



SAAS AGREEMENT

Cavirin Systems, Inc., a Delaware corporation, and Company (as identified in the Purchase Order) agree to the terms of this Agreement (as defined below).

By accessing or using Cavirin's software-as-a-service product (the "Product," as defined more in Section 15), Company agrees to this Agreement on behalf of itself and its Users, and represents and warrants that Company has full authority to bind itself and its Users to this Agreement.

If Company does not agree to this Agreement, Company may not access or use the Product, and Company must immediately notify Cavirin to cancel Company's access to the Product. If Company is accepting this Agreement on behalf of another person or other legal entity, Company represents and warrants that Company has full authority to bind that person or legal entity to this Agreement.

Capitalized terms used in this Agreement have the meaning assigned to them in Section 15 or elsewhere in this Agreement. The interpretation clause in Section 15 sets out the rules of interpretation for this Agreement.

1. RIGHT OF USE AND RESTRICTIONS

1.1 **Right to Access and Use:** Subject to the terms of this Agreement, Cavirin grants Company a non-exclusive, non-transferable, worldwide right to access and use the Product described in the Purchase Order during the applicable Subscription Period solely for Company's internal business purposes. Company must have an active subscription to the Product, or have an active Support agreement for the Product, as applicable, to continue to receive access to the Product.

1.2 **Managing Parties:** If Company enters into a contract for a third party to manage Company's information technology resources (**Managing Party**), Company may authorize the Managing Party to use the Product on Company's behalf, provided that:

- (a) the Managing Party only uses the Product for Company's internal business operations;
- (b) the Managing Party agrees in writing to be bound by this Agreement;
- (c) Company provides Cavirin with written notice that a Managing Party will be using the Product on Company's behalf; and
- (d) Company remains responsible for all use of the Product by the Managing Party.

1.3 **Restrictions:** Company will not and will not allow third parties to:

- (a) license, sublicense, access, use, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Product available to any third party;
- (b) modify, decompile, reverse engineer or copy the Product, or any of their components;
- (c) access or use the Product to build or support any products or services competitive with the Product;
- (d) use the Product to conduct fraudulent activities;
- (e) attempt to gain unauthorized access to the Product, engage in any denial of service attacks, or otherwise cause immediate, material or ongoing harm to Cavirin, its provision of the Product, or to others;
- (f) impersonate or misrepresent an affiliation with a person or entity;
- (g) access or use the Product for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without Cavirin's express written permission;
- (h) falsely identify itself or provide any false information to establish any account that will be used to gain access to and/or use of the Products;



(i) use the Product to initiate or propagate Malware;
(j) use the Product as an HTTP server that allows third-party relay or proxy of web traffic; or
(k) use the Product in a manner that violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement.

Each of (a) to (k) is a **Prohibited Use**. A Prohibited Use is a material breach of this Agreement in Cavirin's sole discretion.

1.4 **Right to Use Company Data:**

(a) Company grants Cavirin a non-exclusive, royalty-free license to access and use the Company Data as necessary during the Subscription Period:

(i) for Cavirin to provide the Product and Support to Company during the Subscription Period; and

(ii) for administering this Agreement, including assuring that the right number of subscriptions and/or user accounts have been issued.

(b) Company grants Cavirin a non-exclusive, perpetual right and license to use, reproduce and disclose product, support, or services-related information, Company Data (excluding Personal Data and Company Confidential Information) and material that is aggregated, anonymized, de-identified, or otherwise rendered not reasonably associated or linked to an identifiable individual or to Company for product improvement (including content synchronization, device tracking, troubleshooting), internal research to enhance Cavirin's understanding of Malware, threats, and vulnerabilities (including detecting and reporting threats and vulnerabilities on Company's and Users' computer endpoints and networks) to improve overall security for users generally and in accordance with Cavirin's Privacy Policy. This includes compiling statistical and performance information related to the provision and operation of the Product and making such information publicly available. Cavirin retains all rights in such aggregated and anonymous data.

2. COMPANY OBLIGATIONS

2.1 **Company Assistance.** Company will provide Cavirin with all credentials, information and assistance required to supply the Product or enable Company's use of the Product. Company will immediately notify Cavirin of any unauthorized account use or other suspected security breach, or unauthorized use, copying or distribution of Product, Documentation or Company Data.

