

**DARKTRACE MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT (TOGETHER WITH ALL APPLICABLE PRODUCT ORDER FORM(S), THE “**AGREEMENT**”) GOVERNS YOUR (“**CUSTOMER**”) ACCESS TO, AND USE OF, THE OFFERING (AS DEFINED BELOW) OR ANY PORTION THEREOF. BY SELECTING THE “ACCEPT” OPTION, DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE OFFERING, OR ENTERING INTO A PRODUCT ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY THIS AGREEMENT, WHICH CONSTITUTES A BINDING CONTRACT BETWEEN CUSTOMER AND DARKTRACE HOLDINGS LIMITED (“**DARKTRACE**”). IF CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT THEN CUSTOMER WILL NOT BE AUTHORIZED TO DOWNLOAD, ACCESS OR USE THE OFFERING OR ANY PORTION THEREOF.

**1. Definitions.**

Certain capitalized terms used in this Agreement have the meanings attributed to them in Section 17.

**2. Order Process.**

Customer may procure the Offering directly from Darktrace or through a Partner pursuant to a Partner Arrangement. Any Offering procured through a Partner is subject to, and Darktrace’s obligations and liabilities to Customer are governed by, this Agreement. Only the terms in a Product Order Form (and for the avoidance of doubt, specifically excluding any pre-printed terms on a Customer or Partner purchase order) that has been duly signed by Darktrace and Customer, or by Darktrace and a Partner on behalf of the Customer, will have any force or effect. Product Order Forms are non-cancellable.

**3. Fees; Payment Terms; Taxes.**

- 3.1. Fees and Payment. Customer will pay, as applicable: (i) the fees set forth in the applicable Product Order Form entered into by Customer and Darktrace to Darktrace; or (ii) the fees agreed upon by Customer and the applicable Partner in accordance with the applicable Partner Arrangement to such Partner (as applicable, the “**Fees**”). Where Customer is required to pay Fees to Darktrace, then unless otherwise expressly set forth on the Product Order Form: (a) Fees will be invoiced on an annual basis, at the beginning of each year of the applicable Subscription Period (where a “year” commences on the Commencement Date and each anniversary thereof); (b) Customer will pay the Fees within 30 days after receipt of the applicable invoice by email; and (c) Darktrace reserves the right to increase the Fees payable by the Customer: (i) on 30 days’ prior written notice in the sole event that the Cloud Provider increases the charges or fees payable by Darktrace to such Cloud Provider for services necessary for or related to the applicable Offering, provided that any such increase shall be proportionate to the increase charged by the Cloud Provider; (ii) once per year on not less than 60 days’ prior written notice, with any such adjustment taking affect from the next anniversary of the Commencement Date; or (iii) if there is any change to the Customer’s network or infrastructure after the Product Order Form is executed, and such change results in a cost to Darktrace, in which case Darktrace shall be entitled to charge such cost to the Customer. Except as otherwise expressly provided in this Agreement, as between Darktrace and Customer, all Fees are non-refundable and non-cancellable.
- 3.2. Taxes; Late Payment. As between Darktrace and Customer: (i) Fees are exclusive of any applicable taxes, however designated; (ii) Customer will pay all such taxes levied or imposed by reason of Customer’s purchase of the Offering and the transactions hereunder; and (iii)

Darktrace may impose late charges on overdue payments at a rate equal to 1.5% per month or, if lower, the highest rate permitted by applicable law.

- 3.3. Withholding Taxes. Should Customer be required under any Applicable Law to withhold or deduct any portion of the payments due to Darktrace, then Customer will increase the sum payable to Darktrace by the amount necessary to yield to Darktrace an amount equal to the sum Darktrace would have received had no withholdings or deductions been made.

#### **4. Offering.**

- 4.1. Evaluation Offering. Darktrace may allow Customer to use the Offering or any part thereof (including parts or features offered for preview or beta testing purposes), on a free-of-charge basis ("**Evaluation Offering**"). This Agreement also applies to access and use of the Evaluation Offering, except as follows: (i) the duration of the evaluation is 4 weeks unless otherwise specified by Darktrace in writing ("**Evaluation Period**") at the end of which period the Customer's right to access and use the Evaluation Offering will automatically terminate; (ii) the Evaluation Offering is provided "AS-IS" without warranty of any kind, and Darktrace disclaims all warranties, support obligations, and other liabilities and obligations for the Evaluation Offering; and (iii) Customer may use the Evaluation Offering only for evaluation purposes and will not use the Evaluation Offering in a product testing environment.

