

## Terms and Conditions

**Version: 22.02.08**

**Effective Date: 8 February 2022**

This Agreement is made and entered between Derry Technological Services, Inc. dba Pulsar Security, a New Hampshire corporation, having an office at 31 Emerald Drive, Derry, New Hampshire 03038, hereinafter referred to as "PULSAR SECURITY", and the Signatory identified on either an Order Form or a Statement of Work (SOW) that references this document, referred to as "SUBSCRIBER," which term shall include both Resellers and End Users. PULSAR SECURITY and SUBSCRIBER are together referred to as the "Parties" and each individually as a "Party". Specific service terms, product details and any applicable license and/or subscription terms have been set forth in Order Form(s) and/or SOW(s), each of which become binding on the Parties and incorporated into this Master Service Agreement (MSA) upon execution of an Order Form and/or SOW. Each Order Form and/or SOW is governed by and incorporates this document in effect as of the date of last update of such documents, collectively referred to as the "Agreement" and consists of the Order Form and/or Statement of Work, this MSA and any included attachment(s), appendix(ices), and Service Schedule(s) included as part of the Order Form and/or SOW. In the event of a conflict, the Order Form and/or SOW will take precedence.

If the Signatory on an Order Form or SOW is a Reseller, acting in good faith to provide an End User with purchased Pulsar Security Services, both Reseller and End User shall separately execute and be bound by the terms of this Agreement. End User shall execute this Agreement upon its first access to any online systems connected to Products or Services sold hereunder. Each Party agrees that the terms and conditions documented here govern each Order Form and/or SOW that references this MSA.

### **TABLE OF CONTENTS**

1. Definitions
2. Usage and Access Rights
3. Ownership
4. Security and Subscriber Data
5. Payment of Fees
6. Taxes
7. Term and Termination
8. Warranties and Disclaimers
9. Third-Party Claims
10. Limitation of Liability

- 11. Confidentiality
- 12. Governing Law and Venue
- 13. General

## **1. DEFINITIONS**

“Account” means a unique account established by SUBSCRIBER to enable one of its Authorized Users to access and use a PULSAR SECURITY Service.

“Account Administrator” is an Authorized User who is assigned and expressly authorized by SUBSCRIBER as its agent to manage SUBSCRIBER’s Account, including, without limitation, to configure administration settings, assign access and use authorizations, request different or additional services, provide usage and performance reports, manage templates, execute approved campaigns and events, assist in third-party product integrations, and to receive privacy disclosures. SUBSCRIBER may appoint an employee or a third-party business partner or contractor to act as its Account Administrator and may change its designation at any time through its Account.

“Affiliate” of a Party means any entity that the Party directly or indirectly owns or controls more than fifty percent (50%) of the voting interests of the subject entity. Any legal entity will be considered a Party’s Affiliate as long as that interest is maintained.

“Authorized User” means one individual natural person, whether an employee, business partner, contractor, or agent of SUBSCRIBER or its Affiliates who is registered by SUBSCRIBER to use the PULSAR SECURITY Services. An Authorized User must be identified by a unique email address and user name, and two or more persons may not use the PULSAR SECURITY Services as the same Authorized User. If the Authorized User is not an employee of SUBSCRIBER, use of the PULSAR SECURITY Services will be allowed only if the user is under confidentiality obligations with SUBSCRIBER at least as restrictive as those in this Agreement and is accessing or using the PULSAR SECURITY Services solely to support SUBSCRIBER’s and/or SUBSCRIBER Affiliates’ internal business purposes.

“Confidential Information” means (a) for PULSAR SECURITY and its Affiliates, the PULSAR SECURITY Services and Documentation; (b) for SUBSCRIBER and its Affiliates, SUBSCRIBER Data; (c) any other information of a Party or its Affiliates that is disclosed in writing or orally and is designated as confidential or proprietary at the time of disclosure to the Party, including its Affiliates, receiving Confidential Information (“Recipient”) (and, in the case of oral disclosures, summarized in writing and delivered to the Recipient within thirty (30) days of the

initial disclosure), or that due to the nature of the information the Recipient would clearly understand it to be confidential information of the disclosing Party; and (d) the specific terms and conditions of this Agreement between the Parties. Confidential Information does not include any information that: (i) was or becomes generally known to the public through no fault or breach of this Agreement by the Recipient; (ii) was rightfully in the Recipient's possession at the time of disclosure without restriction on use or disclosure; (iii) was independently developed by the Recipient without use of or reference to the disclosing Party's Confidential Information; or (iv) was rightfully obtained by the Recipient from a third party not under a duty of confidentiality and without restriction on use or disclosure.

“SUBSCRIBER Data” means any content, eDocuments, materials, data and information that SUBSCRIBER or its Authorized Users provide to PULSAR SECURITY, including, but not limited to, any SUBSCRIBER personal data and information contained in eDocuments. SUBSCRIBER Data does not include any component of the PULSAR SECURITY Services or material provided by or on behalf of PULSAR SECURITY.