2.2 **Company Data:**

(a) Company represents and warrants that it:

(i) has the legal rights and applicable consents to provide Company Data to Cavirin;

(ii) has provided any required notices and has obtained any consents and/or authorizations (including any required from Users) related to its use of the Products and Cavirin's processing of Company Data (including any Personal Data); and

(iii) will comply with all applicable laws for collecting, processing, and transferring Company Data to Cavirin.

(b) Company has sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Company Data. The Product relies on Company Data as supplied by Company, and Cavirin is not liable for the content of Company Data. Except as required under applicable law, Cavirin does not assume any duty or obligation to correct or modify Company Data. Except as provided in this Agreement, Company retains all right, title and interest in and to Company Data.

2.3 **Updated Information:** Company must provide current and complete Users' information as necessary for Cavirin to manage Company's account.

3. TECHNICAL SUPPORT SERVICE

Cavirin will provide Support to Company in accordance with the Service Level Agreement posted on its Website. The Support terms may be updated from time to time, however Cavirin will not materially reduce the level of performance, functionality, or availability of the Support during the Subscription Period.

4. DATA PRIVACY AND PROTECTION

4.1 As Company Data may originate from various jurisdictions and as Cavirin would be unaware of those jurisdictions in the provision of the Products, Company is solely responsible for ensuring that the parties enter into any necessary additional agreements as required by applicable data protection laws.

4.2 Cavirin will comply with Cavirin's Privacy Policy.

4.3 Without prejudice to Sections 4.1 and 4.2 above, Company is responsible for: (a) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Company Data, including any Malware contained in the Company Data, and (b) Company's and its Users' use of the Product in a manner that is inconsistent with this Agreement.

4.4 To the extent Company discloses or transmits Company Data to a third party, Cavirin is no longer responsible for the security, integrity or confidentiality of such content outside of Cavirin's control.

5. TERM; TERMINATION; SUBSCRIPTION PERIODS

5.1 **Term:** This Agreement will continue until terminated in accordance with this Agreement.

5.2 **Termination for Cause:** Either party may terminate this Agreement immediately for cause if:

- (a) the other party breaches this Agreement and has failed to remedy a remediable breach within thirty (30) days of receipt of a notice from the first party specifying the breach and requiring it to be remedied, or if the breach is incapable of remedy;
- (b) the other party or its property is subject to insolvency or receivership procedures;
- (c) the other party becomes insolvent or unable to pay its debts as they mature;
- (d) the other party makes an assignment for the benefit of creditors; or
- (e) the other party becomes the subject of any other proceeding under any bankruptcy, insolvency or debtor's relief law.

5.3 **Suspension or Termination of Product Access by Cavirin:** Cavirin may suspend or terminate Company's access to the Product:

- (a) immediately if Cavirin considers it necessary to prevent or terminate any actual or suspected Prohibited Use; or
- (b) upon notice to Company if:
 - (i) Company commits a material breach of this Agreement;
 - (ii) Cavirin reasonably determines that the volume of data being transmitted or processed through the Product under Company's account is significantly greater than the average use or may cause degradation of the Product for Company or other customers; or
 - (iii) there is a threat to the security and integrity of the hosted environment or Company Data.



Suspension or termination of access to the Product by Cavirin will be without prejudice to any rights or liabilities accruing before or during the suspension, including Company's obligation to pay fees.

5.4 **Termination Obligations:** After termination of a Subscription Period for the Product, Company agrees that Cavirin has no obligation to retain Company Data, which may be permanently deleted as part of Cavirin's record and information management and in accordance with applicable laws. If any Company Data is stored by the Product, Cavirin and Company will use commercially reasonable efforts to retrieve that Company Data.

6. PAYMENTS; TAXES; AUDIT

6.1 **Payments:** Company will pay Cavirin the fees for the Product within thirty (30) days of the invoice date. Late payments are subject to interest of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is lower. All payment obligations are non-cancelable and non-refundable. If Company considers an invoice is incorrect, Company must contact Cavirin in writing within thirty (30) days of the date of invoice to request an adjustment or credit.

