

OSIRT iii USER LICENCE

In respect of OSIRT'S Software as a Service (SAAS) digital casebook with the following features and functionality:-

- Acquisition and secure hashing of digital items.
- Fully auditable casebook recording investigative steps in online investigations.
- Multiple features including screen recording, screen capture, media file downloads and HTML capture.
- Dual facility functions enabling digital casebook and browser extension capture.
- Full investigative/intelligence note recording.
- Case reporting functions.

PLEASE READ THESE TERMS CAREFULLY

By accepting these terms you expressly agree that this is a legal agreement (**Agreement**) between you (**Client or you**) and OSIRT Limited, incorporated and registered in England and Wales with company number 14488378 whose registered office is at Maclaurin Building, 4 Bishops Square, Hatfield, United Kingdom AL10 9NE (**OSIRT or we or us**).

If you accept the terms and conditions of this Agreement, we will make the OSIRT digital investigation software platform and tools available to you as soon as we accept your order. You acknowledge that OSIRT is a software as a service to which you are agreeing to subscribe on the terms set out.

If you are entering into this Agreement on behalf of a company or other entity then you expressly warrant to us that you have all requisite authority required to do so, including to bind such entity and to commit it to paying all fees applicable for the services subscribed to.

YOU MUST ONLY ACCEPT THIS AGREEMENT IF YOU AGREE TO IT IN ITS ENTIRETY.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Account Administrator: your nominated representative entitled to manage the Authorised User accounts and escalate queries to OSIRT.

Affiliate: any holding company of a Party or any company which is a subsidiary company of the ultimate holding company of a Party.

Applicable Laws and Regulations: all applicable laws, statutes, regulations and codes from time to time in force which apply to the supply of the Services by OSIRT.

Asset Library: the secure file storage provided to you as part of the Services where you may keep Input Material, Output Material or other materials for use with the Service.

Authorised Users: those employees, third parties, agents or independent contractors of you who are authorised by you to access or use the Service and the Documentation.

Background IP: all Intellectual Property in pre-existing Software code, data (including anonymised data) or other forms of IPR owned and developed by OSIRT in the Software, Services or Solution [together with any additional software code, data or other IPR created by OSIRT for the Client or in connection with the Project Proposal which further develops, enhances or refines the Background IP, and other IPR owned by or licensed to OSIRT and which may be accessible by the Client or Authorised Users through use of the Service, but not the Foreground IP, Input Material or Open Source Software.

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Business Hours: 9.00am to 5.00pm on any Business Day.

Change of Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.

Commencement Date: the date on which you accept this Agreement.

Confidential Information: information that is proprietary or confidential, including software, data and analytics, and is either clearly labelled as such or identified as Confidential Information in Clause 12.6.

Control: a business entity shall be deemed to “control” another business entity if it owns, directly or indirectly, more than 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

Data Protection Legislation: the UK Data Protection Legislation and any other legislation and regulatory requirements in force from time to time which apply to a party relating to Services and the use of personal data (including, without limitation, the privacy of electronic communications).

Dependencies: the third party or other services on which OSIRT’s supply of the Services is reliant, including hosting by IONOS (which hosting supplier may change from time to time).

Documentation: the operating manuals, user instruction manuals, technical literature and all other related materials (whether machine or eye readable) if any made available by OSIRT in relation to the Services.

Fees: the Subscription Fees, licence fees and any other fees payable to OSIRT for use of and access to the Services.

Initial Term: the initial term of this Agreement being one year, during which OSIRT shall make the Services available to you and in relation to which you shall pay the Fees.

Input Material: all documents, images, images, video, sound recordings, trademarks, information and materials provided by you, or Authorised Users, relating to the Services (including any third party materials or Third Party IP) or as part of your use of the Service (including materials stored in the Asset Library), including any information derived from such information, computer programs, data, reports and specifications and such other material applicable and necessary to the proper provision of the Services, or stored in the Client’s Asset Library.