- 4.2. Access and Use. Subject to the terms and conditions of this Agreement (including Darktrace's receipt of applicable Fees), Darktrace grants Customer a non-exclusive, non-transferable (except as expressly provided in Section 16.2), non-sublicensable license to access and use the Offering for Customer's and Customer Affiliates' internal business purposes in accordance with this Agreement and the applicable Product Specification (which is hereby incorporated into and forms part of this Agreement) during the applicable Subscription Period. Customer's access and use of the Offering is limited to the Usage Metrics set forth in the applicable Product Order Form, and Customer will be subject to the payment of additional fees if the applicable Usage Metrics are exceeded.

- 4.3. Product Specification; Customer Dependency. The Product Specification for the Offering includes additional terms and conditions applicable to Customer's access and use of the Offering. Customer will comply with all such terms and conditions, including the obligations and tasks attributed to Customer therein (each, a "**Customer Dependency**"). To the extent that Customer's delay or failure to comply with a Customer Dependency causes Darktrace to breach an obligation, Darktrace will be entitled to an extension of time equivalent to the delay caused by the delay or failure to comply with such Customer Dependency.

- 4.4. Appliances. Where the Offering includes the Appliance(s), then unless otherwise agreed to in writing between the parties, title to all Appliances (and all components thereof) provided by Darktrace to Customer under this Agreement will always remain with Darktrace. Customer acknowledges and agrees that the Appliances are provided solely as the medium for delivery and operation of the Software and must not be used for any other purpose. Upon termination of the Subscription Period, Customer will promptly return all Appliances to Darktrace (or to the applicable Partner) in accordance with Darktrace's (or applicable Partner's) instructions. Customer's use of any Appliance is subject to the applicable Product Specification.

- 4.5. Services. Darktrace will provide to Customer the Services set forth in the Product Order Form. Support Services will be provided in accordance with the Support Terms, which are hereby incorporated into and form part of this Agreement.

- 4.6. Restrictions. Customer will not, with respect to the Offering (or any portion thereof): (i) use the Offering in any manner beyond the scope of rights expressly granted in this Agreement;

(ii) modify or create derivative works of the Offering, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Offering, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease use of the Offering to any third party, or otherwise allow any third party to use the Offering for any purpose (except for Customer Affiliates or Outsource Providers as expressly permitted herein); (v) use the Offering in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any Applicable Laws; (vi) interfere with, or disrupt the integrity or performance of, the Offering; (vii) access or search any software component of the Offering (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Offering features provided by Darktrace for use expressly for such purposes; (viii) use the Offering for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Offering or any part thereof; (ix) employ or authorize a Darktrace competitor to use or view the Offering, or to provide management, hosting, or support for the Offering; (x) disclose the contents of Alerts, reports or other output of the Offering to third-parties other than Customer Affiliates or Outsource Providers without Darktrace's prior written consent; (xi) use the Offering to circumvent the security of a third party's network/information, develop malware, unauthorized surreptitious surveillance, data modification, data exfiltration, data ransom or data destruction; or (xii) cause, encourage or assist any third party to do any of the foregoing.

- 4.7. Customer Affiliates. Customer will ensure that any Affiliate of Customer ("**Customer Affiliate**") using or accessing the Offering, or benefitting from Customer's use of the Offering, complies with this Agreement. Customer is responsible for Customer Affiliates' acts and omissions in connection with their access to, or use of, the Offering.
- 4.8. Open Source Software. Darktrace uses certain open source software in its products. Copies of, or references to, open source software licenses may be set out in a text file, installation file or folder accompanying the open source software.
- 4.9. Ownership. All Software is provided on a subscription access basis, not sold. Subject to the limited rights expressly granted hereunder, Darktrace reserves and, as between the parties will solely own, the Offering and all right, title and interest (including all Intellectual Property Rights) in and to the Offering. No rights are granted to Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth in this Agreement.
- 4.10. Feedback. Darktrace may freely use any feedback, suggestions, comments or the like that Customer provides to Darktrace with regard to the Offering.

