



**TERMS OF SERVICE FOR VICONE CLOUD SERVICES THAT
ARE HOSTED BY OR ON BEHALF OF VICONE
(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. IF COMPANY AND VICONE HAVE ENTERED INTO A MANUAL/ELECTRONIC SIGNATURE-BEARING CORPORATE LICENSE AGREEMENT (OR OTHER SIMILAR DOCUMENT) WITH RESPECT TO THE ACCESS TO AND/OR USE OF ANY VICONE CLOUD SERVICE, THEN SUCH AGREEMENT WILL GOVERN AND CONTROL THE ACCESS TO AND/OR USE OF SUCH CLOUD SERVICE AND THESE TERMS OF SERVICE WILL HAVE NO EFFECT WITH RESPECT THERETO. OTHERWISE, THESE TERMS OF SERVICE SHALL GOVERN AND CONTROL COMPANY’S ACCESS TO AND/OR USE OF ANY CLOUD SERVICE ACQUIRED HEREUNDER. 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 herefrom.

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 whether acquired from a Reseller, or directly from VicOne; or (b) any maintenance services for such software licensed by VicOne.**

Effective Date: 1 July 2024

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 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.

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 herewith, these Terms of Service that have been accepted and agreed by Company are applicable only to 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, and the Certificate 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 under an Order, 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 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 Under these Terms of Service. Company may secure Cloud Services under these Terms of Service by one of two methods:

- 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 or through a VicOne distributor) 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, which acceptance is signified by VicOne's issuance of its Certificate to Company. Except for the matters agreed in the first sentence of this paragraph 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 venturer, 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 (including the Certificate). 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 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 made 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") and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms.

"**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 hereunder, including, but not limited to, data protection/privacy laws; corrupt activities/illegal payment laws; economic/trade sanctions rules and regulations; and export/import laws.

"**Certificate**" means a written (electronic or otherwise) acceptance/entitlement confirmation issued by VicOne that confirms the Cloud Services purchased by Company hereunder, including the applicable Service Capacity where applicable. Company is advised to retain the Certificate as proof of its entitlement to such Cloud Service(s). In some regions covered hereby, the Certificate is sometimes referred to as a License Certificate or an Entitlement Certificate.

"**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 in the provision of such Cloud Service) that is accessed and/or used by Company in accordance with Terms of Service for the Service Capacity (as evidenced on the Certificate) 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 these Terms of Service) Cloud Service hereunder as evidenced by a Certificate; and (c) to which these Terms of Service have not been terminated or otherwise expired.

"**Company's Configuration**" shall have the meaning set forth in Section 4.1.3.

"**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 hereunder; 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 hereunder pursuant to a written agreement between such Contractor and Company that imposes an obligation (among other

obligations) on such Contractor to fully comply with 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.

“**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 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 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 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) hereunder that is to be integrated to the electronic control units of vehicles, charging station systems and smart cockpit systems that Company manufactures 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.

“**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 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.

“**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://documents.vicone.com/pdf/VicOne_JP_Privacy_Policy_20240101.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 hereunder 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 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 herein; (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.

“**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 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 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 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 its Service Description. 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 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 issuance of a Certificate to Company for such Cloud Services or other VicOne performance signifying its acceptance.

“**Party**” means only each of Company and VicOne, and together, they are collectively the only “**Parties**.” All other persons 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.

“**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. Each Quote shall incorporate these Terms of Service (specifically, by reference, and/or publication of VicOne’s website) as the sole basis and governing document for any procurement by Company based on the Quote.

“**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 or its distributor 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 electronic control units (ECUs), motor vehicles, endpoints, and/or other metering mechanism for each Cloud Service purchased under these Terms of Service that is reflected in the Certificate. 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 hereunder. The Subscription Period is as stated in the Certificate.

“**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 these Terms of Service, and present and future Applicable Laws that applies to the Cloud Services and/or the performance of either Party hereunder 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 Inc. (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. Grant for Cloud Service; License to Enabling Software; Open Source; Security Acknowledgement; Evaluation.

2.1 Grant.

2.1.1 Grant 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 these Terms of Service (including the Certificate), VicOne hereby grants only to Company, a non-exclusive, non-transferable, non-assignable, terminable (in accordance herewith or Applicable Law) limited right in the Territory to access and use 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 the foregoing grant in accordance herewith. Company may allow access to and use a Cloud Service only for the purposes specifically permitted herein 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 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 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 the terms of these Terms of Service and Company acknowledges that it is not hereunder 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 maybe 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 hereunder.