Intellectual Property Rights (IPRs): patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, social media and other accounts and logins, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, data and database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

IPR Claim: any claim made against you and/or any Authorised User for actual or alleged infringement of a third party's Intellectual Property Rights, and/or breach of confidentiality arising out of, or in connection with, the supply of the Service and/or the use of the Background IP and/or Third Party IP introduced by OSIRT.

Open Source Software: open-source software comprised in the Services which is not owned or controlled by OSIRT but which is freely available for redistribution (such as source libraries or plugins).

Output Material: the materials created by you or Authorised Users as a result of using the Service, which may comprise Input Material, Background IP, Third Party IP and Open Source Software.

Privacy Policy: OSIRT’s privacy policy in force from time to time via [Privacy Policy | OSIRT Ltd \(osirtbrowser.com\)](#) or such other web address or sign-on gateway notified by OSIRT and as amended from time to time.

Services: the OSIRT software as a service Digital Casebook and browser extension enabling the

features described at the beginning of this User Licence and/or other software, development or other services to be provided by OSIRT to you under this Agreement.

Software: the software applications provided by OSIRT as part of the Services.

Source Code Material: the source code of the Software, and all technical information and documentation required to enable you to modify and operate it.

Subscription Fees: the Fees payable to OSIRT for use of and access to the Service (usually on the basis of a recurring annual Subscription).

Subscription Plan: the Service subscription and user plan to which you have subscribed, and which is applicable to your use of the Services, including the data storage levels, nature and permitted number of Authorised Users and Account Administrators and Subscription Fees.

Subscription Term: has the meaning given in Clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Third Party IP: any third party Intellectual Property Rights in any third-party materials, including trademarks, video, images or sound recordings, or data or as provided by a Dependency as specified in the Project Proposal and as required for the Client's use of the Services, or provided in the form of Input Material or incorporated in Output Material.

Training: optional training which may be supplied by OSIRT at an agreed rate to provide full understanding of software capabilities and techniques.

UK Data Protection Legislation: all applicable UK data protection and privacy legislation in force from time to time including the UK GDPR as implemented by the Data Protection Act 2018.

User Subscription: the user subscription purchased by you pursuant to Clause 10.1 and relevant Subscription Plan which entitles Authorised Users and Account Administrators to access and use the Services and the Documentation in accordance with this Agreement.

Virus: any thing or device (including any software, code, file or program) which may: prevent, impair

or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement and shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.6 A reference to writing or written includes e-mail.

1.7 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedules to this Agreement.

1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

2. USER SUBSCRIPTIONS

2.1 Subject to you purchasing a Subscription Plan in accordance with Clause 3.3 and Clause 10.1, the restrictions set out in this Clause 2 and the other terms and conditions of this Agreement, OSIRT hereby grants to you:

2.1.1 a non-exclusive licence to use the Service and the Documentation; and

2.1.2 a non-exclusive, non-transferable right, to sub-licence the Services and the

Documentation solely to the Authorised Users and Account Administrators to use and access the Service and the Documentation;

during the Subscription Term solely for the purposes of the Client's own business operations.

2.2 In relation to the Authorised Users and Account Administrators, you undertake that:

- 2.2.1 the Authorised Users and Account Administrators that you authorise to access and use the Services and the Documentation shall not exceed the numbers permitted under a Subscription Plan;
- 2.2.2 you will not allow or suffer any User Subscription to be used by more than one individual Authorised User;
- 2.2.3 each Authorised User shall keep secure and confidential any Client access code or password (**Client Code**) for their use of the Services and Documentation (and the Client shall restrict access to its Client Code to its Authorised Users);
- 2.2.4 you shall ensure that the Authorised Users use the Service and the Documentation in accordance with the terms and conditions of this agreement and any applicable End User Licence Agreement (**EULA**) made available to them regulating individuals' access to and use of the Services as amended from time to time;
- 2.2.5 you permit OSIRT to audit the Services in order to confirm your adherence with the Subscription Plan, and
- 2.2.6 if any audit referred to in Clause 2.2.5 reveals that the Client has underpaid Subscription Fees to OSIRT, then without reference to OSIRT's other rights, Client shall pay an amount equal to such underpayment as calculated in accordance with the prevailing Subscription Plan prices.