## **5. Outsource Providers and Third-Party Services.**

- 5.1. Outsource Providers. If Customer contracts with an Outsource Provider, Customer may permit such Outsource Provider to exercise all or any portion of the rights granted to Customer in Section 4.2 solely on Customer's or the Customer Affiliates' behalf. If Customer permits an Outsource Provider to use or access the Offering on Customer's or a Customer Affiliate's behalf, Customer will make sure all Outsource Providers comply with the terms of this Agreement and Customer will be liable for any breach of this Agreement by an Outsource Provider.

- 5.2. Third-Party Services. Darktrace does not support or guarantee integration with third party technologies or services ("**Third-Party Services**") unless otherwise expressly set out in a Product Order Form or otherwise agreed to by Darktrace in writing. Darktrace: (i) does not provide any aspect of the Third-Party Services; and (ii) is not responsible for any compatibility issues or errors in the Offering or Third-Party Services caused in whole or in part by the Third-Party Services.

## **6. Customer Obligations and Customer Data.**

- 6.1. Customer Security Obligation. As between the parties, Customer will be solely responsible for establishing, monitoring and implementing security practices to control the physical access to and use of the Offering and all Customer Data therein. Darktrace will not be liable, and Customer will be solely responsible for any unauthorized access, damage or loss that may occur through the use or misuse of Customer's credentials, equipment, systems or premises. Customer acknowledges that Darktrace does not provide or undertake backup or maintenance services for Customer Data and Customer will be solely responsible for backup of all Customer Data.
- 6.2. Customer Data. As between Customer and Darktrace, Customer will own all right, title and interest in and to the Customer Data. Customer grants to Darktrace a limited, non-exclusive, worldwide, royalty-free license to host, access and use the Customer Data only: (i) for the purpose of operating and providing the Offering and (ii) as required by Applicable Laws.
- 6.3. Alerts. Darktrace may utilize the contents and details of any Alerts and any data sources related to such Alerts on a deidentified basis to develop and improve Darktrace's products, services and technology.
- 6.4. Representation and Warranties. Customer represents and warrants that: (i) it has obtained and will obtain and continue to have, during the applicable Subscription Period, all necessary rights, authority, consents and licenses for the access to and use of Customer Data, including any Personal Data included therein, as contemplated by this Agreement; and (ii) Darktrace's use of Customer Data in accordance with this Agreement will not violate any Applicable Laws or cause a breach of any agreement or obligations between Customer and any third party.

## **7. Data Protection.**

- 7.1. Data Protection Addendum. The parties will comply with their respective obligations set out in the Data Processing Addendum, which is hereby incorporated into and forms part of this Agreement.
- 7.2. Business Associate Agreement. In order to comply with the parties' obligations under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), to the extent applicable to Customer, Customer and Darktrace agree such protected health information will be processed in accordance with the Business Associate Agreement, which is hereby incorporated into and forms part of this Agreement. For the purposes of this Section, Customer is a "covered entity" as defined pursuant to HIPAA regulations and transmits to Darktrace protected health information which is regulated pursuant to HIPAA during the course of its use of the Offering.

## **8. Confidentiality.**

- 8.1. General Obligation. A recipient of Confidential Information will protect that Confidential Information using the same standard of care it uses to protect its own confidential information of a similar nature, but no less than a reasonable standard of care. This Section 8 will not

apply to information which: (i) is known by the recipient without confidentiality obligations; (ii) is or has become public knowledge through no fault of the recipient; or (iii) is independently developed by, or for, the recipient.

