

**TERMS OF SERVICE FOR VICONE CLOUD SERVICES THAT  
ARE HOSTED BY OR ON BEHALF OF VICONE OR DEPLOYED  
IN COMPANY ENVIRONMENT**  
(these "Terms of Service")

**IMPORTANT: READ CAREFULLY. THE RIGHT TO ACCESS AND USE EACH OF VICONE'S CLOUD SERVICES BY BUSINESS, GOVERNMENTAL, AND OTHER LEGAL ENTITIES ARE SUBJECT TO AND CONDITIONED ON ACCEPTANCE OF AND AGREEMENT TO THESE TERMS OF SERVICE. CLOUD SERVICES ARE NOT INTENDED FOR PERSONAL USE, HOME USE, AND/OR CONSUMER USE. Any additional, conflicting, or different terms or conditions proposed by Company in any Company-issued document (such as an Order), are hereby rejected by VicOne and excluded here from.**

**Trial and Paid Use:** Cloud Services are made available by VicOne from time-to-time through its Resellers or directly from VicOne, but Cloud Services are not available or sold for personal use, home use, and/or consumer use by any person.

**Product Exclusions:** **These Terms of Service do NOT apply to: (a) any standalone application software regardless of whether acquired from a Reseller, or directly from VicOne; or (b) any maintenance services for such software licensed by VicOne.**

**Update Date:** [30] [January] 2026

**COMPANY IS ORDERING OR HAS ORDERED A CLOUD SERVICE THROUGH COMPANY'S RESELLER OR DIRECTLY FROM VICONE FOR ACCESS AND USE IN CONNECTION WITH COMPANY'S SPECIFIC BUSINESS USE. BY COMPANY: (1) ORDERING A CLOUD SERVICE; (2) CAUSING VICONE TO PROVISION A CLOUD SERVICE; AND/OR (3) ACCESSING OR USING A CLOUD SERVICE, COMPANY AGREES THAT ANY SUCH ACTION CONSTITUTES:**

- a. **COMPANY'S ACKNOWLEDGEMENT THAT IT HAS HAD THE OPPORTUNITY TO READ AND REVIEW THESE TERMS OF SERVICE;**
- b. **COMPANY'S ACCEPTANCE AND AGREEMENT TO THESE TERMS OF SERVICE FOR SUCH CLOUD SERVICE;**
- c. **COMPANY'S ONGOING REPRESENTATION AND WARRANTY TO VICONE THAT COMPANY MEETS (AND AT ALL TIMES WILL COMPLY WITH) ALL OF THE TERMS, CONDITIONS, AND REQUIREMENTS SET FORTH IN THESE TERMS OF SERVICE; AND**
- d. **COMPANY'S REPRESENTATION AND WARRANTY TO VICONE THAT COMPANY'S REPRESENTATIVE ACTING ON ITS BEHALF IS AUTHORIZED TO AND DOES POSSESS THE AUTHORITY TO ACCEPT, AGREE, AND BIND COMPANY TO THESE TERMS OF SERVICE.**

**COMPANY AGREES THAT WRITTEN APPROVAL (THIS INCLUDES ELECTRONIC OR MAGNETIC RECORD (THE SAME SHALL APPLY HEREAFTER)) IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THESE TERMS OF SERVICE AND NO SOLICITATION OF ANY SUCH WRITTEN APPROVAL SHALL BE CONSTRUED AS AN INFERENCE TO THE CONTRARY, AND EXCEPT WHERE A SEPARATE WRITTEN AGREEMENT SIGNED OR EXECUTED BY VICONE (INCLUDING BY ELECTRONIC SIGNATURE (THE SAME SHALL APPLY HEREAFTER)) EXISTS, NO WRITTEN CONSENT SHALL BE CONSTRUED AS MODIFYING OR ADDING ANY PROVISION TO THESE TERMS OF SERVICE. IN THE EVENT OF ANY CONFLICT, THESE TERMS OF SERVICE SHALL CONTROL UNLESS A SEPARATE WRITTEN AGREEMENT EXPRESSLY STATES THAT IT SUPERSEDES THESE TERMS OF SERVICE.**

**IF COMPANY DOES NOT ACCEPT AND AGREE TO THESE TERMS OF SERVICE, COMPANY MAY NOT ORDER, REGISTER, DEPLOY, ACCESS, OR USE A CLOUD SERVICE AND COMPANY WILL IMMEDIATELY NOTIFY VICONE**

**THAT COMPANY DOES NOT AGREE TO THESE TERMS OF SERVICE AND WILL NOT BE ACCESSING OR USING SUCH CLOUD SERVICE. AGREED DEFINITIONS USED IN THESE TERMS OF SERVICE ARE IN SECTION 1.2 BELOW.**

**1. Overview; Agreed Definitions.**

**1.1.1 Application of These Terms of Service.** Subject always to termination in accordance with this Agreement or these Terms of Service, these Terms of Service that have been accepted and agreed by Company are applicable only to this Agreement and the Cloud Service for such time that the Cloud Service is subject to an outstanding Order that Company has issued directly or indirectly to, and has been accepted by, VicOne.

**1.1.2 Entire Agreement.** The Company and VicOne agree that these Terms of Service (including all referenced terms related to maintenance, support guides and documentation), Data Processing Addendum are the final, complete, and exclusive statement of the agreement between the Parties with respect to access to and use of the Cloud Service secured by Company, and any prior agreements, representations, statements, white papers, or advertisement of VicOne (whether oral, written, or website) or otherwise arising from any course of dealing between the Parties or usage of the trade or descriptions that are not specifically set forth in these Terms of Service with respect to the subject matter hereof, are all merged into and superseded by these Terms of Service. VicOne will not be bound by, and specifically objects to, any term, condition or other provision that is different from or in addition to the provisions of these Terms of Service (whether or not it would materially alter these Terms of Service) and which is submitted by Company in any Order, confirmation, correspondence or other document. **In entering into this Agreement (including these Terms of Service), each Party represents and warrants to the other Party that it is NOT relying on any extrinsic representation, warranty, guarantee, condition, covenant, promise, forbearance, or inducement of any kind or nature that is or was made by any person that is not specifically set forth in these Terms of Service.**

**1.1.3 Procurement of Cloud Service.** Company may secure Cloud Services by the following methods, or by any other method:

a. **Procurement Through a Reseller.** Typically, Company will secure a Quote for Cloud Services from a Reseller of VicOne products or services. Based on such Quote, Orders by Company will be sent to the Reseller at such prices, discounts, and on invoice and payment

terms as agreed solely by Company and its Reseller. Company understands that if an Order is placed with a Reseller, the Reseller can place an order with VicOne for Cloud Services (either directly through VicOne) as requested by Company, but such Order is and will be subject to acceptance or rejection by VicOne at its discretion. Based on documents submitted by the Reseller, VicOne will reject or accept the Order. Except for the matters (including but not limited to prices and payment) agreed between the Reseller and Company, all other rights, obligations, terms, conditions, limitations, and exclusions regarding Cloud Services that are purchased by Company are exclusively set forth in these Terms of Service. All payments by Company for Cloud Services Ordered from a Reseller will only be made directly to the Reseller and never to VicOne. Company acknowledges that each Reseller is an independent contractor and in no event or circumstance will any Reseller now or hereafter be deemed a joint ventures, partner, fiduciary, or agent of VicOne. No Reseller has been, or will ever be, authorized or permitted to have a right to create any binding obligation, responsibility, duty, liability, condition, warranty, guaranty, or any otherwise contract for or act on behalf of VicOne or waive or renounce any right of VicOne or modify any right, obligation, or agreement of Company set forth in these Terms of Service.

b. **Direct Purchase from VicOne.** Company may (if permitted by VicOne) secure a Quote directly from, and place an Order directly with, VicOne based on such Quote, which Order if accepted by VicOne will be governed solely by the terms, conditions, limitations, and exclusions set forth in these Terms of Service. All prices and payment terms will be as set forth in the Quote by VicOne and all payments for Cloud Services will be made by Company directly to VicOne on such payment terms as set forth in such Quote.

**1.1.4 Not a Master Purchase Agreement.** Company acknowledges that this Agreement is NOT a master purchase agreement for subsequent purchases of a Cloud Service, but rather, these Terms of Service only apply to the instant Order of a Cloud Service by Company. Each subsequent Order of Cloud Service placed by Company will be subject to and conditioned on the agreement of the Parties to the then-current version of these Terms of Service unless otherwise agreed in a writing signed by the Parties.

**1.2 Agreed Definitions.** In addition to initially capitalized definitions, descriptions, clarifications, and agreements that may be set forth elsewhere in these Terms of Service (including all policies, procedures, and VicOne websites that are specifically referenced and incorporated herein), the initially capitalized definitions, descriptions, clarifications, and agreements shall have the meanings set forth in this Section 1.2 (each is an “**Agreed Definition**”, the same shall apply hereafter) and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms.

“**Agreement**” means any and all contracts, orders, or undertakings entered into by and between Company and VicOne with respect to the provision, access, and use of the Cloud Services, of which these Terms of Service shall form a foundational and integral part.

“**Administrator**” means one or more Company employees with authorization to manage the Cloud Service on behalf of Company. Each Administrator will have the ability to, among other things, develop Company’s Configuration from time-to-time, maintain, set rules and policies for, manage Company’s access to, view alerts and events generated by, and/or provide technical support for, all or part of Cloud Service as determined by Company from time-to-time.

“**Affiliate**” means as to a Party, each person or entity that is Controlled by a Party, that Controls such Party, or that is under common Control with such Party. “**Control**” means the direct or indirect ownership of more than fifty percent (50%) of the equity shares or interests (or the maximum equity ownership permitted by Applicable Law if such Party is not permitted to own more than 50%) entitled to vote for the directors or other management of such Party or the equivalent, but only for as long as such ownership relationship continues to exist. Upon request, each Party agrees to confirm in writing to the other Party, the status of any or all Affiliates.

“**Applicable Laws**” means all mandatory national, federal, provincial, state, municipal, and local laws, statutes, acts, ordinances, regulations, rules, codes, treaties, executive orders, supervisory requirements, official directives, circulars, opinions, interpretive letters, and other official releases in the Territory that are applicable from time-to-time to a Party’s performance of its obligations and/or exercise of its rights under this Agreement and these Terms of Service, including, but not limited to, data protection/privacy laws; corrupt activities/illegal payment laws; economic/trade sanctions rules and regulations; and export/import laws.