“Documentation” means PULSAR SECURITY's then-current technical and functional documentation for the PULSAR SECURITY Services as made generally available by PULSAR SECURITY.

“PULSAR SECURITY Service(s)” means the services identified on the Order Form and/or SOW and obtained by SUBSCRIBER pursuant to this Agreement.

“eDocument” refers to a contract, notice, disclosure, or other record or document electronically provided to PULSAR SECURITY by SUBSCRIBER for processing.

“Indemnified Party(ies)” means, as the case may be, the Party (whether PULSAR SECURITY or SUBSCRIBER) being indemnified for a third-party claim, including its employees, directors, agents, and representatives.

“Indemnifying Party(ies)” means the Party (whether PULSAR SECURITY or SUBSCRIBER) that is providing indemnification under Section 9 (Third-Party Claims).

“Order Form” means the order form provided by PULSAR SECURITY that sets forth the pricing and options of the PULSAR SECURITY Services selected by SUBSCRIBER.

“Order Start Date” means the start date of the applicable Order Form as defined in that Order Form.

“Professional Services” means any integration, consulting, architecture, training, transition, configuration, administration, and similar ancillary PULSAR SECURITY Services that are set forth in an Order Form or Statement of Work (“SOW”).

“Service Schedule” means the service-specific terms and conditions applicable to the PULSAR SECURITY Service(s).

## **2. USAGE AND ACCESS RIGHTS**

2.1 Right to Use. PULSAR SECURITY will provide the specified product or services to SUBSCRIBER as set forth in the Order Form and/or SOW. Subject to the terms and conditions of this Agreement, PULSAR SECURITY grants to SUBSCRIBER a worldwide, limited, non-exclusive, non-transferrable right and license during the Term, solely for its and its Affiliates’ internal business purposes, and in accordance with the Documentation, to: (a) use the PULSAR SECURITY Products or Services; (b) implement, configure, and through its Account Administrator, permit its Authorized Users to access and use the PULSAR SECURITY provided interfaces; and (c) access and use the Documentation. SUBSCRIBER will ensure that its Affiliates and all Authorized Users using the PULSAR SECURITY Products and/or Services under its Account comply with all of SUBSCRIBER’s obligations under this Agreement, and SUBSCRIBER is responsible for their acts and omissions relating to the Agreement as though they were those of SUBSCRIBER.

2.2 Restrictions. SUBSCRIBER shall not, and shall not permit its Authorized Users or others under its control to do the following with respect to the PULSAR SECURITY Products and/or Services:

(a) use the PULSAR SECURITY Services, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds SUBSCRIBER’s authorized use or usage metrics set forth in this Agreement, including the applicable Order Form or SOW;

(b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any portion of the PULSAR SECURITY Services or Documentation available for access by third parties except as otherwise expressly provided in this Agreement;

(c) access or use the PULSAR SECURITY Services or Documentation for the purpose of: (i) developing or operating products or services intended to be offered to third parties in competition with the PULSAR SECURITY Services, or (ii) allowing access to its Account by a direct competitor of PULSAR SECURITY;

(d) reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the PULSAR SECURITY Services or technologies, unless and then only to the extent expressly permitted by applicable law, without consent;

(e) use the PULSAR SECURITY Services or Documentation in a way that (i) violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity; or (ii) effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene;

(f) fail to use commercially reasonable efforts to not interfere with or disrupt the integrity, operation, or performance of the PULSAR SECURITY Services or interfere with the use or enjoyment of it by others;

(g) use the PULSAR SECURITY Services to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumvent or disclose the user authentication or security of any PULSAR SECURITY network or related account or use any aspect of the PULSAR SECURITY Services components other than those specifically identified in an Order Form or SOW, even if technically possible; or

(h) use, or allow the use of, the PULSAR SECURITY Services in violation of Section 13.5 (Trade Restrictions).

2.3 Suspension of Access. PULSAR SECURITY may suspend any use of the PULSAR SECURITY Services, or remove or disable any Account or content that PULSAR SECURITY reasonably and in good faith believes violates this Agreement. PULSAR SECURITY will use commercially reasonable efforts to notify SUBSCRIBER prior to any such suspension or disablement, unless PULSAR SECURITY reasonably believes that: (a) it is prohibited from doing so under applicable law or under legal process (such as court or government administrative agency processes, orders, mandates, and the like); or (b) it is necessary to delay notice in order to prevent imminent harm to the PULSAR SECURITY Services or a third party. Under circumstances where notice is delayed, PULSAR SECURITY will provide notice if and when the related restrictions in the previous sentence no longer apply.