- 8.2. Permitted Recipient. A recipient of Confidential Information will not: (i) use Confidential Information of the other party, except as needed to fulfill its obligations or exercise its rights under this Agreement; or (ii) disclose Confidential Information of the other party to any third party, except to its or its Affiliates' employees, agents and contractors who need to know. The recipient is liable for a breach of this Section 8 by its permitted recipients and will ensure each of those permitted recipients have written confidentiality obligations at least as restrictive as the recipient's obligations under this Agreement.
- 8.3. Required Disclosures. The recipient may reveal Confidential Information of the other party if required by law (including under a court order) but only after it notifies the discloser in writing (if legally permissible). A recipient will reasonably cooperate with a discloser's reasonably requested protective actions, at the discloser's expense.
- 8.4. Return or Destruction. The recipient will return, delete or destroy all Confidential Information of the other party and confirm in writing it has done so within 30 days of the discloser's written request unless retention is required by law or Confidential Information has been stored in a backup system in the ordinary course of business, provided, however, that any such retained information will remain subject to this Agreement.

## **9. Warranties.**

- 9.1. Software Warranty. Darktrace warrants to Customer during the applicable Subscription Period that: (i) the Software will perform materially in accordance with the applicable Product Specification(s); and (ii) Darktrace adopts customary industry standard practices to prevent the Software, upon download by or delivery to the Customer, from injecting malicious or disabling code that is intended to damage or destroy the Customer's system or network where the Software is installed (the "**Software Warranty**"). Darktrace will use commercially reasonable efforts to provide a work-around or correct any reported non-conformity with the Software Warranty, and, if Darktrace determines that it is unable to do so in its discretion, Darktrace may terminate Customer's license to access and use the applicable non-conforming Software and refund to Customer the prepaid Fees prorated for the unused period of the applicable Subscription Period. Customer will promptly report any non-conformity with the Software Warranty to Darktrace in writing. The rights and remedies set forth in this Section will be the Customer's sole and exclusive remedy and Darktrace's sole and exclusive liability for any breach of the Software Warranty. The Software Warranty does not apply to Evaluation Offerings.
- 9.2. Service Warranty. Darktrace warrants to Customer that it will perform all Services in a professional and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of 30 days from the completion of the Services, and Customer will promptly report any non-conformity with such warranty to Darktrace in writing. Darktrace will, at its option and expense: (i) use commercially reasonable efforts to re-perform the non-conforming Services; or (ii) refund to Customer the portion of the Fees paid attributable to the non-conforming Services. The rights and remedies set forth in this Section will be the Customer's sole and exclusive remedy and Darktrace's sole and exclusive liability for any breach of the warranty set forth in this Section.
- 9.3. Exclusions. The warranties in Sections 9.1 and 9.2 do not apply if: (i) the Offering has been modified, except by Darktrace; (ii) the Offering has not been installed, used, or maintained in accordance with this Agreement or Product Specification; (iii) the non-conformity occurs due

to a failure by the Customer to allow Darktrace or its agents to implement any updates, corrections or modifications to the Software made available to Customer by Darktrace; or (iv) Customer has combined the Offering with other software, services, or products that are not provided by Darktrace or not otherwise specified in the applicable Product Specification, and but for such combination, the breach of warranty would have been avoided.

- 9.4. No Guarantee. CUSTOMER AGREES THAT: (I) DARKTRACE DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, REPORT OR DISCOVER ALL OF CUSTOMER'S OR CUSTOMER AFFILIATES' SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, AND CUSTOMER AND CUSTOMER AFFILIATES WILL NOT HOLD DARKTRACE RESPONSIBLE THEREFOR; AND (II) THE OFFERING AND SERVICES DO NOT CONSTITUTE ANY FORM OF REPRESENTATION, WARRANTY OR GUARANTEE THAT CUSTOMER'S SYSTEMS ARE SECURE FROM EVERY ATTACK, EVEN IF FULLY IMPLEMENTED.
- 9.5. Disclaimers. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE OFFERING IS PROVIDED ON AN "AS IS" BASIS, AND DARKTRACE MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER OR TO ANY OTHER PARTY REGARDING THE OFFERING OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DARKTRACE HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, DARKTRACE HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE OFFERING WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED, OR WILL FULFILL ANY OF CUSTOMER'S PARTICULAR PURPOSES OR NEEDS. THE OFFERING IS NOT DESIGNED OR INTENDED FOR USE IN ANY APPLICATION OR HAZARDOUS ENVIRONMENT THAT REQUIRES FAIL-SAFE PERFORMANCE, WHERE THE FAILURE OF THE OFFERING MIGHT RESULT IN OR CAUSE DEATH, PERSONAL INJURY OR ENVIRONMENTAL DAMAGE. DARKTRACE DOES NOT WARRANT ANY THIRD-PARTY PRODUCTS, INTEGRATIONS OR SERVICES.