6.2 **Transaction Taxes:** If Company purchases access to the Product directly from Cavirin, Company will pay all applicable transaction taxes, including sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Company under this Agreement (**Transaction Taxes**). Cavirin will separately state on its invoices the Transaction Taxes that Cavirin is required to collect from Company under applicable law. Company will provide proof of any exemption from Transaction Taxes to Cavirin at least fifteen (15) Business Days before the due date for paying an invoice. If Cavirin does not collect the required Transaction Taxes from Company but is subsequently required to remit the Transaction Taxes to any taxing authority, Company will promptly reimburse Cavirin for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to the fault of Cavirin.

6.3 **Withholding Taxes:** All payments due from Company will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority. If Company is required by applicable law to deduct or withhold income taxes from amounts payable to Cavirin under this Agreement (**Withholding Taxes**), Company will remit, and provide Cavirin with evidence that Company has remitted, the Withholding Taxes to the appropriate taxing authority and pay to Cavirin the remaining net amount. Company will provide written notice to Cavirin of its intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days before the due date for any payments under this Agreement and will cooperate with Cavirin to reduce any Withholding Taxes. If Cavirin provides Company with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then Company will apply the lower rate.

6.4 **Income Taxes:** Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

6.5 **Audit:** Cavirin may request, and Company must provide within thirty (30) days from the request date, a system-generated report verifying Company's access to and use of the Product (**System Report**). Company acknowledges that the System Report is based on technological features in the Product to verify access and use verification (including User counts). If the Product do not contain technological features that provide use verification, Company will provide to Cavirin an accurate Product access and use verification report for the Product within thirty (30) days from Cavirin's request. Cavirin will only request the System Report (or Company's prepared Product access and use verification report) once per year and



will not unreasonably interfere with the conduct of Company's business. If a System Report or Company's prepared Product access and use verification report identifies that Company is out of compliance with this Agreement, Company will be required to purchase the additional subscriptions and pay any fees associated with the subscriptions and/or Support. Cavirin may also charge an out-of-compliance fee.

7. CONFIDENTIALITY

7.1 Each party acknowledges that it may have access to Confidential Information of the other party in connection with this Agreement, and that each party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third parties or used in violation of this Agreement.

7.2 Each Recipient of Confidential Information under this Agreement must:

- (a) keep the Disclosing Party's Confidential Information confidential and protect it at least to the same extent it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information;
- (b) not use the Disclosing Party's Confidential Information in any way for its own account or the account of any third party except to perform its duties, exercise its rights or is otherwise authorized under this Agreement; and
- (c) not disclose the Disclosing Party's Confidential Information except to perform its duties or exercise its rights under this Agreement or as otherwise authorized under this Agreement, provided that:
 - (i) any disclosure made to the Recipient's employees, contractors or agents is on a need-to-know basis; and
 - (ii) the Recipient's employees, contractors or agents in receipt of the Confidential Information are under an obligation of confidentiality no less stringent than that set forth in this Section.

7.3 Notwithstanding the restrictions in Section 7.2, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any court, arbitral, administrative, or legislative body, the Recipient must:

- (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
- (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
- (c) assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.

7.4 Company will immediately notify Cavirin if Confidential Information of Cavirin is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threaten to violate the terms of this Section, Cavirin is immediately entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other rights or remedies it may have.

7.5 Upon the Disclosing Party's request and upon termination of this Agreement (unless agreed otherwise by the parties at the time), each party will return, destroy or delete permanently (at the Disclosing Party's election) the other party's Confidential Information.



7.6 On termination of this Agreement, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for five (5) years in accordance with this Section.

7.7 **Feedback:** Company agrees that Cavirin has the unrestricted right to use suggestions and feedback provided by Company regarding the Product and other products and services of Cavirin and its Affiliates, without notice to, payment to or consent from Company, and that such suggestions and feedback will be the Confidential Information of Cavirin and Cavirin will own all right, title and interest in and to such suggestions and feedback, including all Intellectual Property Rights, and not Company.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 **Ownership:** The Product, Documentation and the software underlying the Product are strictly confidential to Cavirin. Cavirin (or its licensors) own exclusively and reserve all right, title and interest in and to the Product, Documentation and the software underlying the Product, including all related Intellectual Property Rights as well as any Derivative Works. Company agrees, on behalf of itself and its Affiliates, that Company and its Affiliates will take no action inconsistent with Cavirin's Intellectual Property Rights.

