, custody, or control, and cooperation with evidentiary discovery, litigation, and trial, including making witnesses within Customer's employ or control available for testimony; and

(c)   CybSafe is given sole authority to defend or settle the claim.

18.2   In the defence or settlement of any claim, CybSafe may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer, provided that CybSafe shall reimburse the Customer prepaid Subscription Fees pro-rata to the unexpired portion of the Subscription Term or the then-current Renewal Period (as the case may be).

18.3   In no event shall CybSafe, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

(a)   a modification of the Services by anyone other than CybSafe or its agents;

(b)   any breach of this Agreement by the Customer;

(c)   the use of any Open Source Software;

(d)   any Free Services or Early Access;

(e)   use of any Customer Materials;

(f)   the Customer's use of the Services in a manner inconsistent with the Documentation;

(g)   any failure of the Customer to implement updates, modifications or replacements to the Services (including any CybSafe Content) made available to it by CybSafe;

(h)   the Customer's use of the Services in combination with software or other technology or services not supplied by or on behalf of CybSafe (including any Non-CybSafe Service), where the alleged infringement would not have occurred but for such combination; or

(i)   the Customer's use of the Services after notice of the alleged or actual infringement from CybSafe or any appropriate authority.

18.4   The foregoing states the Customer's sole and exclusive rights and remedies, and CybSafe's (including CybSafe's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, or database right.

19.   Limitation of liability

19.1   Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services and Professional Services by the Customer, and for conclusions drawn from such use. CybSafe shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to CybSafe by the Customer in connection with the Services or Professional Services, or any actions taken by CybSafe at the Customer's direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

(c) the Services and any Professional Services are provided to the Customer on an "as is" basis.

19.2   Nothing in this Agreement limits or excludes the liability of either party:

(a)   for death or personal injury caused by that party's negligence; or

(b)   for fraud or fraudulent misrepresentation; or

(c)   for any liability which cannot lawfully be limited or excluded.

19.3   Subject to Section 19.2 and Section 19.6, neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following however arising under this Agreement:

(a)   loss of profits or loss of business;

(b) loss of anticipated savings;

(c)   damage to reputation or depletion of goodwill and/or similar losses;

(d)   loss or corruption of data or information, or

(e)   for any special, indirect or consequential loss, costs, damages, charges or expenses.

19.4   Subject to Section 19.2, CybSafe's aggregate liability in respect of any Free Services (howsoever arising under or in connection with this Agreement) shall not exceed £50 (fifty pounds sterling).

19.5   Subject to Section 19.2, 19.4 and 19.6, each party's total aggregate liability in contract (including in respect of the indemnity at Section 18.1), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees and any Professional Services fees paid or due and payable during the 12 months immediately preceding the date on which the claim arose.

19.6   Nothing in this Agreement excludes the liability of the Customer in respect of any breach of Section 8.2 or for any infringement, misuse or misappropriation of CybSafe's intellectual property rights or Confidential Information, or limits the Customer's payment obligations under this Agreement. Amounts owed by the Customer in respect of Subscription Fees or under any Orders shall not be taken into account for the purposes of the limit on liability under Section 19.5. Section 19.5 does not apply to any liability of the Customer to the extent that, at the time of the event giving rise to such liability, it does not have a paid subscription to the Services.

20.   Term and termination

20.1   This Agreement shall, unless otherwise terminated as provided in this Section 20, commence on the date of execution of the Order or (if no Order is executed) the earlier of the Customer's acceptance of these Terms and its accessing the Services, and shall continue for the Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless either party gives notice of non-renewal at least 60 days before the end of the Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Subscription Term or Renewal Period. This Section 20.1 shall not apply in respect of Free Services. Free Services do not renew and may be terminated at any time by CybSafe.

20.2   Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:
(a) fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than14 days after being notified to make such payment;
(b)   commits a material breach of this Agreement and such breach is not remediable;
(c)   commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after written notice of it;
(d)   ceases operation of its business without a successor;
(e)   seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days).