## **10. Intellectual Property Rights Infringement Indemnity.**

- 10.1. Darktrace's Indemnity. Darktrace will defend any third-party claim against the Customer asserting that Customer's use of the Software in accordance with this Agreement infringes a third party's patent, copyright or registered trademark (the "**IP Claim**"). Darktrace will indemnify Customer against any damages awarded in any final judgment entered by a court of competent jurisdiction or any settlements arising out of an IP Claim, if the Customer: (i) notifies Darktrace in writing of the IP Claim promptly, and in any event, within 20 days of receiving notice of such IP Claim; (ii) fully cooperates with Darktrace in the defense of the IP Claim; and (iii) grants Darktrace the right to exclusively control the defense and settlement of the IP Claim and any appeal (provided that any settlement by Darktrace must include, as an unconditional term, the claimant's or plaintiff's release of Customer from all liability with respect to the IP Claim). Customer may, at Customer's own expense, participate in the defense of any IP Claim but Customer will not enter into any settlement or compromise of any such claim without Darktrace's prior written consent.
- 10.2. Remedies. If Darktrace reasonably believes the Software could infringe any third party's patent, copyright or registered trademark, Darktrace may, at its sole option and expense use commercially reasonable efforts to: (i) modify or replace the Software, or any component or part thereof, to make it non-infringing; or (ii) procure the right for Customer to continue to use the Software. If Darktrace determines that neither alternative is commercially practicable, Darktrace may terminate this Agreement, in its entirety or with respect to the affected

component, by providing written notice to Customer and refunding a prorated portion of the pre-paid, unused Fees paid by Customer corresponding to the unused period of the applicable Subscription Period.

- 10.3. Exclusions. Darktrace will have no obligations under this Section 10 if the IP Claim is based upon or arises out of: (i) any modification to the Software not made by Darktrace; (ii) any combination or use of the Software with or in any third party software, hardware, process, firmware, or data, to the extent that such claim is based on such combination or use; (iii) Customer's continued use of the allegedly infringing Software after being notified of the infringement claim or after being provided a modified version of the Software by Darktrace at no additional cost that is intended to address such alleged infringement; or (iv) Customer's failure to use the Software in accordance with the terms of this Agreement, including the applicable Product Specification.
- 10.4. Exclusive Remedy. THE RIGHTS AND REMEDIES SET FORTH IN THIS SECTION 10 WILL CONSTITUTE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND DARKTRACE'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH THE OFFERING.

## **11. Limitation of Liability.**

- 11.1. Excluded Damages TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS, REVENUE, OR SAVINGS, LOST BUSINESS OPPORTUNITIES, LOST DATA, COST OF SUBSTITUTE SERVICES, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF THE OFFERING, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE APPLICABLE CLAIM OR LIABILITY IS BASED, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE.
- 11.2. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL A PARTY'S CUMULATIVE LIABILITY TO THE OTHER PARTY ARISING UNDER OR RELATED TO THIS AGREEMENT OR THE PROVISION OF THE OFFERING, EXCEED THE FEES ACTUALLY PAID TO DARKTRACE FOR THE OFFERING GIVING RISE TO THE LIABILITY IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.
- 11.3. Exclusions. THE FOREGOING EXCLUSIONS AND LIMITS IN THIS SECTION 11 DO NOT APPLY TO: (I) DARKTRACE'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.1; (II) BREACH OF SECTION 4.6 (RESTRICTIONS); (III) CUSTOMER'S PAYMENT OBLIGATIONS; AND/OR (IV) ANY INFRINGEMENT OR MISAPPROPRIATION BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- 11.4. Basis of the Bargain. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN DARKTRACE AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