2.4 Trial Usage. If SUBSCRIBER registers for a free trial, promotional offer, or other type of limited offer for use of the PULSAR SECURITY Services (“Free Trial”), SUBSCRIBER may be presented with additional terms and conditions when registering for a Free Trial, and any such additional terms and conditions are hereby incorporated into this Agreement by reference as a Service Schedule and are legally

binding upon the Parties. ANY DATA THAT SUBSCRIBER ENTERS INTO THE PULSAR SECURITY SERVICES, AND ANY CONFIGURATIONS MADE BY OR FOR SUBSCRIBER, DURING THE FREE TRIAL WILL BE PERMANENTLY LOST AT THE END OF THE TRIAL PERIOD UNLESS SUBSCRIBER: (a) PURCHASES A SUBSCRIPTION TO THE SAME PULSAR SECURITY SERVICES AS THOSE COVERED BY THE TRIAL; (b) PURCHASES AN UPGRADED VERSION OF THE PULSAR SECURITY SERVICES; OR (c) EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. SUBSCRIBER CANNOT TRANSFER DATA ENTERED OR CONFIGURATIONS MADE DURING THE FREE TRIAL TO A PULSAR SECURITY SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, AND IN SUCH SITUATION ANY SUBSCRIBER DATA OR CUSTOMIZATION WILL BE PERMANENTLY LOST. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION SECTION 8 (WARRANTIES AND DISCLAIMERS), SECTION 9 (THIRD-PARTY CLAIMS), AND SECTION 10 (LIMITATION OF LIABILITY), FREE TRIALS ARE PROVIDED “AS-IS” AND “AS AVAILABLE” AND, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, (y) WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY; AND (z) PULSAR SECURITY’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO SUBSCRIBER’S USE OF THE FREE TRIAL IS \$100.

### **3. OWNERSHIP**

3.1 SUBSCRIBER Data. SUBSCRIBER Data processed using the PULSAR SECURITY Services is and will remain, as between SUBSCRIBER and PULSAR SECURITY, owned by SUBSCRIBER. SUBSCRIBER hereby grants PULSAR SECURITY the right to process, transmit, store or disclose the SUBSCRIBER Data in order to provide the PULSAR SECURITY Services to SUBSCRIBER subject to the terms of Section 11.2 (Required Disclosure) below.

3.2 PULSAR SECURITY Services. PULSAR SECURITY, its Affiliates, or its licensors own all right, title, and interest in and to any and all copyrights, trademark rights, patent rights, database rights, and other intellectual property or other rights in and to the PULSAR SECURITY Services and Documentation, any improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder. Unless otherwise specified in the applicable SOW, all deliverables provided by or for PULSAR SECURITY in the performance of Professional Services, excluding SUBSCRIBER Data and SUBSCRIBER Confidential Information, are owned by PULSAR SECURITY and constitute part of the PULSAR SECURITY Service(s) under this Agreement.

3.3 Third-Party Services or Materials. SUBSCRIBER may choose to obtain products, services or materials that are provided or supported by third parties (“Third-Party Services and Materials”) for use with PULSAR SECURITY Services. PULSAR SECURITY assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Third-Party Services and Materials that are provided pursuant to the terms of the applicable third-party license or separate agreement between the licensor of the Third-Party Services and SUBSCRIBER. PULSAR SECURITY does not represent and/or warrant in any manner that Third-Party Services and Materials are accurate, current, or comply with laws, rules and/or regulations of, or are otherwise valid and enforceable in or appropriate for, the jurisdiction in which the Third-Party Services and Materials are used or for SUBSCRIBER’s purposes.

3.4 Feedback. PULSAR SECURITY encourages SUBSCRIBER to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to PULSAR SECURITY Services and related resources (“Feedback”). To the extent SUBSCRIBER provides Feedback, SUBSCRIBER grants to PULSAR SECURITY a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 13.2 (Assignability)), non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import, and otherwise exploit Feedback (including by incorporation of such feedback into the PULSAR SECURITY Services) without restriction; provided that such Feedback does not identify SUBSCRIBER, its Affiliates, or Authorized Users, or include any SUBSCRIBER Data without SUBSCRIBER’s prior written consent.

#### **4. SECURITY AND SUBSCRIBER DATA**

4.1 Security. PULSAR SECURITY will use commercially reasonable industry standard security technologies in providing the PULSAR SECURITY Services. PULSAR SECURITY has implemented and will maintain appropriate technical and organizational measures, including information security policies and safeguards, to preserve the security, integrity, and confidentiality of SUBSCRIBER Data and personal data and to protect against unauthorized or unlawful disclosure or corruption of or access to personal data. Additional security obligations, if any, shall be set forth or referenced in the applicable Service Schedule, attachment and/or appendix.