2.3 Except for its own lawful purposes for which it bears sole responsibility, Client shall not, and shall not allow any Authorised Users or Account Administrators to, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that, in OSIRT's sole opinion:

- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.3.2 facilitates illegal activity;
- 2.3.3 depicts sexually explicit images;
- 2.3.4 promotes unlawful violence;
- 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- 2.3.6 is otherwise illegal or causes damage or injury to any person or property; or
- 2.3.7 constitutes or may be perceived to constitute a data protection breach; or
- 2.3.8 otherwise conflicts or contradicts with any EULA,

and OSIRT reserves the right, without liability or prejudice to its other rights, to suspend or terminate access (and that of any Account Administrator or Authorised User) to the Service and any material that breaches the provisions of this clause, and where it deems it necessary to report any such deemed breach to the police or other competent authority.

2.4 Client shall not, and shall not allow:

- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - 2.4.1.1 any attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 2.4.1.2 any attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 2.4.2 access all or any part of the Service and Documentation in order to build a product or service which competes with the Services, Software and/or the Documentation; or
- 2.4.3 use of the Service and/or Documentation to provide services to unauthorised third parties; or

- 2.4.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or Documentation available to any third party except the Authorised Users, or
- 2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Service and/or Documentation, other than as provided under this Clause 2.

2.5 Client shall adhere to the data use limits under a Subscription Plan, as regards the Client's and Authorised Users' use of the Service and particularly as regards use of the Asset Library and the uploading or downloading of any files or materials to or from the Service.

2.6 For the purposes of s.50A of the Copyright, Designs and Patents Act 1988 it is not necessary for Client to make backup copies of the Services and accordingly you may not make backup copies of the same without OSIRT's express prior written consent.

3. ADDITIONAL USER SUBSCRIPTIONS

3.1 Subject to Clause 3.2 and Clause 3.3, you may during any Subscription Term purchase a new Subscription Plan, in including in relation to additional storage or Authorised Users, and OSIRT shall grant access to the Service and the Documentation to such additional Authorised Users and Account Administrators in accordance with the provisions of this Agreement.

3.2 If Client wishes to elevate its Subscription Plan, you shall notify OSIRT in writing.

3.3 Where use of the Service exceeds the permitted data storage or User Subscriptions of your prevailing Subscription Plan, then you may be moved to the next level Subscription Plan. In such circumstances Client shall be liable to pay the Subscription Fees for that any further applicable next level Subscription Plans. Where such additional data usage, User Subscriptions or elevations occur part way through a Subscription Term, such fees shall be pro-rated from the date of activation by OSIRT for the remainder of the Subscription Term (including any Renewal Period as applicable).

4. SERVICES

4.1 OSIRT shall, during the Subscription Term, provide the Services and make available the

Documentation to you on and subject to the terms of this Agreement.

4.2 OSIRT shall use commercially reasonable endeavours to make the Services, where delivered digitally or online, available 24 hours a day, seven days a week, except for:

- 4.2.1 planned maintenance, provided that OSIRT has provided reasonable advance notice; or
- 4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that OSIRT has used reasonable endeavours to give reasonable notice in advance, unless the issue requires immediate response when it will be performed as needed.

4.3 Client acknowledges and accepts that it is responsible for its own systems and capabilities for downloading the Software and it has chosen OSIRT as a supplier as a result of its own due diligence and that neither the Software, Services or Documentation have been developed by OSIRT specifically for you or your business sector and that and both the Software, Services and Documentation are provided "as is".

4.4 All dates supplied for the delivery of the Services shall be treated as approximate only. Time shall not be of the essence and OSIRT shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates or delay as a result of action or inaction by you, your sub-contractors or agents.