**12. Term; Suspension and Termination.**

- 12.1. Term. This Agreement is effective as of the Effective Date and will remain in effect until the end of the relevant Subscription Period specified in the applicable Product Order Form or earlier termination in accordance with this Section or as otherwise specified herein.
- 12.2. Suspension. Darktrace may immediately suspend Customer's access to, or use of, the Offering if: (i) Darktrace believes that there is a significant threat to the security, integrity, functionality, or availability of the Offering or any content, data, or applications in the Offering; (ii) Customer is in breach of Section 4.6 (Restrictions); (iii) Customer (or the applicable Partner) fails to pay Darktrace when fees are due; or (iv) if required by law (including under a court order); provided, however, Darktrace will use commercially reasonable efforts under the circumstances to provide Customer with notice and, if applicable, an opportunity to remedy such violation prior to any such suspension.
- 12.3. Termination. Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach.
- 12.4. Effect of Termination. Upon termination of this Agreement for any reason: (i) all Customer's rights to access and use the Offering will terminate; (ii) Customer will promptly cease all use of the Offering and de-install all Software installed on Customer's systems or networks; (iii) where applicable, Customer will ensure all Customer Data is removed from the Appliance and return the Appliance to Darktrace (or the applicable Partner) in accordance with Darktrace's (or the applicable Partner's) instructions. Darktrace will not be responsible for maintaining or protecting any configuration settings or data found on the returned Appliance; (iv) for a period of 30 days following the termination, Darktrace will maintain Customer Data stored in Darktrace's cloud services and grant Customer access to the cloud services, solely to download and delete any such Customer Data. Thereafter, Darktrace will delete or destroy all copies of Customer Data without liability or additional notice, unless legally prohibited from doing so. Customer Data cannot be received once deleted or destroyed; and (v) all undisputed Fees owing to Darktrace at the date on which termination or expiry takes effect will become immediately due and payable.
- 12.5. Survival. Sections 1, 3, 4.9, 4.10, 6.3, 8, 9.5, 10, 11, 12.4, 12.5, and 13 to 17 will survive expiration or termination of this Agreement for any reason.

**13. Compliance with Laws.**

Each party agrees to comply with Applicable Laws, including but not limited to, applicable export and import, anti-corruption and employment laws. Customer affirms that Customer is not named on, owned by, or acting on behalf of any United Kingdom, U.S. or other applicable government denied-party list, and Customer agrees to comply fully with all relevant export control and sanctions laws and regulations of the United Kingdom, the United States and other applicable jurisdictions ("**Export Laws**") to ensure that neither the Offering, Software, any of Customer Data, nor any technical data related thereto is: (i) used, exported or re-exported directly or indirectly in violation of Export Laws; or (ii) used for any purposes prohibited by the Export Laws, including, but not limited to, nuclear, chemical, or biological weapons proliferation, missile systems or technology, or restricted unmanned aerial vehicle applications. Customer shall complete all undertakings required by Export Laws, including obtaining any necessary export license or other governmental approval.



**14. U.S. Government End Users.**

The Offering (including the Software) was developed solely at private expense and is a “commercial product”, “commercial item”, or “commercial computer software” as defined in the Federal Acquisition Regulation 2.101 and other relevant government procurement regulations including agency supplements. Any use, duplication, or disclosure of the Offering (including the Software) by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement as consistent with U.S. federal law and regulations. If these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with U.S. federal law, Customer will immediately discontinue its use of the Offering (including the Software).

**15. Governing Law and Dispute Resolution.**

Any dispute or claim relating in any way to this Agreement will be governed by the Governing Law defined in the table below and adjudicated: (i) in the Governing Courts defined in the table below, in which case each party consents to the exclusive jurisdiction and venue thereof; or (ii) by final and binding arbitration; in each case, as set forth in the table below. Notwithstanding the foregoing: (a) each party may enforce its or its Affiliates’ Intellectual Property Rights in any court of competent jurisdiction, including to seek injunction, specific performance and any other relief that may be available from any such court; and (b) Darktrace or its Affiliates may bring suit for payment in the country where the Customer is located. Where arbitration applies, it will be conducted in English, under the Rules of Arbitration of the International Chamber of Commerce (the “**ICC**”) by three arbitrators in accordance with said Rules. The award shall be final and binding on the parties. Except to the extent entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, will be held in confidence. Customer and Darktrace agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