4.2 SUBSCRIBER Data. SUBSCRIBER is responsible for SUBSCRIBER Data (including SUBSCRIBER personal data) as entered into, supplied or used by SUBSCRIBER and its Authorized Users in the PULSAR SECURITY Services. Further, SUBSCRIBER is solely responsible for determining the suitability of the PULSAR SECURITY Services for SUBSCRIBER's business and complying with any applicable data privacy and protection regulations, laws or conventions applicable to

SUBSCRIBER Data and SUBSCRIBER's use of the PULSAR SECURITY Services. SUBSCRIBER grants to PULSAR SECURITY the non-exclusive right to process SUBSCRIBER Data (including personal data) in accordance with the applicable data protection provisions and the technical and organizational measures referred to in an applicable Service Schedule, attachment and/or appendix, for the sole purpose of and only to the extent necessary for PULSAR SECURITY: (a) to provide the PULSAR SECURITY Services; (b) to verify SUBSCRIBER's compliance with the restrictions set forth in Section 2.2 (Restrictions) if PULSAR SECURITY has a reasonable belief of SUBSCRIBER's non-compliance; and (c) as otherwise set forth in this Agreement.

4.3 Use of Aggregate Data. SUBSCRIBER agrees that PULSAR SECURITY may collect, use, and disclose quantitative data derived from the use of the PULSAR SECURITY Services for its business purposes, including industry analysis, benchmarking, analytics, and marketing. All data collected, used, and disclosed will be in aggregate and deidentified form only and will not identify SUBSCRIBER, its Authorized Users, SUBSCRIBER Data, or any third parties utilizing the PULSAR SECURITY Services.

## **5. PAYMENT AND FEES**

5.1 Fees. Except as expressly set forth in the applicable Order Form or SOW, SUBSCRIBER will pay all fees set forth in the Order Form or SOW in accordance with the following: (a) PULSAR SECURITY Services fees are invoiced annually in advance; (b) the first invoice will coincide with the Order Start Date or effective date of a SOW; (c) payment will be due within thirty (30) days from the date of the invoice; and (d) all amounts will be denominated in U.S. dollars. Upon execution by SUBSCRIBER and PULSAR SECURITY, each Order Form and/or SOW is non-cancellable and non-refundable except as provided in this Agreement, and the Term as set forth in the Order Form is a continuous and non-divisible commitment for the full duration of the Term regardless of any invoice schedule. SUBSCRIBER may withhold from payment any charge or amount disputed by SUBSCRIBER in good faith pending resolution of such dispute, provided that SUBSCRIBER: (i) notifies PULSAR SECURITY of the dispute prior to the date such payment is due, specifying in such notice (A) the amount in dispute, and (B) the reason for the dispute set out in sufficient detail to facilitate investigation by PULSAR SECURITY and resolution by the parties; (ii) makes timely payment of all undisputed charges and amounts; (iii) works diligently with PULSAR SECURITY to resolve the dispute promptly; and (iv) pays all amounts that are determined to be payable by resolution of the dispute (by adversarial proceedings, agreement or otherwise) within ten (10) days following such resolution.



5.2 Purchase Orders. If SUBSCRIBER issues a purchase order, then it shall be for the full amount set forth in the applicable Order Form or SOW, and PULSAR SECURITY hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by SUBSCRIBER, and conditions assent solely based on the terms and conditions of this Agreement as offered by PULSAR SECURITY. Upon request, PULSAR SECURITY shall reference the purchase order number on its invoices, provided, however, that SUBSCRIBER acknowledges that it is SUBSCRIBER's responsibility to provide the corresponding purchase order information (including a purchase order number) to PULSAR SECURITY upon the signing of any Order Form. SUBSCRIBER agrees that a failure to provide PULSAR SECURITY with the corresponding purchase order shall not relieve SUBSCRIBER of its obligations to provide payment to PULSAR SECURITY pursuant to Section 5.1 (Fees) above.

5.3 Offsets; Late Charges; Attorneys' Fees. If PULSAR SECURITY owes any amounts to SUBSCRIBER that are not derived from this Agreement, such amounts will not be withheld or offset against any invoice issued under this Agreement. PULSAR SECURITY may assess late charges equal to the lesser of one and one-half percent (1.5%) of the unpaid balance per month or the highest rate permitted by applicable law. SUBSCRIBER will be responsible for any reasonable attorneys' fees, costs, and expenses incurred by PULSAR SECURITY to collect any amounts that are not paid when due. If SUBSCRIBER fails to timely pay any amounts due under this Agreement, then without limitation of any of its other rights or remedies, PULSAR SECURITY may suspend performance of those PULSAR SECURITY Services until PULSAR SECURITY receives all past due amounts from SUBSCRIBER.