“**Cloud Service(s)**” means any VicOne-branded combination of hardware, software components, and/or any fixed scope, technical/managed service that form the environment of a cloud security service (including any Enabling Software and any infrastructure/platform forming a part thereof that is hosted by or on behalf of VicOne or, where applicable, deployed within a Company Environment) that is accessed and/or used by Company in accordance with this Agreement and these Terms of Service for the Service Capacity that Company has purchased directly from VicOne or indirectly from a Reseller. Each Cloud Service also includes any Service Description related to such Cloud Service, Enabling Software (if any), and/or any fixed scope, technical/managed service, as well as any and all content, work product, error corrections; updates; upgrades; new versions; or other releases forming a part of such Cloud Service arising from Support Services or otherwise; and all content and functionality available from VicOne support site(s) that VicOne may elect to make available to customers of such Cloud Service. For the avoidance of doubt, these Terms of Service do not grant Company any right to request or receive a binary code copy of any VicOne published software except for Enabling Software (if any) that may form a part of a Cloud Service.

“**Cloud Service Feedback**” shall have the meaning set forth in Section 6.2.

“**Company**” refers to an entity that: (a) has agreed to these Terms of Service with respect to Cloud Service; (b) has purchased and then-currently has the right to access and/or use (only in accordance with this Agreement and these Terms of Service) Cloud Service; and (c) to which this Agreement has not been terminated or otherwise expired.

“**Company’s Configuration**” shall have the meaning set forth in Section 4.1.3 (b).

“**Company Data**” means any and all content, materials, data, and information: (a) uploaded or transmitted by or on behalf of the Company to the Cloud Service environment provided under this Agreement; and/or (b) otherwise provided or made available to VicOne in the course of the Company’s use or access to or receipt of Cloud Services.

“**Confidential Information**” shall have the meaning set forth in Section 6.1.

“**Contractor**” is an independent contractor that provides services in support of Company and/or its Affiliates with respect to any Cloud Service provided under this Agreement pursuant to a written agreement between such Contractor and Company that imposes an obligation (among other obligations) on such Contractor to fully comply with this Agreement and these Terms of Service to the extent of access to and/or use of any Cloud Service by such Contractor.

“**Controlled Technology**” shall have the meaning set forth in Section 11.5.

“**Company Environment**” shall have the meaning set forth in Section 2.12.

“**Cyberthreat Data**” means any malware, spyware, virus, worm, Trojan horse, ransomware, or other potentially malicious or harmful code or files that Company does not want, as well as URLs, DNS data, network telemetry, commands, executable binary files, macros, scripts, processes or techniques, metadata, or other information or data associated with the foregoing, that may be related to unauthorized intrusions or attacks by third parties associated therewith and that: (a) Company provides to VicOne in connection with this Agreement and these Terms of Service; or (b) is accessed, collected, or discovered by VicOne during the course of providing any Cloud Service, excluding any such information or data that identifies Company or to the extent that it includes Personal Information and Personal Data. Cyberthreat Data is not Confidential Information or Company Data hereunder.

“**Data Processing Addendum**” or “**Addendum**” means VicOne’s Data Processing Addendum that is applicable if and to the extent VicOne acts as a ‘processor’ or ‘sub-processor’ (as defined in the GDPR) for Personal Information or Personal Data of Company. The Data Processing Addendum is available upon Company’s request.

“**Different Terms**” shall have the meaning set forth in Section 2.2.

“**Enabling Software**” means binary code software agent, client, or tool that may be provided by VicOne from time-to-time and licensed (but never sold) under this Agreement that is to be integrated to Company’s devices (including, but not limited to, the electronic control units of vehicles, charging station systems and smart cockpit systems) that enables and facilitates optimal access to and use of a Cloud Service (such as a management console or user interface), and that does not perform functionality without the active right to access and use Cloud Service. The Enabling Software may or may not be specified in the Service Description.

“**End User**” means any individual, entity, or person (directly or indirectly through another user) that: (a) accesses or uses a Cloud Service for Company’s (or an Affiliate’s) benefit in accordance with this Agreement and these Terms of Service such as Company’s Administrator(s), technical/support resources, or employees/contractors whose access/use is in furtherance of Company’s or an Affiliate’s Specific Business Use; or (b) otherwise accesses or uses Cloud Service.

“**Evaluation Service**” shall have the meaning set forth in Section 2.3.

“**Excluded Damages**” means any and all claims, causes of action, losses, expenses, or damages of Company and/or its Affiliates arising from or related to any: loss of use of any networks, systems, software, hardware, computers, or devices; unauthorized access to, alteration of, or the deletion, destruction, corruption, damage, loss, of any information/data and/or the restoration thereof; lost or anticipated business revenue or profits; loss of business opportunity or failure to realize expected savings; third party claim against Company and/or any of its Affiliates; reduction in reputation, or goodwill; loss of use or other downtime of all or a portion of a Cloud Service (or supporting hosting platform) for any reason, including as a result of power outages, system failures, internet failures, or other denial of access to or interruption of such Cloud Service; procurement of substitute goods, software or services; or otherwise for any other incidental, punitive, exemplary, indirect, special, or consequential damages.

“**Excused Performance Events**” means any event, condition, and/or circumstance beyond VicOne’s reasonable control that was unavoidable even if foreseeable, including, without limitation: acts of God; declared or undeclared war; terrorism; sabotage; criminal actions; armed conflict; actions of civil authorities or governments; earthquakes; fires; floods; cyber-attacks; network intrusions; “zero day” threats or attacks; private or state-actor hacking, denial-of-service attacks, or other malicious actions; telecom/internet congestion, slowdown or outage; computer, networks, or systems failures or delays involving hardware, software, or services not within VicOne’s possession, control and responsibility; or labor strike, embargo, or boycott.

“**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016), as amended from time to time.

“**Global Privacy Notice**” means VicOne’s Global Privacy Notice as may be requested by Company from VicOne. If Company is a Japanese entity, the Global Privacy Notice is located at <https://cdn.vicone.com/files/research-papers/EN/EN-ENGLISH-GLOBAL-PRIVACY-NOTICE.pdf>.

“**High-Risk Environment**” means a device, situation, environment, network, or system requiring safety design, features, and/or functionality for fail-safe or fault-tolerant operation or execution in order to maintain safe and secure performance in an environment where a failure could lead (directly or indirectly) to bodily injury, death, physical property damage, and/or environmental damage. High-Risk Environments may include, but are not be limited to: (a) the design, construction, operation, or maintenance of any nuclear facility, civil infrastructure such as power plants and waterworks, and/or industrial plants such as chemical refineries; (b) excluding motor vehicles, any navigation, communications, or operating systems in aircraft, ships, trains, and other modes of transportation; (c) air traffic control systems; (d) weapons systems (nuclear or otherwise); (e) operation of life-support or life-critical medical equipment or other equipment or systems affecting a patient’s health or well-being; or (f) any other device, environment, network, or system in which the unavailability, inaccuracy, circumvention, ineffectiveness, or failure of the Cloud Service could lead or contribute to bodily injury, death, physical property damage, and/or environmental damage.

“**Instance**” means an image of software that is created by executing the software’s setup or install procedure or by duplicating such an image.

“**IP Claim**” means any suit, cause of action, or other legal proceeding filed/brought against Company by a third party in the courts of law, equity, or otherwise ONLY in the Territory, that asserts that Company’s use of a Cloud Service (or component parts thereof, but not Open Source Software) provided hereunder directly infringes any patent, copyright, or trademark of such third party, or makes unlawful use of a trade secret of such third party; *provided, however*, the term IP Claim will not include and VicOne will have no obligation under this Agreement unless each and every third party allegation or assertion is specifically made against such Cloud Service alone. In addition, the term IP Claim will not include, and VicOne will have no obligation under Section 10 or otherwise with respect to, any suit, claim, cause of action, or other legal proceeding arising out of, based on, or related to the following: (a) any use of Cloud Service by Company that is NOT in accordance with this Agreement, these Terms of Service, its Service Description, or Applicable Laws; (b) Company Data and/or other materials that Company provides or makes available in connection with its use of Cloud Service; (c) any redistribution of Cloud Service, or use of Cloud Service for the benefit of any third party not specifically permitted in this Agreement or these Terms of Service; (d) any use of a version of any Enabling Software that has been superseded and made available to Company, if the IP Claim would have been avoided by using an unaltered current version of such Enabling Software; (e) any Open Source Software; or (f) any third party allegation or assertion made against a Cloud Service (or any output thereof) that involves use of such Cloud Service by Company in combination with any other software, service, business process, or technology not provided by

VicOne or not specified as being required by the applicable Service Description where the IP Claim would not have arisen or would have been avoided but for such combination.

**"Licensor"** or **"Supplier"** mean any person or entity that grants VicOne a license to use, or provides services or other offerings to VicOne, with respect to software or other components included in Cloud Services or Enabling Software and its related items.

**"Online Store Provider"** means an entity that hosts an online marketplace or store (each a **"Store"**) that offers for sale: (a) such entity's infrastructure (IaaS) and/or platform (PaaS) hosting services by separate agreement and a separately-stated service fee with the customer (such as Company); together with (b) the software applications of third party publishers (such as VicOne) that are offered and resold (for a separately-stated royalty/fee) by such Online Store Provider for deployment on the Store's infrastructure and/or platform, but licensed to the customer by the application software publisher for a limited term and not perpetually. Company acknowledges and agrees that license to deploy, access, and use VicOne application software that is procured by Company on an Online Store Provider's store is NOT subject to this Agreement and these Terms of Service.

**"Open Source Software"** means: (a) each and every third party software code/component that is licensed/distributed under a license agreement approved by the Open Source Initiative or similar open source or freeware license (and not this Agreement and these Terms of Service); and (b) is included in a Cloud Service or any Enabling Software by VicOne; including any of the following Open Source Initiative-approved license agreements:

(i) GNU's General Public License (GPL), Lesser/Library GPL (LGPL), and GNU Affero Public License; (ii) The Artistic License (i.e., PERL); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Berkeley software design (BSD license including Free BSD or BSD-style license; (vi) the Sun Community Source License (SCSL); (vii) an Open Source Foundation License (e.g., CDE and Motif UNIX user interfaces); (viii) the Apache Server license; or (ix) the MIT License. For the avoidance of doubt, each individual, third party software code/component of Open Source Software has its own copyright and its own license agreement.