20.3   On termination of this Agreement for any reason (including expiry):
(a)   the Customer shall immediately cease all use of the Services;
(b)   CybSafe may destroy or otherwise dispose of any of the Customer Data in its possession unless CybSafe receives, no later than 10 days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. CybSafe shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer acknowledges that the Services comprise a facility for the Customer to download Customer Data, in the manner and to the extent set out in the Documentation; and
(c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced;
(d) any provision of this Agreement that, either by its terms or to give effect to its meaning, must survive and such other provisions that expressly or by their nature are intended to survive termination will survive the expiration or termination of this Agreement. Without limitation, Sections 14 (Proprietary Rights), 15 (Aggregated Data), 17 (Confidentiality), 18 (Indemnity), 19 (Limitation of Liability), and 23 (Other Important terms) will survive the expiration or termination of this Agreement.

20.4 If the Customer terminates this Agreement in accordance with Section 20.2, CybSafe will refund any Subscription Fees paid in advance by the Customer for the Services applicable to the period after termination. If CybSafe terminates this Agreement in accordance with Section 20.2, then the Customer will pay any unpaid Subscription Fees for the remainder of the then-current Subscription Term or Renewal Period (as the case may be). In no event will termination of this Agreement relieve the Customer of its obligation to pay any amounts payable to CybSafe for the period prior to the date of termination.

21.   Force majeure

21.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.

22.   Modification and Variation

22.1   CybSafe may update these Terms ("Terms Updates") from time to time in its sole discretion by notifying the Customer of such update by email, or to an Administrator by means of the Services (each an "Update Notification"). The Terms Update shall replace the preceding version of these Terms for the purposes of this Agreement from the date 14 days after the Update Notification (or at such later date as CybSafe may specify). All Terms Updates shall be directed at CybSafe's customers generally, not the Customer specifically.

23.   Other Important Terms

23.1   No Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

23.2   Severance. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

23.3   Entire Agreement and No Reliance on Representations: This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement. Nothing in this Section shall limit or exclude any liability for fraud.

23.4   Customer standard terms of no effect. For the avoidance of doubt, the Customer's standard terms of purchase are expressly excluded from this Agreement and all Orders shall be treated as placed upon these Terms regardless of whether the Customer purports to incorporate the standard terms of the Customer (including by means of any purchase order). No standard terms of the Customer shall form part of this Agreement.

23.5   Assignment and other dealings. The Customer shall not assign or transfer this Agreement without CybSafe's prior written consent, except that it may assign this Agreement to a successor by reason of merger, reorganisation, sale of all or substantially all of its assets, change of control or operation of law, provided such successor is not a competitor of CybSafe. CybSafe may assign this Agreement to any Affiliate or in the event of merger, reorganisation, sale of all or substantially all of its assets, change of control or operation of law. CybSafe may also permit its Affiliates, agents and contractors to exercise its rights or perform its obligations under this Agreement, in which case CybSafe will remain responsible for their compliance with this Agreement. Subject to this Section, this Agreement will inure to the parties' permitted successors and assigns.

23.6   No third-party rights. This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23.7 Notices. To CybSafe: Notice will be sent by email to notices@cybsafe.com, and will be deemed delivered as of the date of actual receipt. To Customer: such email address as provided in respect of any Administrator or the billing account information for the Customer, provided that CybSafe may also give notices by general notices to Administrators via the Services. Any notice to the Customer will be deemed given upon the first Business Day after CybSafe sends it.

23.8 Governing law and Jurisdiction. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive

jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

24.   Definitions and Interpretation

24.1   In the event of any conflict in respect of the provisions of this Agreement and/or the documents referred to in it the following order of priority shall prevail (in descending order of priority):
(i)   the Order;
(ii)   the Service Specific Terms;
(iii) these Terms.