5. CLIENT CONTENT

5.1 Client (or its Authorised Users) shall own all right, title and interest in and to all Input Material but Client shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Input Material, including that stored in the Asset Library, used in relation to the Services or incorporated into any Client Templates as part of the Service (**Client Content**).

5.2 Client and any Account Administrators or Authorised Users shall be jointly responsible for:

- 5.2.1 the backup, downloading and sharing of any Output Material exported or downloaded from the Service;

- 5.2.2 the use of any Third Party IP introduced to the Services, including obtaining the necessary permissions or licences for such use and any materials uploaded or used with the Services by Authorised Users, and
- 5.2.3 ensuring that all Client Content, Input Material and Third Party IP complies with Clause 2.3 and does not infringe any third party IPRs.

5.3 OSIRT shall follow its standard backup procedures for the Service, which shall align with the back-up procedures of its service providers including the Dependency but cannot and shall not guarantee any Input Material (or Client Content) will be backed up. You are entirely responsible for the separate back-up of any Input Material (or Client Content) introduced into the Service – and you agree that you shall not use the Service as the sole repository for any Client Content.

5.4 OSIRT shall, in providing the Service, comply with its Privacy Policy relating to the privacy and security of the Input Material as may be notified to you from time to time.

6. DATA PROTECTION, ANTI-BRIBERY AND MODERN SLAVERY

6.1 The Parties agree that in supplying the Services to the Client OSIRT is a data processor as regards any personal data introduced by the Client and the Client (or its Authorised Users) is the data controller and that they shall comply with all applicable requirements of the Data Protection Legislation and as set out in the OSIRT Data Processing Agreement which shall be incorporated in full into this Agreement.

6.2 OSIRT shall comply with all applicable anti-bribery and anti-corruption legislation (“Anti-Bribery Laws”) including the Bribery Act 2010 (the “Bribery Act”) and the relevant requirements of the Modern Slavery Act 2015 as may be amended from time to time.

7. THIRD PARTY PROVIDERS

7.1 You acknowledge that the Service may enable or assist you to access the content of, correspond with, and access products and services from, third parties via third-party websites and platforms, and that you do so solely at your own risk.

7.2 OSIRT makes no representation, warranty or commitment and shall have no liability or obligation

whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not OSIRT. OSIRT recommends that you refer to the third party’s terms and conditions and privacy policy prior to using the relevant third-party website or platform. OSIRT does not endorse or approve any third-party website or platform nor the content of any of the third-party website or platform made available via the Services.

7.3 In accordance with Clause 5.2 and 9.1:

- 7.3.1 Client is entirely responsible for use of any third party material or Third Party IP introduced or used with the Service, including obtaining the necessary permissions or licences for use with the Service, and
- 7.3.2 for ensuring that any Account Administrators and Authorised Users are responsible for the upload, storage or use of any materials including Third Party IP they introduce to the Service and that the same does not infringe any third party rights.

8. OSIRT’S OBLIGATIONS

8.1 OSIRT undertakes that it will provide the Services with reasonable care, skill and diligence in accordance with best practice and the Documentation.

8.2 The undertaking at Clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to OSIRT’s written instructions, the Documentation, this Agreement or any relevant EULA, or modification or alteration of the Services by any party other than OSIRT or its duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, OSIRT will, without prejudice to your rights accrued under this Agreement, use all reasonable commercial endeavours to correct any such non-conformance promptly.

8.3 Subject to clauses 8.1 and 8.2 above, and unless specifically set out otherwise in this Agreement, OSIRT:

- 8.3.1 does not warrant that any use of the Service will be uninterrupted or error-free; or that the Service, Documentation and/or the information obtained through the Service will meet your specific requirements; and
- 8.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.4 This Agreement shall not prevent OSIRT from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

8.5 OSIRT warrants that it has and will maintain all necessary licences, consents, and permissions necessary and comply with all Applicable Laws and Regulations for the performance of its obligations under this Agreement.