**"Optional Features"** means those capabilities, features, and functionality in a Cloud Service that require VicOne to process certain Company Data (some of which may be Personal Information and Personal Data) that Company may elect to opt-in or opt-out of the use thereof only if and to the extent a right to opt-in or opt-out is described in and permitted by it's written agreement or Service Description, etc. For example, such Optional Features if active may permit a Cloud Service to: (a) provide the defined capabilities, features, and functionality thereof as described in the Service Description; and/or (b) provide the most effective, up-to-the-minute threat protection and features to detect or prevent the latest malicious behavior and potentially fraudulent websites, internet security risks, and/or Cyberthreat Data.

**"Order"** means: (a) a purchase order or other ordering document issued by Company in response to a Quote; or (b) a Company-initiated procurement document, in each instance placed by Company (with a Reseller or VicOne, as the case may be) for the procurement of Cloud Services to be supplied only in accordance with and subject to the provisions of this Agreement and these Terms of Service. All Orders are Company's irrevocable commitment to purchase and pay for the Cloud Services stated in the Order and are subject to direct or indirect acceptance by VicOne at its sole discretion, which acceptance occurs and is signified by VicOne's performance signifying its acceptance.

**"Party"** means only each of Company and VicOne, and together, they are collectively the only **"Parties."** All other people are third parties.

**"Personal Data"** means one or more data elements relating to an identified or identifiable natural person that can be used to identify, directly or indirectly, such natural person to the extent such data is regulated, protected, restricted, or controlled under Applicable Laws (such as, for example, the GDPR) for the protection of that natural person's privacy and related rights.

**"Personal Information"** means as defined in Article 2, Paragraph 1 of the Act on the Protection of Personal Information (Act No. 57 of May 30, 2003)."

**"Quote(s)"** means one or more documents issued by VicOne or its Reseller (as the case may be) to Company specifying the Cloud Service that Company seeks to obtain, the related pricing, payment terms, and offered Service Capacity and sufficient other information to complete the transaction.

**"Reseller"** means a reseller, Online Store Provider (in limited instances where specifically noted by the Store), system integrator, independent software vendor, VAR, OEM or other channel partner that is authorized by VicOne to secure orders for the sale of Cloud Services to customers, including Company.

**"Service Capacity"** means the applicable Subscription Period together with the number of Virtual Machines, electronic control units (ECUs), motor vehicles, endpoints, instances, end users, throughputs, nodes, other measure and/or other metering mechanism, e-mail address and Subscription Period for each Cloud Service purchased under this Agreement that is reflected in this Agreement. If a Cloud Service permits Company to exceed the Service Capacity that is purchased by Company, then Company is responsible for promptly purchasing an additional quantity to true-up for any excess usage.

**"Service Description"** means the printed, electronic, and/or online technical documentation and operating instructions and requirements generally made available by VicOne for a Cloud Service (and Enabling Software, if any) that is made available to Company for the purpose of supporting Company's Specific Business Use of such Cloud Service. The Service Description is incorporated herein and made a part hereof for all purposes; *provided, however*, Company understands and agrees that the published Service Description may be revised from time-to-time by VicOne at its discretion, for among other reasons, changes or improvements to, or new versions of, Cloud Service, without the need to amend these Terms of Service, and in each such event, such revised Service Description will supersede all prior Service Descriptions with respect to subsequent use of such Cloud Service. VicOne states that certain Cloud Services may be subject to service level targets, service level objectives, or service level agreements that may be published or otherwise made available by VicOne from time-to-time.

**"Service Levels"** means the severity level definitions and response times for Cloud Services included with maintenance and technical support that are detailed in separate agreements and that may be published by VicOne from time-to-time.

**"Specific Business Use"** means Company's application of Cloud Services to its own internal systems (including but not limited to, software supply chain system, vulnerability management system, electronic control units of vehicles, charging station systems or smart cockpit systems) in connection with the security, protection, and/or integrity of such internal systems.

**"Subscription Period"** means the period (such as per host hour, month, or year, but never perpetually) for which Company has purchased

the right to access and use a Cloud Service provided under this Agreement. The Subscription Period is as stated in this Agreement.

“**Support Service(s)**” shall have the meaning set forth in Section 5.1.

“**Term**” is described in Section 9.1.

“**Territory**” means worldwide, subject always to and limited by the terms, conditions, waivers, limitations, disclaimers, and exclusions in this Agreement and these Terms of Service, and present and future Applicable Laws that applies to the Cloud Services and/or the performance of either Party under this Agreement and these Terms of Service that prohibits or restricts a Cloud Service sale, use, or access: (a) to certain technology/goods/services; (b) to specified countries; and/or (c) by defined persons.

“**VicOne**” means VicOne Corporation (VicOne Kabushiki Kaisha), a company incorporated in Japan.

“**Virtual Machine**” means a software container, implementation, or emulation of a computer/server/machine (*i.e.*, a physical device) that runs its own operating system and executes application programs like a physical machine.

## 2. **Provision of Cloud Service; License to Enabling Software; Open Source; Security Acknowledgement; Evaluation.**

### 2.1 **Provision of Cloud Service; License to Enabling Software.**

**2.1.1 Provision of Access to and Use of Cloud Service.** On the terms and subject to Company’s continuous compliance with all of the agreements, conditions, exclusions, and restrictions set forth in this Agreement and these Terms of Service, VicOne provides Company with access to and use of Cloud Service in accordance with its Service Description only for Company’s Specific Business Use (and the Specific Business Use of any of its Affiliates and/or Contractors as it permits in accordance with Section 2.11) for such time and only for the Service Capacity purchased and paid for (in accordance with agreed payment terms) by Company until the expiration or termination of this Agreement. Company may allow access to and use a Cloud Service only for the purposes specifically permitted in this Agreement and these Terms of Service including the Service Description.

**2.1.2 License to Enabling Software.** Subject to these Terms of Service, VicOne grants Company (solely for the Specific Business Use of Company except as otherwise permitted in Section 2.11) a non-exclusive, non-transferable, worldwide (subject to Applicable Laws), terminable (in accordance herewith) license to install, integrate and use any Enabling Software solely as needed to access and/or use Cloud Service as described in the Service Description; *provided that*, Company: (a) at all times complies with the terms and conditions of these Terms of Service and the Service Description; (b) ensures that anyone (including End Users) who accesses or uses the Enabling Software (accessed either locally or remotely) in connection with Cloud Service (i) access or use Cloud Service solely for the benefit of Company or its Affiliates approved by the Company, and only on their behalf, and/or (ii) complies with the terms and conditions of these Terms of Service; (c) does not (i) install, access, use, copy, modify, or distribute the Enabling Software except as may be expressly permitted in Service Description, this Agreement and these Terms of Service, and/or (ii) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Enabling Software; and (d) does not use any of the Enabling Software’s components, files, modules, or related licensed materials separately from the Enabling Software. Company acknowledges that the Enabling Software is copyrighted and licensed and not sold to Company under this Agreement, together with the terms of these Terms of Service and Company acknowledges that it is not under this Agreement and these Terms of Service granted any license, right, title, or interest in or to any patent, copyright, trade secret or other intellectual property of VicOne or any third party. All rights in and to Enabling Software not expressly granted to Company in this Section are reserved by VicOne and Company will have no other or different rights (implied, by estoppel, or otherwise) or privileges with respect to any Enabling Software. If and to the extent only as may be permitted in the Service Description, Company may make a single copy of the Enabling Software for back-up, archival, and disaster recovery purposes. The Enabling Software (and every back-up, archive, and disaster recovery copy) must be promptly uninstalled and irretrievably destroyed when Company no longer has a right to access or use a Cloud Service provided under this Agreement.

**2.2 Open-Source Software.** Enabling Software may come bundled or otherwise be distributed with Open-Source Software, that is subject solely to the agreement terms, conditions, limitations, and disclaimers of the specific license (each “**Different Terms**”) under which such Open Source Software is distributed by VicOne in such Enabling Code and NOT these Terms of Service. Different Terms, if any, applicable to any Open-Source Software redistributed in any Enabling Software provided hereunder will be identified by VicOne in the Service Description for, and/or in a “Read Me” or an “About” file in, the Enabling Software. OPEN SOURCE SOFTWARE IS PROVIDED BY VICONE “AS IS, WITH ALL FAULTS, AS AVAILABLE” WITHOUT (AND VICONE SPECIFICALLY DISCLAIMS) ANY GUARANTEE, CONDITION, OR WARRANTY (EXPRESS, IMPLIED, OR OTHERWISE) OF ANY KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND/OR NON- INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OF SERVICE, AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH OPEN SOURCE SOFTWARE, VICONE SHALL HAVE NO LIABILITY FOR ANY DIRECT OR EXCLUDED DAMAGES, HOWSOEVER CAUSED AND/OR OTHERWISE BASED ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF OPEN SOURCE SOFTWARE, EVEN IF VICONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**2.3 Evaluation of Cloud Service.** If Company has Ordered and agreed to these Terms of Service, and if Company and VicOne have agreed that VicOne shall provide Company with access to or use of a Cloud Service and grant rights related to the Enabling Software for the purpose of an evaluation, trial, proof-of-concept, or test of a Cloud Service (herein “**Evaluation Service**”), then the provisions of this Section shall apply and shall control over any conflicting terms of these Terms of Service. On the terms and subject to the conditions of these Terms of Service and procedures specified by VicOne when and if accepted and approved by VicOne, Company will have the right to access to or use of a Cloud Service and the right to use the Enabling Software for the purpose of the Evaluation Service for a period not to exceed thirty (30) days (unless otherwise agreed to in writing or in accordance with the procedures specified by VicOne, or earlier terminated in accordance with Sections 9 through 11), during which period Company may access and use the Evaluation Service solely for Company’s internal evaluation in a non-production environment (that is to say, an environment that does not access or process any live production Company Data or otherwise perform productive work) to decide whether to purchase the right to continue to access and use the Evaluation Service for its Specific Business Use. Evaluation Services are provided gratuitously by VicOne. VicOne has no obligation to provide any training or Support Service for the Evaluation Service, but VicOne may do so at its sole discretion. Company acknowledges that the Evaluation Service may contain errors, defects or other problems that could cause

system or other failures, security breaches, interruptions, and/or data loss. CONSEQUENTLY, EVALUATION SERVICES ARE PROVIDED TO COMPANY SOLELY ON “AS AVAILABLE” AND “AS IS, WITH ALL FAULTS” BASIS, AND VICONE DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTEES, AND LIABILITY IN CONNECTION WITH ALL EVALUATION SERVICES. COMPANY ASSUMES ALL RISK OF USE OF EVALUATION SERVICES. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, THE LIABILITY OF VICONE, ITS LICENSORS, AND/OR SUPPLIERS SHALL BE LIMITED TO THE SUM OF ONE HUNDRED UNITED STATES DOLLARS (USD\$100.00) IN THE AGGREGATE FOR ALL CLAIMS AND CAUSES OF ACTION. If Company accesses and/or uses Cloud Service after expiration of Evaluation Services as set forth in this Section 2.3, Company agrees to pay for Cloud Service thereafter in accordance with VicOne’s request from time-to-time and the Parties agree that these Terms of Service shall apply to such paid use.