<b>Customer location (as stated in the Product Order Form)</b>	<b>Governing Law</b>	<b>Governing Courts / Arbitration</b>
United Kingdom	The laws of England & Wales	The courts of England & Wales
United States of America	The laws of the state of California, without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction	The state or federal courts in San Francisco, California
None of the above	The laws of England & Wales	Arbitration at the ICC in London

**16. General Provisions.**

- 16.1. Entire Agreement; Amendments. This Agreement is the complete and exclusive agreement between the parties with respect to its subject matter and supersedes any and all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to its subject matter. This Agreement may be amended or modified only by a written document executed by duly authorized representatives of the parties, except that Darktrace may unilaterally modify the Product Specification and Support Terms so long as it does not reduce or materially modify the functionality of the Offering. Unless otherwise specifically agreed to in writing signed by the parties, in the event of any conflict or inconsistency between this Agreement, any Product Order Form or any document

incorporated by reference into this Agreement, the order of precedence of the documents from highest to lowest is: (i) the Product Order Form; (ii) this main body of the Agreement; and (iii) the documents incorporated herein by reference solely with respect to the subject matter of such documents, and provided, further, that the Data Processing Addendum will prevail over the Product Order Form, this main body of the Agreement and all other documents solely with respect to its subject matter.

- 16.2. Assignment. Neither party may assign or transfer this Agreement, by operation of law or otherwise, without the other party's prior written consent. Any attempt to assign or transfer this Agreement without such consent will be void. Notwithstanding the foregoing, either party may assign or transfer this Agreement to: (i) an Affiliate in connection with a corporate reorganization; or (ii) a third party that succeeds to all or substantially all of the assigning party's business and assets relating to the subject matter of this Agreement, whether by sale, merger, operation of law or otherwise. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the parties and their respective successors and permitted assigns.
- 16.3. Compliance. Customer agrees to permit Darktrace, or an independent representative appointed by Darktrace, to verify that Customer's use of the Offering complies with this Agreement. Darktrace will not exercise this right more than once in any 12-month period. If Customer procured the Offering through a Partner, Customer also agrees that Darktrace may request Customer to provide confirmation of the order(s) placed by Customer with the Partner, including copies of agreement(s) between Customer and Partner, provided that all pricing information will be removed from the copies provided to Darktrace.
- 16.4. Equitable Relief. Each party agrees that a breach or threatened breach by such party of any of its obligations under Section 8 (Confidentiality) or, in the case of Customer, Section 4.6 (Restrictions), would cause the other party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- 16.5. Independent Contractors. The relationship between the parties is that of independent contractors. Nothing in this Agreement will be construed to establish any partnership, joint venture or agency relationship between the parties. Neither party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other party's prior written consent.
- 16.6. No Third-Party Beneficiaries. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the parties and their respective successors and assigns.
- 16.7. Waiver; Severability. Either party's failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party granting the waiver. If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the parties, and the remaining provisions of this Agreement will remain in full force and effect.
- 16.8. Force Majeure. Other than in respect of Customer's payment obligations, neither party will be responsible for any failure or delay in the performance of its obligations under this Agreement

due to causes beyond its reasonable control, which may include, without limitation, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics, epidemics, public health emergencies, governmental orders and acts (including government-imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God. The party experiencing a force majeure event will use commercially reasonable efforts to provide notice of such to the other party. During the continuation of a force majeure event, the non-performing party will use commercially reasonable efforts to overcome the force majeure event and, to the extent it is able, continue to perform its obligations under this Agreement.

- 16.9. **Notices.** Any notice will be delivered by hand, recorded delivery, registered post or email with satisfactory proof of such delivery to be retained by sender. Notices will only become effective on the actual date that the notice is received. Any notices required to be given in writing to Darktrace will be addressed to: Attn: Legal Department, Darktrace Holdings Limited, Maurice Wilkes Building, Cowley Road, Cambridge CB4 0DS, United Kingdom. Email notices to [notices@darktrace.com](mailto:notices@darktrace.com).

## 17. **Definitions.**

When used in this Agreement, terms defined in this Section 17 will have the meanings given below. Defined terms may be used in the singular or plural depending on the context.