9. CLIENT'S OBLIGATIONS

9.1 The Client shall:

9.1.1 provide OSIRT with:

- 9.1.1.1 all necessary cooperation in relation to this Agreement; and
- 9.1.1.2 such information as may be reasonably required by OSIRT;

in order to provide the Services, including but not limited to Input Material, security access information and configuration services;

9.1.2 comply with all Applicable Laws and Regulations with respect to its activities under this Agreement;

9.1.3 carry out all its responsibilities set out in this Agreement in a timely and efficient manner;

9.1.4 ensure that the Authorised Users and Account Administrators use the Service

and the Documentation in accordance with the terms and conditions of this Agreement and any EULA presented to them;

9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary (including in respect of personal data) for OSIRT, and its contractors and agents, to perform their respective obligations under this Agreement, including without limitation the Service;

9.1.6 ensure that its network and systems comply with the relevant specifications to provide the Service from time to time;

9.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to relevant data centres;

9.1.8 ensure that sufficient measures, processes and protections are in place to back up Input Material and Output Material and any Third Party IP used by you, any Account Administrators or Authorised Users, and

9.1.9 you warrant to us that all Input Material, Third Party IP or other materials supplied to OSIRT in relation to the Services shall be true, accurate and not infringe the rights of any third party or breach any applicable law and you shall fully indemnify OSIRT against a breach of this clause.

10. FEES AND PAYMENT

10.1 The Client shall pay the Subscription Fees to OSIRT for the Subscription Plan in accordance with this Clause 10.

10.2 The Client shall on or before the Commencement Date provide to OSIRT valid, up-to-date and complete contact and billing information to enable OSIRT to from the Commencement Date:

10.2.1 charge the Subscription Fees payable in respect of the Subscription Term, and

10.2.2 subject to Clause 16.1, at least 30 days prior to each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period.

10.3 If OSIRT has not received payment of any outstanding Subscription within 30 days after the due date, and without prejudice to any other rights and remedies of OSIRT may:

- 10.3.1 without liability to the Client, disable the Client's (and any Authorised Users' and Account Administrators') password, account and access to all or part of the Services and OSIRT shall be under no obligation to provide any or all of the Services while any payment due remains unpaid;
- 10.3.2 suspend the performance of any Services;
- 10.3.3 claim interest in accordance with The Late Payment of Commercial Debts (Interest) Act 1998, commencing on the due date and continuing until fully paid, whether before or after judgment, and
- 10.3.4 delete any Input Material (including Client Content) in the Service.

10.4 All amounts and fees stated or referred to in this Agreement:

- 10.4.1 shall be payable in pounds sterling;
- 10.4.2 are non-cancellable and non-refundable;
- 10.4.3. shall include value added tax, which shall be added at the appropriate rate, and
- 10.4.4 shall be paid in full without deduction set off counterclaim or other withholding. If any deduction or withholding is required by law from the payment of Fees or any other amounts, you shall pay to OSIRT such sum as will, after the deduction or withholding has been made, leave OSIRT with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

10.5 If, at any time whilst using the Service under a Subscription Plan, the Client exceeds the applicable data usage limits OSIRT shall require the Client to move to the next higher Subscription Plan (as further set out at clause 3).

10.6 OSIRT shall be entitled to increase the Subscription Fees at the start of each Renewal Period or upon thirty (30) days' prior notice.

11. PROPRIETARY RIGHTS

11.1 You acknowledge and agrees that OSIRT and/or its licensors own all Intellectual Property Rights in the Services, Documentation and

Background IP. Except as expressly stated herein, this Agreement does not grant you any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Service or the Documentation.

11.2 OSIRT confirms that it has all the rights in relation to the Service, the Documentation and the Background IP that are necessary to grant the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11.3 You agree and acknowledge that the Services and Output Material may include Third Party IP and Open Source Software which OSIRT is only entitled to make available in accordance with applicable terms of use.

11.4 OSIRT hereby grants you and each Authorised User an unconditional and irrevocable licence to use the Output Material in perpetuity for any reasons whatsoever on the terms of this Agreement.