**2.4 Security Acknowledgement.** Certain portions of Cloud Services are designed to identify, block and/or remove applications, messages, and files that may compromise productivity or the performance and security of computers, systems, and/or networks. While VicOne uses commercially reasonable efforts to properly identify applications and files for detection by its Cloud Services, *however*, given the constantly changing nature and volume of malicious, fraudulent, and unwanted electronic content, VicOne cannot and does not represent, warrant, or guarantee that a Cloud Service will detect, block, or completely remove or clean any or all applications, routines, and files that are malicious, fraudulent, or that Company does not use or want. Company understands and agrees that the success of its security efforts are dependent on a number of factors solely under Company’s control and responsibility such as: (a) use of a number of network, hardware, cloud services, and software security tools in a coordinated effort to manage present and future security threats; (b) implementation of cybersecurity protocols and controls, network, cloud services and systems protections, as well as monitoring and detection processes applicable to the foregoing; (c) enforcement of appropriate internal security policies, procedures, and controls regarding access, security, encryption, use, and transmission of data; (d) the development and continual testing of processes and procedures (i) for the backup and recovery of any network, system, software, database, and any stored data, as well as, (ii) implementation of security-breach incident response practices; (e) conducting regular cybersecurity and privacy training for employees; (f) having adequate vendor risk management processes; and (g) promptly downloading and installing all updates to all networks, products, and software that are made available to Company by any publisher or manufacturer.

**2.5 Ownership; Reservation of Rights.** Each Cloud Service is and remains the exclusive property of VicOne and/or its Licensors and service providers. Except for Company’s limited rights to receive access and use expressly granted in this Agreement and these Terms of Service and the limited license granted in Section 2.1.2 to Enabling Software, no license, right, title, or interest in or to a Cloud Service or VicOne’s and its Licensors’ intellectual property rights therein, are granted to Company. Company acknowledges and agrees that, as between the Parties, each Cloud Service and all ideas, methods, algorithms, formulae, processes, and concepts incorporated into Cloud Service, and all revisions, corrections, modifications, enhancements, derivative works, releases, and upgrades, and anything developed (such as performance of an analysis of and any all Cyberthreat Data provided with Company Data to a Cloud Service) or made available by or on behalf of VicOne under this Agreement and these Terms of Service and/or a Cloud Service, and any copies of the foregoing are: (a) the intellectual property of VicOne, its Affiliates, and/or its or their Licensors/Suppliers; and (b) all right, title, and interest therein are reserved to and the sole property of VicOne, its Licensors, and/or such other persons as VicOne may determine. Company will not alter or remove VicOne’s and its Licensors’ copyright notices and all other proprietary legends from any part of Cloud Service.

**2.6 Changes and Improvements to Cloud Service.** VicOne reserves the right (at its discretion and without notice to or consent of any person) to continually improve, update, and offer new versions of Cloud Service (e.g., infrastructure/platform, features or functionality, security, technical configurations, and/or application features) during the Term, to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of use, and cyberthreat environment and capabilities. Any such improvement, change, and/or new version of Cloud Service shall be governed by these Terms of Service and shall not be treated as a breach of this Agreement and these Terms of Service nor give Company a right to a full or partial refund of any monies paid or payable under this Agreement and these Terms of Service, but Company acknowledges that the use of some of which may be contingent upon Company’s agreement to additional terms.

**2.7 End-of-Life.** VicOne reserves the right to discontinue the publication, sale, distribution, provision, subscription, licensing, and support of any or all Cloud Services at any time and for any reason (each event herein “**End-of-Life**”) by announcement or publication of notice to the general public or revision of its price list. The Parties agree that an End-of-Life announcement of any Cloud Service shall not be considered a breach of this Agreement and these Terms of Service by VicOne, nor shall any such End-of-Life entitle Company to any claim for compensation or damages as a result of or in connection with this Agreement and these Terms of Service.

**2.8 Acceptable Use.** Company will not make any use or disclosure of, or perform any acts with respect to, Cloud Service other than as expressly permitted by this Agreement, its Service Description or these Terms of Service. Company may not and agrees that it will not as its material obligation under this Agreement and these Terms of Service (and any non-compliance with or breach of those is a material breach by Company of the same), nor will Company authorize, encourage, or permit third parties to:

- (a) Disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Company’s use of a Cloud Service or otherwise use a Cloud Service in a way intended to avoid incurring fees or exceeding the Service Capacity limitations or otherwise attempt to gain unauthorized access to a Cloud Service.
- (b) Access or use any Cloud Service without permission in accordance with this Agreement and these Terms of Service, including attempting to probe, scan, or test the vulnerability of the environment of any Cloud Service or to breach any security or authentication measures used by or in such Cloud Service.
- (c) Modify, adapt, copy (except as may be expressly permitted herein with respect to Enabling Software), translate, disassemble, decompile, or reverse engineer Cloud Service (or any of its components or parts thereof), or otherwise attempt to derive the source code of, decrypt, modify, or create derivative works of, Cloud Service or any part thereof; *provided, however*, configuring a Cloud Service within its policy parameters set forth in the Service Description to create Company’s Configuration shall not constitute a modification or derivative work.
- (d) Make available, license, sublicense, sell, resell, loan, rent, lease, transfer, assign, distribute, or provide the benefit of any Cloud Service (or any portion thereof) to any third party except as specifically set forth in Section 2.11.
- (e) Use Cloud Service: (i) as a paid or unpaid service bureau or otherwise provide services directly or indirectly to third parties (such as business processing outsourcing); (ii) to provide services to third parties on a time-share basis; or (iii) otherwise commercially exploit or make Cloud Service available to any third party save as set forth in Section 2.11.
- (f) Access, evaluate, observe, or use a Cloud Service (or any of its components) to build or support (or assist a third party in building

or supporting) the improvement and/or creation of a competitive product or service, or copy any ideas, features, functions, organization, structure, graphics, or user interface of Cloud Service for any reason.

(g) Use a Cloud Service: (i) in a manner that violates Applicable Laws or otherwise to engage in or promote any illegal, harmful, fraudulent, offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, or offensive; (ii) in a manner that infringes or misappropriates the intellectual property rights, portrait rights, publicity rights, privacy rights, honor, reputation, business, or any other rights or interests of VicOne or of any third party, or is likely to do so, or otherwise that breaches these Terms of Service; (iii) interfere with the use of Cloud Services by any third party; (iv) in a manner that, or that may, place an excessive burden on the servers or other facilities of VicOne or any third party, or disrupt their use or operation; (v) in a manner that unlawfully or without authorization modifies or deletes information stored in the servers or other facilities of VicOne or any third party or (vi) interfere with the proper functioning of the equipment and environment used to provide Cloud Services.

(h) Use anything other than VicOne products in a manner that misleads others into believing that it is a VicOne product or a product authorized by VicOne

(i) Publish or otherwise make available to any third party, any benchmark tests or performance analysis relating to Cloud Service without the express written permission of VicOne which may be withheld or conditioned at the sole discretion of VicOne.

Company shall cause its officers and employees not to engage in the acts set forth in Section 2.8 and to comply with this Agreement and these Terms of Service; and any failure to compliance with or breach of the same by such officers or employees shall be deemed a non-compliance with or breach of this Agreement and these Terms of Service by Company.

In addition to any other rights or remedies afforded to VicOne under this Agreement, these Terms of Service or under any Applicable Laws, VicOne reserves the right, but has no obligation, to investigate suspected violations of undertakings in this Section or any misuse of a Cloud Service and to take remedial action if Company breaches or violates any of the foregoing commitments, including the suspension, removal, or disablement of access to such Cloud Service by Company. In addition, Company agrees that VicOne may report any activity that it suspects violates any Applicable Law to the appropriate law or regulatory enforcement officials and provide any assistance required under such Applicable Law. VicOne shall have no liability to Company for damages or anything else in the event that VicOne takes any such action in good faith.

**2.9 High-Risk Environment.** Cloud Services are not fault-tolerant/fail-safe and are not intended, designed, tested, or certified to be reliable or suitable for use in High-Risk Environments and VicOne specifically disclaims any express or implied warranty/condition/guarantee of fitness for use of any Cloud Service in a High-Risk Environment. VicOne notifies Company that no Cloud Service has been submitted for compliance testing, certification, or approval for any use by any governmental agency and/or a self-regulatory, standard-setting, or other industry/product-specific consensus organization in a High-Risk Environment. As a condition to Company utilizing any Cloud Service in a High-Risk Environment, Company agrees to: (1) secure and maintain any and all certifications and/or approvals required under any Applicable Law with respect to a Cloud Service that Company intends to deploy in a High-Risk Environment; and (2) undertake all appropriate and/or necessary testing, fail-safe, backup, redundancy and other measures necessary to ensure the safe deployment and use of any Cloud Service by Company in a High-Risk Environment. Any access, deployment, or use of any Cloud Service in a High-Risk Environment shall be at Company's sole liability and risk and Company does hereby irrevocably waive and renounce any and all claims or causes of action for losses, expenses, or damages (of every kind and nature) that Company and its Affiliates may now or hereafter have against VicOne and its Affiliates with respect to Company's access, deployment, or use of any Cloud Service in a High-Risk Environment.

**2.10 Applicable Laws.** To the extent applicable to Company's performance of its obligations and/or exercise of its rights under this Agreement and these Terms of Service (including without limitation in relation to Company's and its Affiliates' (and its and their Contractors') use and/or configuration of any Cloud Service), Company represents (on an ongoing basis) and warrants to VicOne and agrees that Company and its Affiliates (and its and their Contractors) will: (a) comply with all Applicable Laws (including, without limitation, the GDPR if and to the extent applicable) and will not use or configure any Cloud Service or give any instructions to VicOne which would or could infringe, violate, or otherwise not be in compliance with any Applicable Laws or could cause VicOne to do so; and (b) identify, procure, and maintain any permits, certificates, approvals, consents, and inspections that may be required or advisable in order to comply with Applicable Laws with respect to this Agreement and these Terms of Service. If there is any failure to comply with or breach of this Agreement and these Terms of Service arising out of or related to this Section, Company will promptly (at no cost VicOne) do all things and take all actions as may be necessary or appropriate to cure and correct any breach or non-compliance with any Applicable Laws.