24.2   The definitions and rules of interpretation in this Section apply in this Agreement.

Administrator: an Authorised User who will have the rights to access and configure Customer's preferences and settings as regards the Services, and to access and administer Authorised User accounts.
Affiliate: in respect of either party, a company, partnership or other entity controlling, controlled by or under common control with such party, but only so long as such control continues to exist. For purposes of this definition, "control" means ownership, directly or indirectly, of greater than fifty percent (50%) of the voting rights in such entity (or, in the case of a noncorporate entity, equivalent rights).
Aggregated Data: means: (i) data comprising or derived from Customer Data and Usage Data; (ii) learnings, logs, and data regarding or derived from Customer's and Authorised Users' use of or interaction with the Services and any Non-CybSafe Service, in all cases in an aggregated form which does not identify the Customer or any Authorised User, nor contain any Personal Data.
Applications: the software or applications used by or on behalf of CybSafe to provide the Services;
Authorised Users: those employees, consultants, agents and independent contractors of the Customer (and, subject to Section 2.3, an Affiliate of the Customer) who are authorised by the Customer to use or have access to the Services.
Business Day: a day other than a Saturday, Sunday or public holiday in England.
Change Control Note: the written record of any change to Professional Services agreed or to be agreed by the parties pursuant to Section 11.4.
Channel Partner: a reseller or channel partner of CybSafe, directly or indirectly authorised by CybSafe to resell access to the Services.
Commencement Date: the date specified in the Order specified for the commencement of the Subscription Term, or in the absence of an Order, the date on which the Customer affirms their acceptance of these Terms or uses or accesses the Services, whichever is earlier.
Core Hours: 6.00am to 9.00pm local UK time, each Business Day.
Customer: has the meaning given in the Order.
Customer Data: all information that Customer or any Authorised User submits to the Services, provided that Customer Data does not include CybSafe Content, Customer Materials or Aggregated Data.
Customer Materials: any Customer branding elements, text, images or other content items generated by the Customer outside of the Services, that the Customer (including any Authorised User) submits to the Services for display to or use by Authorised Users.
CybSafe: CybSafe Ltd, a limited company registered in England and Wales under company number 09642350, whose registered office is at 5 New St Square, London EC4A 3TW.
CybSafe API: any APIs, SDKs or other developer assets, to the extent that they are comprised within the Subscription Allocation.
CybSafe Content: all information, data, text, messages, graphic images, photographs, sound, music, video or content that CybSafe incorporates into the Services or any Professional Services.
CybSafe Privacy Notice: the privacy notice set out from time to time at https://www.cybsafe.com/website-privacy-policy/.
Data Protection Laws: means, as applicable, the General Data Protection Regulation ((EU) 2016/679), and the UK GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
Deliverables: any materials, deliverables, customisations, modifications, integrations, developments or derivative works provided by CybSafe in connection with any Professional Services.
Documentation: the document made available by CybSafe online via the CybSafe Website or such other web address notified by CybSafe to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
Early Access: CybSafe features, functions, products or services that are not generally available to CybSafe customers.
Free Services: any Services (or any feature or function of the Services) identified as being provided without charge (for the duration of the period during which it is provided on such basis);
Integration: any means provided by CybSafe as part of the Services which facilitates connection to or interaction with a Non-CybSafe Service.
Licences: the number of user subscriptions comprised in the Subscription Allocation, which entitle a corresponding number of Authorised Users to access and use the Services in accordance with this Agreement.
Non-CybSafe Service: any third-party product or service (including any learning management systems, compliance platforms, or single sign-on tools) which may be accessed or used in connection with the Services.
Normal Working Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Open Source Software: means any free or open source software, including any 'free software' as defined by the Free Software Foundation (*www.gnu.org/philosophy/free-sw.html*) at the Commencement Date and any software falling within the Open Source Definition issued by the Open Source Initiative (www.opensource.org/docs/osd) at the Commencement Date.

Order: CybSafe's applicable online order forms, flows, in-product screens or other CybSafe-approved ordering document or process describing the services ordered from CybSafe. As applicable, the Order will identify the Customer, the Services, the Subscription Allocation, the Subscription Term and the Subscription Fees.

Personal Data: has the meaning given to that term in the Data Protection Laws and relates only to personal data, or any part of such personal data, in respect of which Cybsafe provides the Services under this Agreement.