11.5 OSIRT shall not, without prior written consent, use the Client's Input Material for any other purpose or for the benefit of any person other than the Client, except OSIRT may publicise the fact of the Client as a subscriber to the service.

12. CONFIDENTIALITY

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

12.1.2 was in the other party's lawful possession before the disclosure;

12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

12.2 Subject to Clause 12.4, each party shall hold the other's Confidential Information in confidence

and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement, except as permitted by Clause 12.3.

12.3 Each party may disclose the other party's Confidential Information:

12.3.1 to its employees, officers, agents, consultants or subcontractors who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement, provided that the disclosing party takes all reasonable steps to ensure that its representatives comply with the confidentiality obligations contained in this Clause 12 as though they were a party to this agreement. The disclosing party shall be responsible for its representatives' compliance with the confidentiality obligations set out in this clause; and

12.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 13.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.4 Subject to the terms of this Clause 12 neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party unless caused by a third party duly appointed by a party, including but not limited to sub-contractors and agents.

12.5 You acknowledge that details of the Source Code Material and Services, including the results of any performance tests of the Services, constitute OSIRT's Confidential Information.

12.6 Notwithstanding the remainder of this Clause 12, OSIRT shall be entitled to publicise through its marketing materials the fact that the Client is or has been a client of OSIRT.

12.7 The above provisions of this Clause 12. shall survive termination of this Agreement, however arising.

13. IPR INDEMNITY

13.1 If an IPR Claim is made, or OSIRT anticipates that an IPR Claim might be made, OSIRT may, at its own expense, discretion and sole option, either:

13.1.1 procure for you the right to continue using the relevant item which is subject to the IPR Claim; or

13.1.2 replace or modify the relevant item with non-infringing substitutes provided that:

13.1.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

13.1.2.2 there is no additional Fee; and

13.1.2.3 the terms and conditions of this Agreement shall apply to the replaced or modified item, or

13.1.3 terminate this Agreement and reimburse you for the Fees paid in the latest period of subscription prior to the date of termination.

13.2 The provisions of clause 13.1 shall not apply in respect of any IPR Claim caused by:

13.2.1 any use by or on behalf of the Client of the relevant item in combination with any item not supplied pursuant to this Agreement; or

13.2.2 the use by the Client of the relevant item in a manner not reasonably anticipated by this Agreement.

13.3 In no event shall OSIRT, its employees, agents and sub-contractors be liable whatsoever to the extent that the IPR Claim is based on:

13.3.1 a modification of the Services or Documentation by anyone other than OSIRT or duly appointed sub-contractors and/or agents; or

13.3.2 use of the Services, or Documentation in a manner contrary to that reasonably anticipated by this Agreement or the Documentation or

13.3.3 as a result of use of hardware or software not supplied or specified by OSIRT; or

13.3.4 use of the Service or Documentation after notice of the alleged or actual infringement from OSIRT or any appropriate authority.

13.4 The foregoing and Clause 13.1 state the Client's sole and exclusive rights and remedies, and OSIRT's (including its employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. LIMITATION OF LIABILITY

14.1 Except as expressly and specifically provided in this Agreement:

- 14.1.1 Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client or Authorised Users, and for conclusions and materials produced or drawn from such use, including Output Material. OSIRT shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to OSIRT in connection with the Service, or any actions taken by OSIRT at the Client's direction;
- 14.1.2. the Service and Documentation are in no way intended to supplant the professional expertise, experience or judgment of the Client or its employees, agents, sub-contractors or any other professionals engaged by the Client or who via the Client have access to the Service or Documentation, Authorised Users as Account Administrators;
- 14.1.3 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- 14.1.4 the Service and the Documentation are provided on an "as is" basis with no warranties of its functional state or fitness for the Client's specific purpose or business sector.

14.2 Nothing in this Agreement excludes the liability of either party for:

- 14.2.1 death or personal injury caused by negligence;
- 14.2.2 fraud or fraudulent misrepresentation, or

any statutory liability to the extent it would be unlawful to exclude.