**2.11 Affiliate and/or Contractor Use.** For no more than the Service Capacity purchased by or on behalf of Company, VicOne grants Company the right to authorize and permit: (a) Subject to VicOne's prior written consent, Company's Affiliates to access and/or utilize Cloud Services only in connection such Affiliate's Specific Business Use for so long as such person remains an Affiliate of Company; and (b) Subject to VicOne's prior written consent, Contractors to Company and/or its Affiliates to access and/or utilize Cloud Services only in connection with the provision of business process support, technical support, hosting services, and/or outsourcing services to and solely for the use and benefit of Company and/or Affiliates in connection with its and their Specific Business Use and not for the benefit of any third party or such Contractor, all of the foregoing on the terms and subject to the limitations and conditions of this Agreement and these Terms of Service. Each Affiliate and Contractor satisfying (a) or (b) and having access to, possession of, and/or utilization of any Cloud Service will be considered an authorized user of Company under this Agreement and these Terms of Service with respect to such Cloud Service and NOT having any rights or deemed to be a third party beneficiary under this Agreement and these Terms of Service in any event or circumstance. Company agrees at all times to require, ensure, and enforce compliance with the grants, terms, conditions, and limitations set forth in this Agreement and these Terms of Service as well as the Data Processing Addendum where applicable by Company's Affiliates (including, without limitation, those applicable to the Affiliate's Personal Information and Personal Data that may be exported outside of the European Economic Area (EEA) to VicOne by the Affiliate's use of any Cloud Service purchased by Company) and/or Contractors having access to Cloud Services procured under this Agreement and these Terms of Service and, further, Company agrees that any breach of this Agreement or these Terms of Service by Company's Affiliates or Contractors shall be deemed a breach by Company, and it shall at all times be and remain legally and financially responsible to VicOne for the compliance and non-compliance with, or breach of, these Terms of Service (and the Data Processing Addendum where applicable) directly or indirectly caused by any Affiliate or Contractor. For the avoidance of doubt, since all Support Services are to be provided by VicOne only to Company, no Affiliate and/or Contractor will be entitled to request or receive Support Services directly from VicOne.

**2.12 Deployment in Company-Controlled Environment.** In the event that the Cloud Service (or any portion thereof) is deployed, installed, or hosted within the Company's own infrastructure, data center, or third-party cloud service account (e.g., Company's AWS, Azure, or Google Cloud account) (collectively, the "Company Environment"), the Parties agree as follows:

**Company Responsibility.** Company shall be solely responsible for the procurement, setup, configuration, security, management, and all associated costs of the Company Environment. This includes, without limitation, ensuring the Company Environment meets all technical specifications and connectivity requirements set forth in the Service Description.

**Performance and Availability.** Notwithstanding anything to the contrary in these Terms of Service, VicOne shall not be responsible for any failure, unavailability, or degradation of the Cloud Service to the extent caused by: (a) issues, outages, or misconfigurations within the Company Environment; (b) Company's failure to maintain the required infrastructure; or (c) internet or network connectivity issues external to VicOne's control. Any such incidents shall be deemed Excused Performance Events.

**Security and Data.** For Cloud Services hosted in the Company Environment, Company acknowledges that it retains primary control over the security settings of such environment. VicOne's liability for security breaches or data loss shall be limited to the extent such incidents are directly and solely caused by a proven defect in the Cloud Service software itself, and not by the vulnerabilities or configurations of the Company Environment.

**Access for Support.** To the extent necessary for VicOne to provide Support Services or error corrections, Company shall provide VicOne with authorized, remote access to the Company Environment. If Company restricts such access, VicOne shall be excused from its support obligations to the extent such restriction prevents the diagnosis or resolution of the issue.

### **3. Company Responsibilities.**

**3.1 Cloud Service Setup; Registration; Administrators.** Company is responsible for architecting, selecting, configuring, registering, and securing operation of, as well as securing and maintaining connectivity and access to, Cloud Service. Company must provide VicOne with all necessary or advisable information to allow VicOne to provision and make available Cloud Service, as well as permit registration that requires, among other things, an entity name and address, primary contact name and information, an email address, and other information as may be requested by VicOne from time-to-time. Registration information will be treated as the Confidential Information of Company. In accordance with the Service Description, Company will provide to VicOne (and maintain), contact information for Company's Administrator(s) who are the only End Users authorized or permitted to provide information required to manage, create Company's Configuration, as well as request and undertake Support Services of a Cloud Service for Company.

**3.2 Authentication Credentials.** Company has sole control over access and use by its End Users, Affiliates, and Contractors of a Cloud Service, and is responsible for ALL activity (whether authorized or unauthorized) occurring on Company's Cloud Service account under this Agreement and these Terms of Service. Company is responsible for maintaining the confidentiality of any non-public authentication credentials associated with its access to and use of a Cloud Service. Company will ensure that all End Users comply with Company's obligations under this Agreement and these Terms of Service and that the terms and conditions of Company's agreement with each End User are consistent with this Agreement and these Terms of Service. If Company becomes aware of any breach or non-compliance of Company's obligations under this Agreement and these Terms of Service by an End User or other third party such as an Affiliate or Contractor, Company will immediately terminate such person's access to Cloud Service and notify VicOne. Further, Company is solely responsible for population, maintenance, security, protection, loss prevention, and backup of Company's systems and networks, Company Data, and other content, information, and devices.

**3.3 Internet Transmission.** Company understands and agrees that no data transmission over the Internet by Company is guaranteed to be secure by VicOne. VicOne is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside VicOne's control. Company is solely responsible for maintaining the security of its networks, servers, applications and access codes.

**3.4 Fees.** Company will timely pay to its Reseller or directly to VicOne, as the case may be, the applicable fees for access to and/or use of Cloud Service in accordance with the Service Capacity that is purchased by Company. Invoicing and collection of the fees and any applicable Taxes will be by its Reseller or directly by VicOne, as the case may be. Except as may be expressly set forth in Sections 7 and 10, the fees Company pays for access to and use of Cloud Service are nonrefundable or otherwise subject to credit or offset. VicOne reserves the right to change or modify published fees for Cloud Services that are purchased directly from VicOne in a manner and at such times as VicOne shall determine in its discretion.

**3.5 Taxes – Direct Orders.** The fees and other charges in an Order placed directly with VicOne do not include foreign and domestic national, federal, dominion, provincial, state, municipal, or local sales, use, VAT, GST/GSM, excise, service, or similar transactional taxes (collectively "Taxes") now or hereafter levied under Applicable Laws. Where applicable on direct Orders, Company will provide VicOne all required information for the calculation, invoicing, and remittance of all applicable Taxes that VicOne reasonably requests to determine whether VicOne is obligated to collect and remit any Taxes from Company, including Company's correct name, location, and sales tax or VAT/GST/GSM identification number where applicable. If Company is legally entitled to an exemption from the collection and remittance of any otherwise applicable Taxes, Company is responsible for providing VicOne with legally-sufficient tax exemption certificates for each taxing jurisdiction. Otherwise, Company will be invoiced for, and pay, all Taxes as required to be collected by VicOne under Applicable Laws.

**3.6 Compliance; Audit.** VicOne may request, and Company will provide within thirty (30) days from the request date, a system-generated report verifying Company's and its Affiliates' access to and use of the Cloud Services, if and only if, a Cloud Service purchased under this Agreement and these Terms of Service is programmed with the technological features to provide such access and use verification (including Service Capacity where applicable). In any event, VicOne has the right, at its expense, to audit Company's and its Affiliates' compliance with this Agreement and these Terms of Service, and Company will provide all records and information reasonably necessary for VicOne to successfully perform such audit. If any audit reveals that Company owes fees to VicOne, or its Reseller, Company will promptly remit such underpaid amounts. Company consents to VicOne's disclosure of such audit results to the Reseller.

### **4. Company Data; Optional Features; Personal Information and Personal Data Protection; Personal Information Personal Data Processing.**

#### **4.1 Responsibility for Company Data; Right to Use Company Data; Optional Features.**

**4.1.1 Responsibility for Company Data.** Company is solely responsible for the content of all Company Data and represents to

VicOne (on an ongoing basis) and agrees to the extent required by Applicable Laws or any agreement of Company with a third party, that Company will: **(a)** with respect to all Company Data, provide all notices to, and procure and maintain all necessary rights, consents, and approvals; and **(b)** take any and all other actions as may be required, to ensure the lawfulness of Company's access to and/or use of each Cloud Service, including without limitation its transmission or making available of Company Data (some of which may include Personal Information and Personal Data) to VicOne and VicOne's receipt and use of such Company Data in that connection, without Company in any such case violating any Applicable Laws or the rights of any third party or otherwise obligating VicOne to any third party. VicOne does not and will not assume any obligations to Company with respect to Company Data or Company's use of Cloud Service other than as may be expressly set forth in these Terms of Service including in relation to its provision of Support Services.

**4.1.2 Right to Use Company Data.** Company hereby grants VicOne a limited, non-exclusive, royalty-free, paid-up, license to access and use Company Data (unless and only to the extent Company opts-out of such uses through Company's Configuration): **(a)** as necessary for VicOne to provide each Cloud Service and Support Service to Company; **(b)** to maintain and improve the operation, security efficacy, and functionality of VicOne's software and services including Cloud Services; **(c)** to identify and collect information on potential security risks and URLs associated with websites, executable files, or content identified as potential malware vectors in order to continually provide Cloud Services and to improve VicOne's subject- matter databases; **(d)** for administration of this Agreement, these Terms of Service and each Cloud Service; **(e)** to comply with its legal obligations and exercise its rights under Applicable Laws; and **(f)** for other purposes set forth in this Agreement, these Terms of Service and/or VicOne's Global Privacy Notice.

**4.1.3 Company's Configuration.** Company acknowledges and agrees that a Cloud Service may contain certain Optional Features. Company is solely responsible for selecting (during activation/initial deployment and at all times thereafter) and maintaining Company's Configuration of each Cloud Service and assuring that Company's Configuration conforms to Company's requirements, policies, and procedures regarding any processing of Company Data (including any Personal Data) and complies with all Applicable Laws in each jurisdiction to which Company's processing of any Company Data in connection with its use of any Cloud Service may be subject (including any Personal Data) and/or from which Company is accessing and utilizing an Optional Feature. At the initial activation and deployment of each Cloud Service and at any time thereafter, Company agrees to: **(a)** review the capabilities, features, and functionality of the Optional Features and all other features and functionality in the Service Description thereof; and **(b)** activate, configure, restrict, limit, and/or disable each Optional Feature as may be described in the Service Description in order to cause Company Data to be processed in a manner that meets Company's specific needs (each Cloud Service as configured by or on behalf Company from time-to-time is herein referred to as "**Company's Configuration**"). Except for Optional Features and permissions and administrative selections described in the Service Description, Company understands that each Cloud Service is a standardized service hosted by or on behalf of VicOne and no additional or different instructions or configurations are available to Company for such Cloud Service.