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 or otherwise entitled to 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 when and if accepted and approved by VicOne, Company will have the right to conduct a test of the Evaluation Service for a period not to exceed thirty (30) days (unless otherwise agreed to in writing by VicOne or earlier terminated in accordance with Sections 9 or 10), 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 rates and fees published by VicOne 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 access and use rights expressly granted in 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 licensor’s 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 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 these Terms of Service nor give Company a right to a full or partial refund of any monies paid or payable hereunder, 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, 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 hereof 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 therewith.

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 its Service Description or these Terms of Service. Company may not and agrees that it will not as its material obligation hereunder (and any non-compliance with or breach thereof is a material breach by Company of these Terms of Service), 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 in Certificate or otherwise attempt to gain unauthorized access to a Cloud Service.
- (b) Access or use any Cloud Service without permission in accordance herewith, 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) 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 to 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 of any third party or otherwise that breaches these Terms of Service; (iii) interfere with the use of Cloud Services by any third party; or (iv) interfere with the proper functioning of the equipment and environment used to provide Cloud Services.
- (h) 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.

In addition to any other rights or remedies afforded to VicOne under 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 hereunder (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 hereto. If there is any failure to comply with or breach of 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 as evidenced in a Certificate, VicOne grants Company the right to authorize and permit (for no additional fees or amounts due VicOne other than the fees already payable with respect to the rights granted to Company): (a) Company's Affiliates to access and/or utilize Cloud Services only in connection with Affiliate's Specific Business Use for so long as such person remains an Affiliate of Company; and (b) 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 these Terms of Service. Each Affiliate and Contractor having access to, possession of, and/or utilization of any Cloud Service will be considered an authorized user of Company under these Terms of Service with respect to such Cloud Service and NOT having any rights or deemed to be a third party beneficiary hereunder 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 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 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 hereunder and, further, Company agrees that 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.

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 hereunder. 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 these Terms of Service and that the terms and conditions of Company's agreement with each End User are consistent with these Terms of Service. If Company becomes aware of any breach or non-compliance of Company's obligations under 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 access to and use of the Cloud Services, if and only if, a Cloud Service purchased hereunder 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 compliance with 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 Data Protection; 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 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 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 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 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 of 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 Data Protection. A Cloud Service may employ applications and tools that receive Company Data that includes one or more data elements that are Personal Data under Applicable Laws. In accordance with the instructions made known through Company's Configuration and these Terms of Service, VicOne may access, receive, process, copy, backup, store, transfer and use 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 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 Data without authorization and imposes appropriate obligations upon its personnel regarding Personal Data protection.

4.3 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 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 hereunder) provides or makes available to VicOne hereunder. With respect to each Affiliate of Company that accesses or utilizes any Cloud Service as permitted herein, 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 will provide support services for each Cloud Service to Company through Slack or similar workspace collaboration platform. 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. Each Cloud Service is periodically monitored by VicOne based on its Service Level targets and adjustments are made by VicOne as needed.

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 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 hereunder, 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 use such Confidential Information, except as authorized under these Terms of Service, 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 these Terms of Service. The Confidential Information restrictions will not apply to information or data that is: (a) already known to the receiving Party at the time of access hereunder; (b) becomes publicly available through no wrongful act of the receiving Party; (c) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information; (d) has been rightfully received from a third party not under obligation of confidentiality; (e) disclosed in any legal proceeding arising from or in connection with these Terms of Service; or (f) 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 these Terms of Service, 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 these Terms of Service, then the Parties hereto agree that such prior agreement is hereby merged into and superseded by these Terms of Service ONLY with respect to the subject matter hereof and the transactions undertaken pursuant hereto.**

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.