## **6. TAXES**

6.1 Tax Responsibility. All payments required by this Agreement are stated exclusive of all taxes, duties, levies, imposts, fines or similar governmental assessments, including sales and use taxes, value-added taxes ("VAT"), goods and services taxes ("GST"), excise, business, service, and similar transactional taxes imposed by any jurisdiction and the interest and penalties thereon (collectively, "Taxes"). SUBSCRIBER shall be responsible for and bear Taxes associated with its purchase of, payment for, access to or use of the PULSAR SECURITY Services. Taxes shall not be deducted from the payments to PULSAR SECURITY, except as required by law, in which case SUBSCRIBER shall increase the amount payable as necessary so that after making all required deductions and withholdings, PULSAR SECURITY receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made. If SUBSCRIBER claims tax exempt status for amounts due under this Agreement, it shall provide PULSAR SECURITY with a valid tax exemption certificate (authorized

by the applicable governmental authority) to avoid application of Taxes to SUBSCRIBER's invoice. Each Party is responsible for and shall bear Taxes imposed on its net income. SUBSCRIBER hereby confirms that PULSAR SECURITY can rely on the ship-to name and address set forth in the Order Form(s) or SOW SUBSCRIBER places directly with PULSAR SECURITY as being the place of supply for Tax purposes. The Parties' obligations under this Section 6.1 (Tax Responsibility) shall survive the termination or expiration of this Agreement.

6.2 Invoicing Taxes. If PULSAR SECURITY is required to invoice or collect Taxes associated with SUBSCRIBER's purchase of, payment for, access to or use of the PULSAR SECURITY Services, PULSAR SECURITY will issue an invoice to SUBSCRIBER including the amount of those Taxes, itemized where required by law. If applicable, SUBSCRIBER shall provide to PULSAR SECURITY its VAT, GST or similar tax identification number(s) on the Order Form or SOW. SUBSCRIBER shall use the ordered PULSAR SECURITY Services for SUBSCRIBER's business use in the foregoing location(s) in accordance with the provided VAT or GST identification number(s).

## **7. TERM AND TERMINATION**

7.1 Term. The term of an Order Form and any associated Service Schedule(s) is the period of time, including all renewals thereto, that begins on the Order Start Date and, unless terminated sooner as provided herein, will continue until the Order End Date, both dates as specified on the Order Form (the "Term"). In the case of a SOW for Professional Services, if no end date is specified in the SOW, then the SOW shall expire upon completion of Professional Services or early termination as permitted by this Agreement. The term of this MSA and this Agreement shall continue as long as an Order Form or SOW referencing or incorporated into this MSA remains valid and in effect. Prior to the Order Start Date, PULSAR SECURITY may, upon mutual agreement, start providing Professional Services and/or provide SUBSCRIBER access to the PULSAR SECURITY Services, which will be governed by this Agreement. Termination or expiration of any Order Form or SOW shall leave other Order Forms or SOWs unaffected.

7.2 Termination for Breach; Termination for Insolvency. If either Party commits a material breach or default in the performance of any of its obligations under this Agreement, then the other Party may terminate this Agreement in its entirety by giving the defaulting Party written notice of termination, unless the material breach or default in performance is cured within thirty (30) days after the defaulting Party receives notice thereof. Either Party may terminate this Agreement in its entirety upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction,

that is not dismissed within sixty (60) days of its commencement, or an assignment for the benefit of creditors.

7.3 Post-Termination Obligations. If this Agreement expires or is terminated for any reason: (a) SUBSCRIBER will pay to PULSAR SECURITY any amounts that have accrued before, and remain unpaid as of, the effective date of the expiration or termination; (b) any and all liabilities of either Party to the other Party that have accrued before the effective date of the expiration or termination will survive; (c) licenses and use rights granted to SUBSCRIBER with respect to PULSAR SECURITY Services and intellectual property will immediately terminate; (d) PULSAR SECURITY's obligation to provide any further services to SUBSCRIBER under this Agreement will immediately terminate, except any such services that are expressly to be provided following the expiration or termination of this Agreement; and (e) the Parties' rights and obligations under Sections 6.1, 7.3, 8.3, and 10 through 13 will survive.

## **8. WARRANTIES AND DISCLAIMERS**

8.1 PULSAR SECURITY Service Warranties. PULSAR SECURITY warrants that during the applicable Term, the PULSAR SECURITY Services, when used as authorized under this Agreement, will perform substantially in conformance with the Documentation associated with the applicable PULSAR SECURITY Services. SUBSCRIBER's sole and exclusive remedy for any breach of this warranty by PULSAR SECURITY is for PULSAR SECURITY to repair or replace the affected PULSAR SECURITY Services to make them conform, or, if PULSAR SECURITY determines that the foregoing remedy is not commercially reasonable, then either Party may terminate this Agreement.

8.2 Mutual Warranties. Each Party represents and warrants that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of this Agreement; and (b) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement.