**4.2 Personal Information and Personal Data Protection.** A Cloud Service and Support Service may employ applications and tools that receive Company Data that includes one or more data elements that are Personal Information and Personal Data under Applicable Laws. In accordance with the instructions made known through Company's Configuration, this Agreement and these Terms of Service, VicOne may access, receive, process, copy, backup, store, transfer and use Personal Information and Personal Data which may take place in, from and to the United States of America, Europe, or other countries or jurisdictions, potentially outside of the country of residence of Company, its Affiliates, and/or its and their End Users. VicOne has and will continue to implement technical, organizational and administrative security measures in order to protect the Personal Information and Personal Data provided to and utilized in connection with each Cloud Service from unauthorized access and misuse while under VicOne's custody or control, including when VicOne utilizes any third-party subcontractors. VicOne restricts its personnel from accessing and/or utilizing Personal Information and Personal Data without authorization and imposes appropriate obligations upon its personnel regarding Personal Information and Personal Data protection.

**4.3 Personal Information and Personal Data Processing; Relationship of the Parties.** By agreeing to these Terms of Service, each of Company and VicOne acknowledges and agrees that it is also entering into and agreeing to be bound by the Data Processing Addendum, it being further agreed that the Addendum shall only apply, if and to the extent that VicOne acts as a processor or subprocessor for any Personal Information and Personal Data (but does not apply to other Company Data) that Company (and its Affiliates that have been authorized to access and/or utilize Cloud Services under this Agreement and these Terms of Service) provides or makes available to VicOne under this Agreement and these Terms of Service. With respect to each Affiliate of Company that accesses or utilizes any Cloud Service as permitted in this Agreement and these Terms of Service, Company hereby enters into and agrees to be bound by the Data Processing Addendum for itself and on behalf of each such Affiliate, and Company represents and warrants to VicOne that Company is duly authorized, and Company and all such Affiliates have each taken, all necessary action to do so validly.

**5. Support Services; Updates to Enabling Software.**

**5.1 Support Services.** VicOne may, upon a separate agreement with Company, provide one or more support services for each Cloud Service to Company through Slack or similar workspace collaboration platform (herein referred to as "**Support Service(s)**"). Except for the Support Services, these Terms of Service do not require VicOne to provide Company with any configuration, deployment, training, consulting services, or other technical assistance of any kind.

**5.2 Updates to Enabling Software.** At its sole discretion, VicOne may provide periodic updates to the Enabling Software, if any. If available, such updates may include bug fixes, new features and/or enhancements. Company is solely responsible for deploying such updates at Company's own cost as soon as possible. VicOne's obligation to provide Support Services with respect to Enabling Software as well as a Cloud Service continuing to meet its Service Description, this Agreement and these Terms of Service depends upon Company's prompt installation of any and all such updates to Enabling Software that VicOne makes available to Company.

**6. Confidentiality; Feedback.**

**6.1 Confidentiality/Non-Disclosure.** Each Party hereto acknowledges that by reason of its relationship with the other Party under this Agreement and these Terms of Service, it may have access to confidential information and materials concerning the other Party's business, technology, and/or products that is confidential to the other Party ("**Confidential Information**"). Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or

visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each Party agrees that it will not disclose such Confidential Information, except as authorized under these Terms of Service, will not use, copy, or alter such Confidential Information for any purpose other than the exercise of rights or the performance of obligations under these Terms of Use, and will protect Confidential Information at least to the same extent as a reasonable person would undertake to protect such Confidential Information. Neither Party may use the other Party's Confidential Information except to perform its duties or exercise its rights under this Agreement and these Terms of Service. The Confidential Information restrictions will not apply to information or data that: (a) is already known to the receiving Party at the time of access or disclosure under this Agreement and these Terms of Service not under obligation of confidentiality; (b) is publicly available at the time of access or disclosure under this Agreement and these Terms of Service; (c) becomes publicly available through no wrongful act or fault of the receiving Party after access or disclosure under this Agreement and these Terms of Service; (d) is independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information; (e) has been rightfully received from a third party not under obligation of confidentiality; (f) is disclosed in any legal proceeding arising from or in connection with these Terms of Service; or (g) is required to be disclosed by law, provided the Party compelled to disclose the Confidential Information provides the Party owning the Confidential Information with prior written notice of disclosure (only if legally permissible) adequate for the owning Party to take reasonable action to prevent such disclosure. Unless otherwise agreed to by both Parties, upon termination of this Agreement, each Party will return to, or irretrievably destroy, the other Party's Confidential Information in its possession. **In the event that the Parties hereto have previously entered into a non-disclosure or confidentiality agreement that is still in effect on the effective date of this Agreement, then the Parties hereto agree that such prior agreement is hereby merged into and superseded by this Agreement and these Terms of Service ONLY with respect to the subject matter of this Agreement and these Terms of Service and the transactions undertaken pursuant to this Agreement and these Terms of Service.**

**6.2 Feedback.** Notwithstanding anything to the contrary: (a) VicOne will have no obligation of any kind to any person with respect to any Cloud Service-related comments, suggestions, design changes or improvements, that Company may elect to provide to VicOne in either verbal or written form (collectively, "**Cloud Service Feedback**"), and (b) VicOne and its Affiliates and Licensors are hereby granted by Company a perpetual, irrevocable, royalty-free right and license to use any ideas, concepts, know-how or techniques, in whole or in part, contained in Cloud Service Feedback provided now or in the future: (i) for any purpose whatsoever, including developing, making derivative works, manufacturing, improving, enhancing, making, having made, distributing, and/or marketing VicOne products and/or services incorporating Cloud Service Feedback in whole or in part, and (ii) which right and license is granted without any restrictions or limitations, including requiring the payment of any license fees, royalties, or other consideration.

**6.3 Processing of Personal Information.** Company agrees that VicOne may provide Personal Information and Personal Data to Trend Micro Incorporated (*Trend Micro Kabushiki Kaisha*), a company incorporated in Japan and its overseas subsidiaries and Affiliates, or to overseas contractors, for the purposes of outsourcing of its business concerning the provision of VicOne products, services and Support Services, as well as for quality improvement and development of VicOne products or services. Details thereof shall be as set forth at <https://cdn.vicone.com/files/research-papers/EN/EN-ENGLISH-GLOBAL-PRIVACY-NOTICE.pdf>. Company agrees that VicOne will handle Personal Information in accordance with VicOne's Privacy Policy available at <https://cdn.vicone.com/files/research-papers/EN/EN-ENGLISH-GLOBAL-PRIVACY-NOTICE.pdf>.

## 7. Disclaimer of All Other Conditions, Guarantees, and Warranties.

CLOUDSERVICES, ENABLING SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" AND WITHOUT ANY OTHER WARRANTY, CONDITION, UNDERTAKING, OR GUARANTEE OF ANY KIND OR NATURE. VICONE (ON BEHALF OF ITSELF AND ITS AFFILIATES/SUPPLIERS/LICENSORS/RESELLERS) EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, GUARANTEES, CONDITIONS, UNDERTAKINGS, OR WARRANTIES OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE), WITH RESPECT TO CLOUD SERVICES, ENABLING SOFTWARE, SERVICE DESCRIPTION OR SUPPORT SERVICES, ARISING FROM OR RELATED TO A STATUTE, CIVIL/COMMERCIAL CODE, CUSTOM, USAGE OR TRADE PRACTICE, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AND/OR CONDITION OF: MERCHANTABILITY; FITNESS FOR A PARTICULAR (SUCH AS A HIGH-RISK ENVIRONMENT) OR GENERAL PURPOSE; TITLE; SATISFACTORY QUALITY; ACCURACY; NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; OR ABILITY TO ACHIEVE A PARTICULAR RESULT. FURTHER, VICONE DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT: (A) A CLOUD SERVICE, ENABLING SOFTWARE OR SUPPORT SERVICE WILL BE CONTINUOUSLY AVAILABLE OR USE OF A CLOUD SERVICE OR ENABLING SOFTWARE UNINTERRUPTED; (B) THE FUNCTIONS AND FEATURES CONTAINED IN A CLOUD SERVICE OR ENABLING SOFTWARE, OR A SUPPORT SERVICE ITSELF WILL MEET THE REQUIREMENTS OF COMPANY OR THAT A CLOUD SERVICE, ENABLING SOFTWARE OR SUPPORT SERVICE WILL SATISFY ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE, SECURITY, OR OTHER NEEDS OR REQUIREMENTS (SUCH AS USE IN A HIGH-RISK ENVIRONMENT) OF COMPANY; (C) USE OF A CLOUD SERVICE OR ENABLING SOFTWARE, OR A SUPPORT SERVICE ITSELF WILL PROVIDE COMPLETE AND ABSOLUTE PROTECTION OF COMPANY'S SYSTEMS, NETWORKS, DEVICES, ASSETS, INFORMATION, AND/OR DATA FROM AND AGAINST ANY OR ALL CYBERTHREAT DATA OR OTHER POSSIBLE RISKS; (D) USE OF A CLOUD SERVICE OR ENABLING SOFTWARE, OR A SUPPORT SERVICE ITSELF WILL DETECT, IDENTIFY, BLOCK, REMOVE, REMEDIATE, OR RESOLVE SOME, ANY, OR ALL CYBERTHREAT DATA; (E) A CLOUD SERVICE OR ENABLING SOFTWARE WILL BE PROVIDED OR PERFORMED ERROR-FREE OR THAT VICONE WILL CORRECT ALL ERRORS IN CLOUD SERVICES OR ENABLING SOFTWARE; OR (F) A CLOUD SERVICE OR ENABLING SOFTWARE WILL OPERATE IN COMBINATION WITH COMPANY DATA, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, CLOUD SERVICES, OR DATA NOT PROVIDED OR REQUIRED BY VICONE.