Professional Services: additional services for the Customer's use and operation of the Services, including configuration and implementation, provision of non-standard Integrations, training or consulting services, or any Premium Support services.

Renewal Period: a period as defined in Section 20.1.

Security Document: the page on the CybSafe Website which sets out the information security practices of CybSafe in relation to the Services, being as of the Commencement Date as set out in the Platform Security Overview available at cybsafe.com/legal, as updated from time to time provided that no such update shall materially overall negatively affect the level of security of Customer Data.

Services: the subscription services (including Free Services) provided by CybSafe to the Customer under this Agreement, including access to CybSafe Content and any mobile applications provided by CybSafe for use in connection with the Services, as described in the Order.

Service-Specific Terms: means, in respect of any Services, the specific additional or amended terms relevant to those Services (as updated from time to time as set out in Section 22) which as at the Commencement Date are available at cybsafe.com/legal.

Subscription Allocation: the number or allocation of Licences specified in the Order and the features and functions associated from time to time with the subscription plan specified in the Order.

Subscription Fees: the subscription fees payable to CybSafe for the Subscription Allocation, as set out in the Order as updated in accordance with Section 13.6.

Subscription Term: the initial term of this Agreement as set out in the Order, or if no such term is specified, one year from the Commencement Date. For Free Services, the Subscription Term will be the period during which the Customer has an account to access the Free Services.

Usage Data: data, comprising of details of (or derived from) Customer's and Authorised Users' use of the Services, including interactions with the Services and Non-CybSafe Services, responses and activities of Authorised Users, and the extent of Authorised Users' completion of training materials comprised in the CybSafe Content.

24.3 In this Agreement: (i) The terms "controller", "joint controller", "processor", "data subject", "processing", "personal data breach" and "appropriate technical and organisational measures" will be interpreted in accordance with Data Protection Laws; (ii) Section, schedule and paragraph headings shall not affect the interpretation of this Agreement; (iii) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality); (iv) a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (v) a reference to writing or written includes email; (vi) any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms; and (vii) references to Sections and schedules are to the Sections and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

SCHEDULE 1 - DATA PROTECTION

1. Each of CybSafe and the Customer shall comply at all times with and assist each other in complying with their respective responsibilities for compliance with the obligations of Data Protection Laws in connection with the processing of Personal Data.

2. Each of CybSafe and the Customer shall in its processing of Personal Data: (i) comply with data protection by design and data protection by default obligations under Data Protection Laws, including, where required, legitimate interest assessments and data protection impact assessments and associated consultation with data subjects, other parties involved with the processing and any applicable supervisory authority, to ensure appropriate technical and organisational measures, including appropriate data protection governance and audit compliance, are implemented to safeguard the rights and freedoms of data subjects; (ii) not retain any of Personal Data for longer than is necessary to perform its obligations or exercise its rights under this Agreement; (iii) only transfer any Personal Data outside the United Kingdom or EEA to third countries in accordance with a mechanism lawful under Data Protection Laws, including finding of adequacy decisions, appropriate standard contractual clauses or binding corporate rules; (iv) maintain appropriate technical and organisational measures designed to secure Personal Data from unauthorised disclosure and modification, which (in the case of CybSafe) are described in the Security Documentation; and (v) monitor for, investigate and manage any actual or suspected personal data breach regarding processing activities undertaken by them, to inform the other party of such personal data breaches without undue delay; (vi) notify any applicable law enforcement authority (including any applicable supervisory authority) regarding personal data breaches where required relating to processing activities undertaken by them;

and (vii) ensure that any staff or personnel (including contractors) authorised by it to process Personal Data shall be subject to a binding duty of confidentiality in respect of such data. Each party shall only process Personal Data for the purposes set out in its privacy notice (in the case of CybSafe, being the CybSafe Privacy Notice).

3.   CybSafe shall (i) maintain and make available to the Customer on request a list of third parties used by CybSafe to process Personal Data; and (vii) upon Customer's written request, provide (on a confidential basis) copies of relevant external ISO27001 certifications, audit report summaries and/or other documentation reasonably required by Customer to verify CybSafe's compliance with this Schedule.