8.3 Disclaimer. Except for the express representations and warranties stated in this Section 8 (Warranties and Disclaimers), SOW or a Service Schedule, PULSAR SECURITY: (a) makes no additional representation or warranty of any kind -- whether express, implied in fact or by operation of law, or statutory -- as to any matter whatsoever; (b) disclaims all implied warranties, including but not limited to merchantability, fitness for a particular purpose, and title; and (c) does not warrant that the PULSAR SECURITY Services are or will be error-free or meet

SUBSCRIBER's requirements. SUBSCRIBER has no right to make or pass on any representation or warranty on behalf of PULSAR SECURITY to any third party.

## **9. THIRD-PARTY CLAIMS**

9.1 By PULSAR SECURITY. PULSAR SECURITY will indemnify SUBSCRIBER, and its employees, directors, agents, and representatives from, and defend the Indemnified Parties against, any actual or threatened: (a) third-party claim; (b) third-party legal action; or (c) administrative agency action or proceeding ("Claim") to the extent arising from or related to: (i) any alleged breach by PULSAR SECURITY of specified security safeguards related to the PULSAR SECURITY Services that results in the breach of its confidentiality obligations in Section 11 (Confidentiality); and (ii) any alleged infringement of any third-party intellectual property rights by the PULSAR SECURITY Services as provided by PULSAR SECURITY, or the Indemnified Party's use thereof when used as authorized under this Agreement, provided, however, that PULSAR SECURITY will not be responsible for alleged infringement that is due to the combination of PULSAR SECURITY Services with goods or services provided by third parties.

9.2 By SUBSCRIBER. SUBSCRIBER will indemnify PULSAR SECURITY, and its employees, directors, agents, and representatives from, and defend the Indemnified Parties against, any Claim to the extent arising from or related to: (a) use of the PULSAR SECURITY Services by SUBSCRIBER or its Account Administrator or Authorized Users in violation of this Agreement, the Documentation, or applicable law; (b) any breach by SUBSCRIBER of its obligations under Section 2.2 (e)-(h) (Restrictions) or Section 11 (Confidentiality); or (c) the nature and content of all SUBSCRIBER Data processed by the PULSAR SECURITY Services.

9.3 Procedures. The Parties' respective indemnification obligations above are conditioned on: (a) the Indemnified Parties giving the Indemnifying Party prompt written notice of the Claim, except that the failure to provide prompt notice will only limit the indemnification obligations to the extent the Indemnifying Party is prejudiced by the delay or failure; (b) the Indemnifying Party being given full and complete control over the defense and settlement of the Claim (as long as the settlement does not include any payment of any amounts by or any admissions of liability, whether civil or criminal, on the part of any of the Indemnified Parties); (c) the relevant Indemnified Parties providing assistance in connection with the defense and settlement of the Claim, as the Indemnifying Party may reasonably request; and (d) the Indemnified Parties' compliance with any settlement or court order made in connection with the Claim. The Indemnifying Party will indemnify the Indemnified Parties against: (i) all damages, costs, and attorneys' fees finally awarded against any of them with respect to any Claim; (ii) all out-of-pocket costs (including reasonable

attorneys' fees) reasonably incurred by any of them in connection with the defense of the Claim (other than attorneys' fees and costs incurred without the Indemnifying Party's consent after it has accepted defense of such Claim); and (iii) all amounts that the Indemnifying Party agreed to pay to any third party in settlement of any Claims arising under this Section 9 (Third-Party Claims) and settled by the Indemnifying Party or with its approval.

9.4 Infringement Remedy. If SUBSCRIBER is enjoined or otherwise prohibited from using any of the PULSAR SECURITY Services or a portion thereof based on a Claim covered by PULSAR SECURITY's indemnification obligations under Section 9.1 (By PULSAR SECURITY) above, then PULSAR SECURITY will, at its sole expense and option, either: (a) obtain for SUBSCRIBER the right to use the allegedly infringing portions of the PULSAR SECURITY Services; (b) modify the allegedly infringing portions of the PULSAR SECURITY Services so as to render them non-infringing without substantially diminishing or impairing their functionality; or (c) replace the allegedly infringing portions of the PULSAR SECURITY Services with non-infringing items of substantially similar functionality. If PULSAR SECURITY determines that the foregoing remedies are not commercially reasonable, then either Party may terminate this Agreement, and in such case, PULSAR SECURITY will provide a prorated refund to SUBSCRIBER for any prepaid fees received by PULSAR SECURITY under this Agreement that correspond to the unused portion of the Term. Without limiting PULSAR SECURITY's obligation to indemnify SUBSCRIBER as set forth in Section 9.1 (By PULSAR SECURITY) above, the remedy set out in this Section 9.4 (Infringement Remedy) is SUBSCRIBER's sole and exclusive remedy for any actual or alleged infringement by PULSAR SECURITY of any third-party intellectual property rights in the event that SUBSCRIBER is enjoined or otherwise prohibited from using any of the PULSAR SECURITY Services or a portion thereof based on a Claim covered by PULSAR SECURITY's indemnification obligations under Section 9.1 (By PULSAR SECURITY).