## 8. Exclusions From and Limitation of Liability; Maximum Liability.

**8.1 Exclusions From and Limitation of Liability.** IN NO EVENT OR CIRCUMSTANCE WILL VICONE (OR ITS AFFILIATES, LICENSORS, OR SUPPLIERS) BE LIABLE TO COMPANY OR ITS AFFILIATES FOR ANY EXCLUDED DAMAGES ARISING FROM OR RELATING TO THESE TERMS OF SERVICE, VICONE'S (OR ITS AFFILIATES) PERFORMANCE UNDER THESE TERMS OF SERVICE, OR ANY CLOUD SERVICE/SUPPORT SERVICE, WHETHER OR NOT FORESEEABLE, EVEN IF VICONE AND/OR ITS AFFILIATES MAY HAVE BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES AND

REGARDLESS OF THE NATURE OF THE CLAIM OR CAUSE OF ACTION OR THEORY ASSERTED INCLUDING, WITHOUT LIMITATION; BREACH OF CONTRACT; STRICT LIABILITY; MISREPRESENTATION; UNDER ANY EXPRESS/IMPLIED/STATUTORY WARRANTY, GUARANTEE, DUTY, OR CONDITION; UNDER ANY STATUTE OR CIVIL/COMMERCIAL CODE; IN TORT (INCLUDING NEGLIGENCE); OR ANY OTHER LEGAL, IMPLIED, STATUTORY, OR EQUITABLE THEORY. THE PARTIES AGREE THAT NONE OF THE EXCLUDED DAMAGES REFERENCED IN THIS SECTION 8.1 ARE ACTUAL DIRECT DAMAGES AS REFERENCED IN SECTION 8.2.

IF COMPANY IS IN THE EUROPEAN ECONOMIC AREA, REFERENCES TO "EXCLUDED DAMAGES" SHALL ALSO MEAN ANY LOSSES OR DAMAGES WHICH: (A) WERE NOT REASONABLY FORESEEABLE BY BOTH PARTIES; (B) WERE KNOWN TO COMPANY BUT NOT TO VICONE; AND/OR (C) WERE REASONABLY FORESEEABLE BY BOTH PARTIES BUT COULD HAVE BEEN PREVENTED BY COMPANY SUCH AS, FOR EXAMPLE, LOSSES CAUSED BY VIRUSES, MALWARE, OR OTHER MALICIOUS PROGRAMS, OR LOSS OF OR DAMAGE TO COMPANY DATA OR COMPANY'S FAILURE TO PROPERLY BACK-UP SUCH COMPANY DATA.

**8.2 Maximum Liability – Actual Direct Damages.** THE LIABILITY OF VICONE, ITS AFFILIATES, AND ITS THEIR SUPPLIERS (INCLUDING ANY HOSTING PLATFORM) AND LICENSORS TO COMPANY OR ANY THIRD PARTY FOR LOSSES, EXPENSES, OR DAMAGES (EXCEPT THOSE ARISING FROM WILLFUL MISCONDUCT OR GROSS NEGLIGENCE) RELATED TO OR ARISING FROM ALL RELATED AND UNRELATED CAUSES OF ACTION, CLAIMS, SUITS, AND OTHER LEGAL PROCEEDINGS OF ANY KIND OR NATURE (REGARDLESS OF WHETHER BASED ON EXPRESS/IMPLIED/STATUTORY WARRANTY, GUARANTEE, CONDITION, MISREPRESENTATION, CONTRACT AND BREACH THEREOF, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), UNDER ANY CIVIL/COMMERCIAL CODE, AND/OR ANY OTHER OR EQUITABLE OR LEGAL THEORY) THAT ARE ACTS OR OMISSIONS OF VICONE SPECIFICALLY ATTRIBUTABLE TO: (A) AN UNCURED MATERIAL BREACH OF THIS AGREEMENT AND THESE TERMS OF SERVICE; (B) THE RELATIONSHIP OF PARTIES; AND/OR (C) THE PROVISION/SUPPLY OF CLOUD SERVICES AND/OR SUPPORT SERVICES, AND/OR LICENSES OF ENABLING SOFTWARE SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED, IN THE AGGREGATE (AND NOT PER INCIDENT OR PER CLAIMANT) FOR ALL CLAIMS AND CAUSES OF ACTION, THE TOTAL FEES AND OTHER AMOUNTS PAID BY COMPANY FOR THE CLOUD SERVICE GIVING RISE TO OR CAUSING SUCH LOSS, EXPENSE, OR DAMAGE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LOSS, EXPENSE, OR DAMAGE, LESS ANY REFUNDS OR CREDITS PREVIOUSLY RECEIVED BY COMPANY FROM VICONE WITH RESPECT THERETO.

**8.3 Basis of the Bargain.** Each Party recognizes and agrees that the waivers, warranty limitations, as well as disclaimers and exclusions from and limitations of liability and/or remedies in this Agreement and these Terms of Service are a material and essential basis of this Agreement and these Terms of Service; reflect a reasonable allocation of risk between the Parties; are fair, reasonable, and a fundamental part of this Agreement and these Terms of Service; and each has been taken into account and reflected in determining the consideration to be given by each Party under this Agreement and in the decision by each Party to enter into this Agreement. The Parties acknowledge and agree that absent any of such waivers, disclaimers, exclusions, and/or limitations of liability/remedies, the provisions of this Agreement and these Terms of Service, including the economic terms, would be substantially different, or in the alternative, this Agreement would not have been consummated.

#### 9. Term and Termination.

**9.1 Term.** These Terms of Service and Company's access to Cloud Service will become effective as of the date set forth in this Agreement and such Cloud Service is made available to the Company by VicOne and shall continue in effect thereafter as set forth in this Agreement and these Terms of Service until such outstanding Subscription Period for a Cloud Service purchased under this Agreement is completed (the "Term"), unless earlier terminated or suspended in accordance with this Agreement, this Section and/or these Terms of Service.

**9.2 Suspension and Termination by VicOne.** VicOne may terminate this Agreement and suspend or terminate Company's use of Cloud Service (in whole or in part) at any time upon written notice without any further notice, demand, or tender of performance of VicOne's obligations if VicOne determines that: (a) Company or one or more of its Affiliates, Contractors, or End Users of Cloud Service (i) poses a security risk to Cloud Service or any third party, (ii) may adversely impact Cloud Service or any third party, (iii) is in non-compliance in any way with Section 2.8, or (iv) may subject VicOne, its Affiliates, its Licensors, or any third party to liability; (b) Company is in material breach of this Agreement or these Terms of Service, or in breach of representations and warranties of Company; (c) Company suspends payment or becomes unable to pay its debts, or if any bill of exchange or check issued by Company is dishonored; (d) any attachment, provisional attachment, or auction is filed against Company, or if Company is subject to any delinquent tax enforcement; (e) a petition is filed for the commencement of bankruptcy, special liquidation, corporate reorganization, civil rehabilitation, or other similar insolvency proceedings with respect to Company, or if Company enters into liquidation; (f) there is a material adverse change in the assets or financial condition of Company such that it is reasonably likely to impede the performance of Company's obligations under this Agreement and these Terms of Service; or (g) there is a merger, company split, share exchange, share transfer, partial share exchange, or any change in shareholders or members holding more than half of Company's voting rights, or any other change in ownership of Company (Company shall notify VicOne of such change in writing in advance). VicOne may immediately suspend Company's use of Cloud Service (in whole or in part) without any prior notice to Company if VicOne determines that: (a) if it is necessary to perform emergency maintenance on the systems related to Cloud Services; (b) if the operation of the systems related to Cloud Services becomes difficult due to any of Excused Performance Events or interference by any third party; (c) if the operation of the systems related to Cloud Services becomes impossible due to any of Excused Performance Events or interference by any third party; or (d) if, due to any other emergency, VicOne determines that it is necessary to suspend the systems related to Cloud Services. Company will cease use of Cloud Service identified in such notice(s) during any period of suspension, or upon termination of this Agreement or other termination of Company's right to use such Cloud Service. For any termination or suspension by VicOne in accordance with the foregoing, VicOne will not provide, or be liable for, any refund or proration offset.

**9.3 Termination by Company.** In the event of a material breach of this Agreement or these Terms of Service by VicOne with respect to a Cloud Service, Company may terminate this Agreement solely with respect to the affected Cloud Service and the applicable Order by providing VicOne with at least thirty (30) days' prior written notice specifically identifying the nature of the breach. If VicOne fails to cure such breach within the thirty (30) day notice period, termination shall become effective, and Company shall be entitled to a pro-rata refund of any pre-paid but unused fees paid for such terminated Cloud Service. With respect to the Evaluation Service, Company may terminate the Evaluation Service at any time with written notice to VicOne.

**9.4 Company's Termination Duties.** Upon expiration or termination of this Agreement for any reason or no reason, Company will: **(a)** cease any access and use of Cloud Service; and **(b)** irretrievably destroy all copies in Company's possession or control of the Enabling Software, including any Service Description provided by VicOne. Upon request, Company will certify in writing that the foregoing has occurred. Termination does not relieve Company from Company's obligation to pay fees and Taxes that remain unpaid.

**9.5 Survival.** Notwithstanding the termination or expiration of this Agreement, Sections 1, 2.2, 2.3, 2.4, 2.5, 2.8, 2.9, 2.10, 2.11, 3, 4, 6, 7, 8, 9, 10, 11, 12, and any other provisions of these Terms of Service which expressly provide for survival upon termination or expiration shall survive such termination or expiration, regardless of the reason thereof.

#### **10. IP Claim.**

Should a Cloud Service at any time become, or in VicOne's opinion be likely to become, the subject of an IP Claim, VicOne shall have the right, at its sole option to: **(a)** procure for Company the right to continue using such Cloud Service as provided under this Agreement, or **(b)** modify such Cloud Service so that it no longer is the subject of an IP Claim, while maintaining substantially the same utility or functionality of the unmodified utility or functionality. If neither **(a)** or **(b)** are commercially practicable in VicOne's opinion, VicOne may terminate this Agreement as to such Cloud Service and any related the rights granted under this Agreement to access and utilize the Cloud Service upon written notice, in which event Company will cease further use of the Cloud Service and return or uninstall and irrevocably destroy all copies of any Enabling Software (and its documentation) and, thereafter, VicOne will promptly refund to Company any unused, prepaid fees Company may have paid for such Cloud Service. The Parties agree that any termination hereof in accordance with this Section 10 shall not be treated as a breach of this Agreement and these Terms of Service by VicOne and shall not entitle Company to any claim for damages, losses, or expenses of any kind or nature arising from or related to such termination including for replacement cost or loss of use of the Cloud Service or any lost profits, savings, or revenue arising from or related to the Cloud Service.