4.   Each of CybSafe and the Customer shall: (i) ensure it has a legal basis under Data Protection Laws for its processing of Personal Data. CybSafe's legal basis is as set out in the CybSafe Privacy Notice; (ii) provide information notices to data subjects regarding processing activities in respect of Personal Data. CybSafe's information notice is CybSafe Privacy Notice; (iii) fulfil any data subject rights request pertaining to their processing activities in respect of Personal Data or (where this is not possible) assist the other party in doing so; and (iv) designate a contact point for data subjects. CybSafe's point of contact is set out in the CybSafe Privacy Notice. To the extent that the parties share any Personal Data with each other, this is for the purpose of employee cybersecurity risk assessment, management, and training. CybSafe may also independently of the Customer process Personal Data for the purposes of research and ongoing development of its services.

5.   Each of CybSafe and the Customer shall notify the other without undue delay in writing if it receives from any applicable law enforcement authorities (including any applicable regulators) where permitted to do so: (i) any communication seeking to exercise rights conferred on data subjects by Data Protection Laws; (ii) any complaint or any claim for compensation arising from or relating to the processing of Personal Data; (iii) any communication from any applicable law enforcement authorities (including any applicable regulators).

6.   Each of CybSafe and the Customer shall provide such information and such assistance to the other as they may reasonably require, to allow the other party to comply with their data protection by design and data protection by default obligations under Data Protection Laws, including, where required, consultation regarding legitimate interest assessments and data protection impact assessments, to ensure appropriate technical and organisational measures, including appropriate data protection governance and audit compliance, are implemented to safeguard the rights and freedoms of data subjects, including such full and prompt information and assistance to the other party and any applicable law enforcement authorities (including any applicable regulators) in relation to a personal data breach.

7.   The Personal Data may be provided by the Customer or from the Authorised Users. To the extent that CybSafe and the Customer are considered 'joint controllers' for the purposes of the Customer receiving the Services, each party acknowledges that each party also acts as independent controller in its own processing of Personal Data (including, in the case of CybSafe, for the production of Aggregated Data).

8.   The Customer acknowledges that in order to facilitate CybSafe's provision of the Services CybSafe may transfer Personal Data to third party service providers such as administration & support service providers, customer relationship management software and communication platforms. Where such service provider is outside of the United Kingdom, CybSafe shall ensure that the appropriate lawful transfer mechanisms are in place when transferring Personal Data.

9.   Following termination of this Agreement, CybSafe shall ensure that all Personal Data held by it in respect of Authorised Users will be automatically deleted or anonymised.

10.   Each of CybSafe and the Customer shall at no additional cost, keep or cause to be kept such information as is necessary to demonstrate compliance with their respective obligations under this Schedule.

11.   Rights of data subjects shall be ensured as follows:
(i) The right to be informed. The point of contacts for this Agreement will each ensure that appropriate privacy notices are in place so that individuals are informed about the use of their Personal Data;
(ii) The right of access. The point of contacts for this agreement will each ensure that procedures are in place to manage subject access requests. If information supplied by another party is captured by a subject access request, reasonable endeavours should be made to consult with that party regarding the release.
(iii) The right to rectification. Concerns from individuals about the accuracy of their Personal Data shall be referred to the originating organisation. They will in turn investigate and inform any recipients of the Personal Data,, if it is concluded to be incorrect, so it can be corrected.
(iv) The right to erasure. Requests from individuals regarding the erasure of their Personal Data need to be referred to the originating party. They will in turn consider the request and inform any recipients of the information so that it can be erased.
(v) The right to restrict processing. Requests from individuals regarding the restriction of processing of their Personal Data need to be referred to the originating party. They will in turn consider the request and inform any recipients of the Personal Data so that its processing can be restricted.
(vi) The right to data portability. Each party will ensure that procedures are in place to manage requests for

portability of data.
(vii) The right to object. If an objection to processing is received, the point of contact for this agreement will assess whether it is appropriate to inform the other parties to this Agreement.