## **10. LIMITATIONS OF LIABILITY**

10.1 Exclusion of Damages. EXCEPT FOR THE PARTIES' OBLIGATIONS UNDER SECTION 9 (THIRD-PARTY CLAIMS), UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE CLAIM, SHALL EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES) BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS, SALES OR BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, WORK STOPPAGE OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, COVER, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE

TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH LOSSES.

10.2 Limitation of Liability. EXCEPT FOR: (A) THE PARTIES' OBLIGATIONS UNDER SECTION 9 (THIRD-PARTY CLAIMS); (B) DAMAGES RESULTING FROM DEATH OR BODILY INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (C) PULSAR SECURITY'S RIGHT TO COLLECT UNPAID FEES DUE HEREUNDER, TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY (OR THEIR RESPECTIVE AFFILIATES) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY SUBSCRIBER FOR THE PULSAR SECURITY SERVICE(S) GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS CUMULATIVE LIMIT.

10.3 Independent Allocations of Risk. Each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Parties. This allocation is reflected in the pricing offered by PULSAR SECURITY to SUBSCRIBER and is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of this Agreement, and each of these provisions will apply even if the warranties in this Agreement have failed of their essential purpose.

## **11. CONFIDENTIALITY**

11.1 Restricted Use and Nondisclosure. During and after the Term, Recipient will: (a) use the Confidential Information of the other Party solely for the purpose for which it is provided; (b) not disclose such Confidential Information to a third party, except on a need-to-know basis to its Affiliates, attorneys, auditors, consultants, and service providers who are under confidentiality obligations at least as restrictive as those contained herein; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

11.2 Required Disclosure. If Recipient is required by law to disclose Confidential Information of the other Party or the terms of this Agreement, Recipient will give

prompt written notice to the other Party before making the disclosure, unless prohibited from doing so by the legal or administrative process, and cooperate with the disclosing Party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.

11.3 Ownership. Recipient acknowledges that, as between the Parties, all Confidential Information it receives from the disclosing Party, including all copies thereof in Recipient's possession or control, in any media, is proprietary to and exclusively owned by the disclosing Party. Nothing in this Agreement grants Recipient any right, title or interest in or to any of the disclosing Party's Confidential Information. Recipient's incorporation of the disclosing Party's Confidential Information into any of its own materials will not render Confidential Information non-confidential.

11.4 Remedies. Recipient acknowledges that any actual or threatened breach of this Section 11 (Confidentiality) may cause irreparable, non-monetary injury to the disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the disclosing Party is entitled to (but not required to) seek injunctive relief in addition to all remedies available to the disclosing Party at law and/or in equity, to prevent or mitigate any breaches of this Agreement or damages that may otherwise result from those breaches. Absent written consent of the disclosing Party to the disclosure, the Recipient, in the case of a breach of this Section 11 (Confidentiality), has the burden of proving that the disclosing Party's Confidential Information is not, or is no longer, confidential or a trade secret and that the disclosure does not otherwise violate this Section 11 (Confidentiality).

## **12. GOVERNING LAW AND VENUE**

12.1 This Agreement is governed by the laws of the State of New Hampshire, U.S.A., without reference to its choice of law rules to the contrary. The Parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in New Hampshire, for the purposes of adjudicating any dispute arising out of this Agreement. To the extent permitted by law, choice of law rules, the United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act as enacted shall not apply. Notwithstanding the foregoing, either Party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such Party's intellectual property rights. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

## **13. GENERAL**

13.1 Relationship. The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Except as set forth in this Agreement, nothing in this Agreement, expressed or implied is intended to give rise to any third-party beneficiary.

13.2 Assignability. Neither Party may assign its rights nor obligations under this Agreement without the other Party's prior written consent. Notwithstanding the foregoing, either Party may assign its rights and obligations under this Agreement to an Affiliate as part of a reorganization, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without the other Party's consent, provided that: (a) the purchaser is not insolvent or otherwise unable to pay its debts as they become due; (b) the purchaser is not a competitor of the other Party; and (c) any assignee is bound hereby. Other than the foregoing, any attempt by either Party to transfer its rights or obligations under this Agreement will be void.

13.3 Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective only if it is in writing and sent via certified or registered mail to the mailing addresses listed on the Order Form. Each Party hereto expressly consents to service of process by registered mail. Either Party may change its address for receipt of notice by notice to the other Party through a notice provided in accordance with this Section 13.3 (Notices). Notices are deemed given upon receipt.