#### **11. General Provisions.**

**11.1 Assignment, Delegation; Sublicensing; Subcontracting.** Company will not assign (in whole or in part), delegate, or sublicense any of Company's rights and obligations under this Agreement or its contractual status under the same, without VicOne's prior written consent. Any purported assignment or transfer in violation of this Section 11.1 will be void. In its sole discretion and without notice to Company, the Parties agree that VicOne may assign, delegate or sublicense any of VicOne's rights and obligations under this Agreement or its contractual status under the same to any VicOne Affiliate or to any subcontractor provided that VicOne shall remain responsible for the performance of such obligations by such persons as though such persons were VicOne. Subject to the foregoing, this Agreement and these Terms of Service will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

**11.2 Interpretation.** The headings within these Terms of Service are for convenience only and will not affect the interpretation of these Terms of Service. The words "include", "includes", and "including" shall be interpreted as introducing a list of examples which do not limit the generality of any preceding words or any words in the list of examples.

**11.3 No Waivers.** The failure by either Party to enforce any provision of this Agreement and these Terms of Service will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. To be effective, all waivers must be in writing, specifying the provision and actions or inactions being waived, and signed or sealed by the Parties.

**11.4 Changes To These Terms.** VicOne may change these Terms of Service at any time in its sole discretion and will post the latest version of these Terms of Service on the VicOne website. Such changes shall be effective immediately upon posting. Company's continued access to or use of the Cloud Services after the effective date constitutes irrevocable acceptance of the revised Terms. It is Company's responsibility to check the website regularly for updates. If Company does not agree to the change of the Terms of Service, Company may not use Cloud Services.

**11.5 Export/Import Control.** In connection with this Agreement and these Terms of Service, the access, use, export or re-export of Cloud Service and related technical data and services (collectively "**Controlled Technology**") is subject to Applicable Laws with respect to the export (including "deemed export" and "deemed re-export" regulations) and import of Controlled Technology by Company, its Affiliates, Contractors, and/or its End Users. In connection with this Agreement and these Terms of Service, Company acknowledges that each Cloud Service is designed with capabilities to permit (at its and their discretion) Company, its Affiliates, Contractors, and/or its End Users to access the Cloud Service without regard to geographic location and to transfer or otherwise move Company Data between the Cloud Service, its Affiliates, Contractors, and/or its End Users/Contractors anywhere in the world. Company acknowledges and agrees that it is solely responsible for the authorization and management of End User accounts, as well as export/import control and geographic transfer of Company Data in connection with the Cloud Service. Company agrees that it will at all times comply with each Applicable Law (now or hereafter in effect, including but not limited to the following) that applies to direct/indirect export, re-export, or import of Controlled Technology by Company, its Affiliates, and its and their Contractors, and/or its End Users and/or the performance of Company, its Affiliates, it's or their Contractors, and/or its End Users under this Agreement and these Terms of Service that: **(a)** requires a license to, or otherwise prohibits the, export, re-export, import, diversion, or disclosure of such Controlled Technology; **(b)** prohibits or restricts sale, use, or access to certain technology/goods/services, to specified countries, and/or by defined persons; or **(c)** restricts or prohibits end-use of such Controlled Technology related to the development, production, use, or proliferation of nuclear, chemical or biological weapons, missiles, or other weapons of mass destruction. Company represents and warrants to VicOne that neither Company, its Affiliates, its Contractors, nor any of its End Users are under the control of, located in, or a resident or national of any country or region subject to any embargo or applicable trade sanction and are not a prohibited person or prohibited entity as defined in any Applicable Law.

**11.6 Government Agency Use.** Each Cloud Service (including any component software) and accompanying Service Description have been developed solely at private expense by VicOne and/or its Suppliers/Licensors, consisting of commercially available items, commercially-available computer software, commercially available hardware, technical documentation, and/or commercially available Service Description with the same rights and restrictions generally applicable to Cloud Service. Access and use of Cloud Service by any Government Agency may be subject to mandatory applicable laws; *provided, however*, except for the limited right to access and use Cloud Service granted in Sections 2.1 above, no right, title, or interest in or to any software, hardware, binary code, or service (or updates and documentation) is granted or transferred hereunder to any Government Agency accessing and/or using Cloud Service. If any Government Agency requires or needs greater or different rights in or to access and/or use Cloud Service other than those rights that are granted in these Terms of Service, the Parties will discuss such additional

requirements and the additional fees/charges applicable thereto, and if additional or different rights are agreed, the parties will enter into a specific written agreement with respect thereto. In this Section 11.6, “**Government Agency**” shall mean a national, federal, provincial, state, municipal, and/or local agency or entity that Orders through a Reseller for the right to access/use a Cloud Service under this Agreement.

#### 11.7 Notices.

**11.7.1 If to Company.** VicOne may provide any notice to Company under this Agreement and these Terms of Service: (a) if a legal notice, by sending a message to the email address then associated with Company’s Account, if any; and (b) if product or support notices, by posting a notice on VicOne website. Product or support notices posted on the VicOne website will be effective upon posting and legal notices that VicOne provides by email will be effective when VicOne sends the email. It is Company’s responsibility to keep Company’s email address current.

**11.7.2 If to VicOne.** To give VicOne legal notice under this Agreement and these Terms of Service, Company must contact VicOne directly. Notices provided by email will be effective when VicOne receives the email. Notices regarding Orders for new or additional Cloud Services should be directed to the appropriate Reseller or VicOne’s sales executive, as the case may be.

**11.8 Severability; Enforcement.** The Parties agree that the unenforceability or invalidity of any term or provision of these Terms of Service shall not impair the enforceability or validity of any other part of these Terms of Service. In the event that any term or provision of these Terms of Service conflicts with the governing law under which these Terms of Service is to be construed or if any such term or provision is held invalid or unenforceable in whole or in part by a court with jurisdiction over the Parties, the Parties agree that the court making such determination shall have the power, and the Parties hereby request that such court exercise such power, to modify, amend, or restate any such unenforceable term or provision of these Terms of Service in lieu of severing such unenforceable term or provision in its entirety, whether by rewriting the offending term or provision, deleting any or all of the offending term or provision, adding additional language to these Terms of Service, or by making such other modifications as it deems appropriate that is valid and enforceable and that comes closest to expressing the original intention of the Parties to the greatest lawful extent under these Terms of Service.

**11.9 Excused Performance Events.** VicOne shall not be liable for any delay or failure to perform its obligations hereunder due to any Excused Performance Event. VicOne will (a) take commercially reasonable steps to minimize and/or mitigate any delays or failures related to any Excused Performance Event, and (b) provide prompt written notice of the nature of such Excused Performance Event and the expected duration thereof to Company, but this Section does not excuse VicOne’s obligation to take reasonable steps to follow its normal disaster recovery procedures. VicOne will resume performing its affected obligations promptly following the removal or reasonable circumvention of such Excused Performance Event. The Parties agree that any delay or failure arising from or related to an Excused Performance Event shall not constitute a breach of these Terms of Service by VicOne.

**11.10 Independent Contractors.** Nothing in these Terms of Service is intended or shall be construed to create or establish any agency, partnership, or joint venture relationship between the Parties. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder, and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated herein. Neither Party has any authority to act as agent for, or to incur any obligations on behalf of or in the name of, the other Party or its Affiliates.

**11.11 Third Party Beneficiaries.** All disclaimers, limitations of damages and remedies, and exclusions and limitations of liabilities in this Agreement and these Terms of Service that are applicable to VicOne also extend to and apply in respect of VicOne’s Affiliates, Suppliers, and Licensors as third party beneficiaries. Except as set forth in the immediately preceding sentence, this Agreement are entered into solely between and for the benefit of, and may be enforced only by, the Parties and no third party shall have any right/benefit whether arising under this Agreement and these Terms of Service or otherwise, or under any now or hereafter enacted laws, regulations, or other provisions, or under any statute now or hereafter enacted (such as Contracts (Rights of Third Parties) Act of 1999 in the UK and similar laws enacted in Ireland, Singapore, New Zealand, Hong Kong S.A.R., and certain states of Australia, the application of each of which is hereby barred and disclaimed), or otherwise. Except as set forth in the first sentence of this Section, this Agreement and these Terms of Service do not, and shall not be deemed to, create any express or implied rights, remedies, benefits, claims, or causes of action (legal, equitable or otherwise) in or on behalf of any third parties including employees, independent consultants, agents, suppliers, and Affiliates of a Party, or otherwise create any obligation or duty to any third party; *provided, however*, notwithstanding anything contained in this Agreement and these Terms of Service to the contrary, VicOne’s Affiliates, Licensors, and Resellers shall be intended third party beneficiaries for the exclusions, limitations, and disclaimers with respect to Cloud Services as stated in Sections 2.8, 2.9, 7, and 8 of these Terms of Service.

**11.12 Exclusion of Anti-Social Forces.** If Company falls or fell under an organized crime group, an organized crime group member, a member of an organized crime group who has not ceased to be such for less than five (5) years, a quasi-member of an organized crime group, a related enterprise of an organized crime group, a corporate racketeer, a rogue professing social activity, a crime group with special intelligence, any other person or group equivalent thereto (hereinafter collectively referred to as “**Organized Crime Groups**”), or any of the following, VicOne may terminate this Agreement and/or Company’s use of Cloud Service.

- (a) Having a relationship recognized as one in which an Organized Crime Group controls or is substantially involved in the management.
- (b) Having a relationship recognized as one in which an Organized Crime Group is unjustly used for the purpose of gaining illegal profits for oneself or a third party, or for the purpose of causing damage to a third party, etc.
- (c) Having a relationship recognized as being involved with an Organized Crime Group by providing funds, etc. or by providing favors, etc.
- (d) An officer or a person substantially involved in the management has a socially reprehensible relationship with an organized crime group member, etc.

Furthermore, if Company, either by itself or through a third party, engages in any of the acts listed in the following items, or if VicOne determines that Company is likely to do so, VicOne may terminate this Agreement and/or Company’s use of Cloud Service.

- (a) Frauds, violences, or acts involving threatening language.

- (b) Illegal acts or unreasonable demands.
- (c) Interference with business operations.
- (d) Defame reputation, or goodwill, etc.
- (e) Other acts equivalent to the preceding items

**12. General Governing Law; Dispute Resolution; Venue/Jurisdiction.**

**12.1 Governing Law.** This Agreement and these Terms of Service will be governed by and construed in accordance with the laws of Japan without regard to conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods does not apply to, and is specifically excluded, in any event or circumstance.

**12.2 Dispute Resolution.** Any and all disputes arising under or relating to this Agreement and these Terms of Service shall be brought and resolved solely and exclusively in Tokyo District Court.