“**Affiliate**” means any corporation or other business entity that directly or indirectly controls, is controlled by or is under common control with a party. Control means direct or indirect ownership of or other beneficial interest in fifty percent (50%) or more of the voting stock, other vesting interest, or income of a corporation or other business entity;

“**Alerts**” means alerts of suspected malicious activity on a Customer’s environment generated by the Offering;

“**Appliance(s)**” means hardware device(s) (including embedded firmware) shipped by Darktrace to Customer and as more fully described on the Product Order Form;

“**Applicable Laws**” means all international, domestic and local laws, ordinances, regulations and orders applicable to a party’s performance under this Agreement;

“**Business Associate Agreement**” means the document titled Darktrace Business Associate Agreement available at <https://darktrace.com/legal/business-associate-agreement>;

“**Cloud Provider**” means Microsoft Azure, Amazon Web Services, Google Cloud Platform, as specified on the Product Order Form;

“**Commencement Date**” means the date specified in a Product Order Form on which Darktrace shall commence providing the Offering to Customer;

“**Confidential Information**” means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, suppliers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, intellectual property, materials, designs, improvements, formulae, discoveries, inventions, networks, concepts, ideas, technical information and know-how of a party, and any other information clearly designated by a party as being confidential to it (whether or not it is marked “confidential”),

and information that ought reasonably be considered to be confidential given its nature or circumstance of disclosure, but in all circumstances excludes any Personal Data;

"Customer Data" means: (i) all data and information submitted into, or stored in, the Appliance or Software by Customer, or otherwise provided by Customer to, or accessible by, Darktrace in connection with this Agreement (which may include information about network traffic on Customer's network (metrics), log/metadata collection, as well as the raw packet capture data from Customer's network); and (ii) the contents of all Alerts; but, in case of (i) and (ii), excluding any information or data owned or controlled by Darktrace and made available through or in connection with the Offering;

"Data Processing Addendum" means the document titled Data Processing Addendum available at <https://darktrace.com/legal/data-processing-addendum>;

"Effective Date" means, as applicable, the date on which the Customer signs the applicable Product Order Form or the date on which the Partner signs, or issues a valid order against, the applicable Product Order Form;

"Installation Service" means installation and test procedures performed by Darktrace to confirm completion of the installation of the Appliance on the applicable site;

"Intellectual Property Rights" means patent rights, copyrights, trademark rights, design rights, trade secrets, know-how, data and database rights, mask work rights, domain name rights, and any other intellectual property rights and similar or equivalent rights or forms of protection recognized in any part of the world;

"Offering" means, collectively, the Appliance(s), Software and Services (or any combination thereof);

"Outsource Provider" means any third-party service provider(s) such as an outsourcer, hosting, managed service, or collocation service provider or other information technology service provider for the performance of information technology functions appointed or engaged by or on behalf of Customer;

"Partner" means an authorized reseller of Darktrace;

"Partner Arrangement" means a separate agreement between Customer and a Partner;

"Personal Data" has the meaning given to it in the Data Processing Addendum;

"Product Order Form" means an order form agreed to in writing or electronically by: (i) Darktrace and Customer which references this Agreement; or (ii) Darktrace and a Partner which references the Customer;

"Product Specification" means the technical and user manuals and guides for the Offering available at available at <https://darktrace.com/legal/product-specific-terms> and at <https://darktrace.com/legal/product-specifications-and-service-definitions>, as updated by Darktrace from time to time;

"Services" means the Installation Service and the Support Services;

"Support Services" means support services for the Offering performed by Darktrace in accordance with the Support Terms;

"Support Terms" means Darktrace's support services terms and conditions available at <https://darktrace.com/legal/darktrace-support-services>, as may be updated by Darktrace from time to time;

"Software" means the Darktrace's software (in object code form) delivered to Customer on a standalone basis or as installed in the Appliance pursuant to the applicable Product Order Form, as more fully described on the applicable Product Specification, together with all enhancements, error corrections, and/or updates which are generally made available by Darktrace;

"Subscription Period" means the period during which Darktrace shall make available the Offering to Customer as set forth in the applicable Product Order Form;

"Usage Metrics" means the limits, metrics or other measurements or conditions of permitted usage of the Offering, as set out in the applicable Product Order Form.