7. Limited Warranty and Exclusive Remedy; Disclaimer of All Other Conditions, Guarantees, and Warranties.

7.1 Limited Warranty and Exclusive Remedy. In connection with a Cloud Service, VicOne warrants only to Company that such Cloud Service will substantially conform to its then-current Service Description under normal use and circumstances until the expiration or termination of Company's paid right to access and use such Cloud Service under these Terms of Service. The foregoing limited warranty does not cover events or circumstances caused by accident, abuse or use of Cloud Service in a manner inconsistent with these Terms of Service, the Service Description, or other guidance provided by VicOne or resulting from events of Excused Performance Event. If it is established that VicOne has breached the above warranty after notice from Company as required below, VicOne may, at its option: (a) use reasonable efforts to cure the breach; or (b) in the event VicOne cannot, after commercially practicable attempts to do so, achieve the remedy in (a) immediately above, either VicOne or Company may terminate these Terms of Service and VicOne will provide a refund (within thirty (30) days) of unused fees pre-paid by Company, if any, as of the effective date of such termination. To benefit from this warranty and the remedies stated herein, Company must report in writing to VicOne, the alleged breach of warranty with reasonable specificity within ten (10) days of its occurrence. The above remedies for breach of the foregoing warranty are VicOne's sole and exclusive obligation and liability to Company and Company's sole and exclusive right and remedy for VicOne's breach of the foregoing warranty notwithstanding any other provision of these Terms of Service to the contrary.

7.2 Disclaimer of All Other Conditions, Guarantees, and Warranties. EXCEPT AS SET FORTH IN SECTION 7.1, CLOUD

SERVICES 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) 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 WILL BE CONTINUOUSLY AVAILABLE OR USE THEREOF UNINTERRUPTED; (B) THE FUNCTIONS AND FEATURES CONTAINED IN A CLOUD SERVICE WILL MEET THE REQUIREMENTS OF COMPANY OR THAT A CLOUD 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 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 WILL DETECT, IDENTIFY, BLOCK, REMOVE, REMEDIATE, OR RESOLVE SOME, ANY, OR ALL CYBERTHREAT DATA; (E) A CLOUD SERVICE WILL BE PROVIDED OR PERFORMED ERROR-FREE OR THAT VICONE WILL CORRECT ALL ERRORS IN CLOUD SERVICES; OR (F) A CLOUD SERVICE 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 THE EXCLUSIVE REMEDIES PROVIDED BY THESE TERMS OF SERVICE FAIL OF THEIR ESSENTIAL PURPOSE AND 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 FOR LOSSES, EXPENSES, OR DAMAGES 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 THESE TERMS OF SERVICE; (B) THE RELATIONSHIP OF PARTIES; AND/OR (C) THE PROVISION/SUPPLY OF CLOUD SERVICES AND/OR SUPPORT SERVICES, 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 these Terms of Service are a material and essential basis of these Terms of Service; reflect a reasonable allocation of risk between the Parties; are fair, reasonable, and a fundamental part of these Terms of Service; and each has been taken into account and reflected in determining the consideration to be given by each Party under these Terms of Service and in the decision by each Party to enter into these Terms of Service. The Parties acknowledge and agree that absent any of such waivers, disclaimers, exclusions, and/or limitations of liability/remedies, the provisions of these Terms of Service, including the economic terms, would be substantially different, or in the alternative, these Terms of Service 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 of issuance of a

Certificate to Company by VicOne and such Cloud Service is made available to the Company by VicOne and shall continue in effect thereafter as set forth in the applicable Certificate and these Terms of Service until such outstanding Subscription Period for a Cloud Service purchased hereunder is completed (the “Term”), unless earlier terminated or suspended in accordance with this Section and/or these Terms of Service.

9.2 Suspension and Termination by VicOne. VicOne may suspend or terminate Company’s right to use Cloud Service (in whole or in part) at any time upon written notice 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; or (b) Company is in material breach of these Terms of Service, including a breach of or non-compliance by Company with any of its agreements in Sections 2.1 or 4.1. Company will cease use of Cloud Service identified in such notice(s) during any period of suspension, or upon termination of these Terms of Service 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 of fees.

9.3 Termination by Company. Company may terminate for its convenience, these Terms of Service and/or Company’s use of a Cloud Service at any time with written notice to VicOne, in which event Company will NOT be entitled to a refund or credit of unused fees (if any) pre-paid by Company for access to and use of such Cloud Service (s). Notwithstanding the foregoing, only if Company is entitled to terminate these Terms of Service for a material breach by VicOne (after giving VicOne at least twenty (20) days prior detailed written notice and an opportunity to cure such material breach during such notice period) of these Terms of Service, Company will be entitled to receive a refund from VicOne of the applicable unused fees (if any) pre-paid by Company for access to Cloud Service.