14.3 Subject to Clause 14.1 and Clause 14.2:

- 14.3.1 Neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
 - 14.3.1.1 loss of profits;
 - 14.3.1.2 loss of business or revenue
 - 14.3.1.3 depletion or loss of goodwill and/or similar losses;
 - 14.3.1.4 pure economic loss;
 - 14.3.1.5 loss or deletion of data;
 - 14.3.1.6 liability to any third parties;
 - 14.3.1.7 special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement;
- 14.4. OSIRT's total aggregate liability under or in connection with this Agreement whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise, including in connection with any data processing agreement, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the Service during the latest period of subscription immediately preceding the date on which the claim arose.
- 14.5 All references to "OSIRT" in this Clause 14 shall, for the purposes of this clause, be treated as including all employees, subcontractors and suppliers of OSIRT, all of whom shall have the benefit of the exclusions and limitations of liability set out in this Clause 14.

15. TERM AND TERMINATION

15.1 This Agreement shall, unless otherwise terminated as provided in this Clause 15, commence on the Commencement Date and shall continue for the Subscription Term and, thereafter, this Agreement shall be renewed for a comparable term, unless:

- 15.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Subscription Term or

- Renewal Period (the final day of the notice period not to occur before the first year anniversary of the Commencement Date), in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
- 15.1.2 otherwise terminated in accordance with the provisions of this Agreement;
- and the Initial Term together with the subsequent Renewal Period shall constitute the Subscription Term.*
- 15.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 15.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- 15.2.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 15.2.3 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 15.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 15.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole

- purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 15.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 15.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 15.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 15.2.4 to Clause 16.2.10 (inclusive);
- 15.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; and
- 15.2.13 OSIRT may terminate immediately if there is a:
- 15.2.13.1 Change of Control of the other party;
- 15.2.13.2 it loses or is threatened with the removal or loss of or is otherwise unable to provide the Client with continued access to the Dependency, for whatever reason, or
- 15.2.13.3 as a result of action taken by a relevant or competent authority.
- 15.3 On termination or expiry of this Agreement for any reason:
- 15.3.1 all licences granted under this Agreement shall immediately terminate and the Client shall immediately cease all use of the Services and the Documentation;

- 15.3.2 any outstanding Fees or other charges payable to OSIRT shall be payable immediately
- 15.3.3 each party shall return and make no further use of any equipment, property, materials, documentation and other items (and all copies of them) belonging to the other party
- 15.3.5 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced; and
- 15.3.6 any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement including Clause 6, 7, 9, 11, 12, 13, 14, 15, 17, 27 and 28 (inclusive) shall remain in full force and effect.

16. FORCE MAJEURE

Both Parties shall have no liability to the other party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Arc or any other party or contractor), failure of a utility service or transport or telecommunications network including the internet, local area network or virtual private network), act of God, war, riot, civil commotion, malicious damage or digital attack, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or shortage of, default, failure or delay of any sub-contractor or third party in the performance of its obligations to OSIRT, provided that the Client is notified of such an event and its expected duration.

17. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this Agreement and any Schedules, any policies referred to in this Agreement and any EULA, the provisions in the main body of this Agreement shall prevail.

18. VARIATION

- 18.1 No variation of this Agreement shall be effective unless it is in writing and signed by a director of OSIRT.

19. WAIVER

Unless expressly accepted as such by the relevant party in writing no failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21. SEVERANCE

21.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

22. ENTIRE AGREEMENT

22.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement, and that it has full authority to do so.

22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

23. ASSIGNMENT

The Client may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

24. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25. THIRD PARTY RIGHTS

25.1 Nothing in this Agreement is expressly or impliedly intended to confer on any third party any

right to enforce any of its provisions pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. NOTICES

Any notice required to be given under this Agreement shall be in writing and shall be sent by Arc to the postal address or email provided to it.

27. GOVERNING LAW

This Agreement and any Dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