13.4 Force Majeure. In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision (including, without limitation, for causes due to war, fire, earthquake, flood, hurricane, riots, acts of God, telecommunications outage not caused by the obligated Party, or other similar causes) ("Force Majeure Event"), the affected Party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided that the affected Party: (a) provides the other Party with prompt notice of the nature and expected duration of the Force Majeure Event; (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such Force Majeure Event; (c) provides periodic notice of relevant developments; and (d) provides prompt notice of the end of such Force Majeure Event. Obligations to pay are excused only to the extent that payments are entirely prevented by the Force Majeure Event.

13.5 Export Control. The PULSAR SECURITY Services, Documentation, and the provision and derivatives thereof are subject to the export control and sanctions laws and regulations of the United States and other countries that may prohibit or restrict



access by certain persons or from certain countries or territories (“Trade Restrictions”).

(a) Each Party shall comply with all applicable Trade Restrictions. In addition, each Party represents that it is not a Restricted Party, nor is it owned or controlled by, or acting on behalf of any person or entity that is a Restricted Party. “Restricted Party” means any person or entity that is: (a) listed on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, including, but not limited to, OFAC’s List of Specially Designated Nationals and Other Blocked Persons, the U.S. State Department’s Nonproliferation Sanctions lists, the U.S. Commerce Department’s Entity List or Denied Persons List located at <https://www.export.gov/article?id=Consolidated-Screening-List>; or (b) subject to end destination export control regulations, such as, but not limited to, the U.S. Export Administration Regulations and EU Dual-Use Regulation EC 428/2009.

(b) SUBSCRIBER acknowledges and agrees that it is solely responsible for complying with, and shall comply with, Trade Restrictions applicable to any of its own or its Affiliates’ or Authorized Users’ content or SUBSCRIBER Data transmitted through the PULSAR SECURITY Services. SUBSCRIBER shall not and shall not permit any Authorized User to access, use, or make the PULSAR SECURITY Services available to or by any Restricted Party or to or from within in a country or territory subject to comprehensive U.S. sanctions (currently including, but not limited to, Cuba, the Crimea region of the Ukraine, Iran, North Korea, and Syria).

13.6 Anti-Corruption. In connection with the services performed under this Agreement and SUBSCRIBER’s use of PULSAR SECURITY’s products and services, the Parties agree to comply with all applicable anti-corruption and anti-bribery related laws, statutes, and regulations.

13.7 U.S. Government Rights. All PULSAR SECURITY software (including PULSAR SECURITY Services) is commercial computer software and all services are commercial items. “Commercial computer software” has the meaning set forth in Federal Acquisition Regulation (“FAR”) 2.101 for civilian agency purchases and the Department of Defense (“DOD”) FAR Supplement (“DFARS”) 252.227-7014(a)(1) for defense agency purchases. If the software is licensed or the PULSAR SECURITY Services are acquired by or on behalf of a civilian agency, PULSAR SECURITY provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as required in FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data) and their successors. If the software is licensed or the PULSAR SECURITY Services are acquired by or on behalf of any agency within the DOD, PULSAR SECURITY provides the commercial computer software and/or commercial computer software

documentation and other technical data subject to the terms of this Agreement as specified in DFARS 227.7202-3 and its successors. Only if this is a DOD prime contract or DOD subcontract, the Government acquires additional rights in technical data as set forth in DFARS 252.227-7015. Except as otherwise set forth in an applicable Service Schedule, this Section 13.7 (U.S. Government Rights) is in lieu of, and supersedes, any other FAR, DFARS or other clause or provision that addresses U.S. Government rights in computer software or technical data.

13.8 **Publicity.** Neither Party shall refer to the identity of the other Party in promotional material, publications, or press releases or other forms of publicity relating to the PULSAR SECURITY Service unless the prior written consent of the other Party has been obtained, provided, however, that PULSAR SECURITY may use SUBSCRIBER's name and logo for the limited purpose of identifying SUBSCRIBER as a SUBSCRIBER of the PULSAR SECURITY Service.

13.9 **Waiver.** The waiver by either Party of any breach of any provision of this Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such Party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

13.10 **Severability.** If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

13.11 **Entire Agreement.** This Agreement is the final, complete, and exclusive expression of the agreement between the Parties regarding the PULSAR SECURITY Services provided under this Agreement. This Agreement supersedes and replaces, and the Parties disclaim any reliance on, all previous oral and written communications (including any confidentiality agreements pertaining to the PULSAR SECURITY Services under this Agreement), representations, proposals, understandings, undertakings, and negotiations with respect to the subject matter hereof and apply to the exclusion of any other terms that SUBSCRIBER seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing. This Agreement may be changed only by a written agreement signed by an authorized agent of both Parties. This Agreement will prevail over terms and conditions of any SUBSCRIBER-issued purchase order or other ordering documents, which will have no force and effect, even if PULSAR SECURITY accepts or does not otherwise reject the purchase order or other ordering document.