9.4 Company’s Termination Duties. Upon expiration or termination of these Terms of Service and/or Company’s use of Cloud Service 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. All provisions of this Agreement which by their nature are destined to survive the duration or termination of this Agreement shall so survive.

10. Intellectual Property Indemnity.

10.1 IP Claim Indemnity. VicOne (at its cost) will defend ONLY Company from each IP Claim and indemnify Company from the resulting costs and damages with respect to each such IP Claim finally awarded against Company ONLY that are specifically attributable to such IP Claim or those amounts agreed to by VicOne in a monetary settlement of such IP Claim, subject always to the conditions, qualifications and limitations in this Section 10. No settlement of any IP Claim will be made by Company (and VicOne will have no responsibility or obligation hereunder or otherwise therefor) without VicOne’s express written consent, which may be withheld at its sole and absolute discretion. The obligation of VicOne under this Section 10 for any IP Claim is subject to and conditioned on Company giving VicOne: (a) prompt written notice of any IP Claim (but in any event notice in sufficient time for VicOne to respond without prejudice to its position), provided that a failure to provide notice shall only relieve VicOne of its indemnity obligation to the extent VicOne was prejudiced by such failure; (b) sole and complete control and authority over the defense, negotiations, and settlement of such IP Claim; and (c) reasonable requested information, cooperation and assistance, at VicOne’s expense, with regard to the defense, negotiations, or settlement of such IP Claim. Without Company’s consent, VicOne will not settle with respect to Company, any IP Claim to the extent such settlement requires that Company admit any liability on the part of Company with respect to such IP Claim or pay any money therefor. Company may participate in the defense of any IP Claim at its cost with counsel of its selection. **This indemnity is personal to Company and may not be assigned/transferred (in whole or in part) or otherwise passed through to any third party.**

10.2 IP Claim Mitigation. 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 hereunder, 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 these Terms of Service as to such Cloud Service and any related the rights granted hereunder 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 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. **This Section 10 states VicOne’s sole and exclusive obligation and liability to Company, and Company’s sole and exclusive right and remedy against VicOne, for any IP Claim. Except as set forth herein this Section 10, Company acknowledges and agrees that no indemnity is given by VicOne with respect to any Cloud Service and VicOne specifically denies and disclaims any obligation to indemnify Company and/or its Affiliates from and against any other matter or thing in any event or circumstance. Notwithstanding anything contained herein to the contrary, VicOne’s liability shall not be limited by Section 8 to the extent of monies payable by VicOne by operation of this Section 10.**

11. General Provisions.

11.1 Assignment, Delegation; Sublicensing; Subcontracting. Company will not assign (in whole or in part) these Terms of Service, or delegate or sublicense any of Company’s rights under these Terms of Service, 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 these Terms of Service to any VicOne Affiliate, or delegate or sublicense the performance of VicOne’s obligations 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, 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 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 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 Services on the VicOne website. Those changes shall be effective for Company with active subscriptions sixty (60) days after VicOne posts the latest version on the website. The previous version of these Terms of Service shall be deemed invalid upon the effective date of the latest version, and the latest version shall apply. 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 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 therewith, 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) 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, its or their Contractors, and/or its End Users hereunder 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 these Terms of Service.

11.7 Notices.

11.7.1 If to Company. VicOne may provide any notice to Company under 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 these Terms of Service, Company must contact VicOne directly. Notices provided by email will be effective one (1) business day after they are sent. 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 or in any arbitration convened hereunder, the Parties agree that the court or arbitrator(s) (as the case may be) making such determination shall have the power, and the Parties hereby request that such court or arbitrator(s) 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 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, these Terms of Service are entered into solely between and for the benefit of, and may be enforced only by, the Parties hereto and no third party shall have any right/benefit hereunder, whether arising hereunder, 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, 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 herein 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, 7.2, and 8 of these Terms of Service.

11.12 Exclusion of Anti-Social Forces. If Company is a corporation formed under Japanese laws, Company represents and warrants that none of itself or its officers or employees falls or fell under the category of an organized crime group, an organized crime group member, a related enterprise of an organized crime group, a corporate racketeer, a rogue professing social activity, a crime group with special intelligence, anti-social forces or other similar person or group within past five years, and covenant not to fall under those categories in future.

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

12.1 Governing Law. 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 these Terms of Service shall be brought and resolved solely and exclusively in Tokyo District Court.