8.2 **Reserved Rights:** Company may not exercise any right, title and interest in and to the Products, Documentation, the software underlying the Product or any related Intellectual Property Rights, except for the limited access and usage rights granted to Company in this Agreement. This Agreement is not an agreement of sale, and this Agreement does not transfer any title, Intellectual Property Rights or ownership rights to the Product, Documentation, or the software underlying the Product to Company. Company acknowledges and agrees that the Product, Documentation, and the software underlying the Product, and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the foregoing, and all other improvements, revisions, corrections, modifications, enhancements, releases, detection definition files (or DATs, also referred to as signature files, being the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, content, and other updates in, of, or to the Product or the software underlying the Product, all Derivative Works based on any of the foregoing, and all copies of the foregoing are trade secrets and/or the intellectual and proprietary property of Cavirin, having great commercial value to Cavirin.

9. WARRANTIES; EXCLUSIONS; DISCLAIMERS

9.1 **Warranty:** Cavirin warrants that during the Subscription Period, the Product will perform substantially in accordance with the associated Documentation. Company's sole and exclusive remedy for Cavirin's breach of the foregoing warranty is, at Cavirin's option, the repair or replacement of the Product, or for Cavirin to provide a credit for the period in which the Product did not materially comply. This warranty is conditioned upon Company providing Cavirin prompt written notice of the Product's non-conformance and using the Product as provided in this Agreement.

9.2 **Disclaimer of Warranties:** EXCEPT AS EXPRESSLY STATED IN THIS SECTION, TO THE EXTENT ALLOWED BY APPLICABLE LAW, CAVIRIN EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY, CONDITION OR OTHER IMPLIED TERM AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CAVIRIN MAKES NO WARRANTY OR REPRESENTATION THAT THE PRODUCT: (A) WILL BE UNINTERRUPTED, COMPLETELY SECURE, ERROR-FREE, FAILSAFE OR FREE OF VIRUSES;



(B) WILL MEET COMPANY'S BUSINESS REQUIREMENTS OR OPERATE WITH COMPANY'S CURRENT SYSTEMS; (C) WILL COMPLY WITH ANY PARTICULAR LAW; OR (D) WILL PROVIDE COMPLETE PROTECTION AGAINST ANY SECURITY THREATS VULNERABILITIES. NO DATA TRANSMISSION OVER THE INTERNET CAN BE GUARANTEED TO BE SECURE. CAVIRIN DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ANY INTERCEPTION OR INTERRUPTION OF ANY COMMUNICATIONS THROUGH THE INTERNET, NETWORKS, OR SYSTEMS OUTSIDE CAVIRIN'S CONTROL. COMPANY IS RESPONSIBLE FOR MAINTAINING THE SECURITY OF ITS NETWORKS, SERVERS, APPLICATIONS AND ACCESS CODES. PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CAVIRIN IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, LOSS OF COMPANY DATA OR DAMAGES RESULTING FROM THOSE PROBLEMS. COMPANY WILL NOT MAKE ANY REPRESENTATION OR OTHER STATEMENT OR UNDERTAKE ANY ACT OR OMISSION INCONSISTENT WITH THIS SECTION.

9.3 **Third Parties:** The Product may contain independent third-party products and rely on them to perform certain functionality, including malware definitions or URL filters and algorithms. Cavirin makes no warranty as to the operation of any third-party products or the accuracy of any third-party information.

10. LIMITATION OF LIABILITY

EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL PAYMENTS PAID OR PAYABLE BY COMPANY TO CAVIRIN UNDER THIS AGREEMENT OR ANY PURCHASE ORDER IN THE SIX (6) MONTHS PRIOR TO THE CLAIM. NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE DAMAGES WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR OTHERWISE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

11. INDEMNIFICATION

11.1 **Company Indemnification Obligations:** Company will unconditionally indemnify, hold harmless, and defend Cavirin, its Affiliates, and their officers, directors, employees, contractors and agents (each a "**Cavirin Indemnified Party**") against any claims, liabilities and expenses (including court costs and reasonable attorneys' fees) that a Cavirin Indemnified Party incurs as a result of or in connection with:

- a) any third-party claims arising from:
 - (i) Company Data, including without limitation Company's failure to follow applicable laws or obtain all necessary consents related to Company Data;
 - (ii) Company's use of the Product in a manner not expressly permitted by this Agreement;
 - (iii) Cavirin's compliance with any technology, designs, instructions or requirements provided by Company or a third party on Company's behalf;
 - (iv) any claims, costs, damages and liabilities whatsoever asserted by any Company Representative; or
 - (v) any violation by Company of applicable laws or regulations; and



(b) any reasonable costs and attorneys' fees required for Cavirin to respond to a subpoena, court order or other official government inquiry regarding Company Data or Company's use of the Product.

11.2 **Cavirin Indemnification Obligations:**

(a) Cavirin will indemnify Company and, at Cavirin's election, defend Company against a third-party claim asserted against Company in a suit or action if the claim is for direct patent infringement, for direct copyright infringement, or for Cavirin's trade secret misappropriation and the claim is asserted against the Product alone and not in combination with anything else, or solely a combination of the Product.

(b) **Exclusions:** Notwithstanding anything to the contrary in this Agreement, Cavirin will not indemnify or defend Company for claims asserted, in whole or in part, against or resulting from:

- (i) Company's breach of this Agreement;
- (ii) technology, designs, instructions or requirements provided by Company or a third party on Company's behalf;
- (iii) modifications to the Product or use of the Product outside the scope of the applicable Documentation;
- (iv) use of non-current or unsupported versions of the Product;
- (v) Company Data;
- (vi) Services Company provides using or based upon the Product; or
- (vii) the Product alleged implementation of some or all of a Standard.

(c) **Remedies:** Cavirin may, in its sole discretion and at its own expense, with respect to any Product that is subject to a claim:

- (i) procure Company with the right to continue using the Product;
- (ii) replace or modify the Product or the software underlying the Product so it is non-infringing; or
- (iii) upon Company's termination of Company's access to the Product, refund the value of the purchase price Company paid for the infringing Product.

11.3 **Indemnification Procedure:** The indemnified party ("**Indemnitee**") will (a) provide prompt written notice to the indemnifying party ("**Indemnitor**") of the claim (provided that the failure to provide timely notice that prejudices the Indemnitor will relieve the Indemnitor of its obligations under this Section to the extent the Indemnitor has been prejudiced and the failure to provide timely notice will relieve the Indemnitor of any obligation to reimburse the other party for its attorney's fees incurred prior to notification), (b) reasonably cooperate in connection with the defense or settlement of the claim, and (c) give the Indemnitor sole control over the defense and settlement of the claim, provided however that any settlement of a claim will not include a specific performance obligation or admission of liability by the Indemnitee.

11.4 **Personal and Exclusive Indemnity:** The foregoing indemnities are personal to the parties and may not be transferred to anyone. This Section 11 states the parties' entire indemnification obligations and Company's exclusive remedy for claims involving infringement of Intellectual Property Rights.

12. EVALUATION PRODUCTS

12.1 **Generally:** If Company requests an evaluation of the Product ("**Evaluation Product**"), the provisions of this Section will apply and prevail over any other conflicting terms of this Agreement. Company's use of an Evaluation Product is limited to thirty (30) days ("**Evaluation Period**") unless agreed otherwise in writing by Cavirin. During the Evaluation Period, Company may access and use the



Evaluation Products solely for Company's internal evaluation to decide whether to purchase the right to use the Evaluation Products.

12.2 No Support Obligation: Cavirin has no obligation to provide any Support for Evaluation Products. Company acknowledges that the Evaluation Products may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions and data loss.

12.3 Disclaimer of Warranties: Cavirin's indemnification obligations under Section 11 do not apply to Evaluation Products. Evaluation Products are provided to Company solely on an "as is" basis. To the extent permitted by law, Cavirin makes no other warranties of any kind, express or implied, with respect to the Evaluation Products and disclaims all other obligations and liabilities, or express and implied warranties regarding the Evaluation Products, including quality, conformity to any representation or description, performance, merchantability, fitness for a particular purpose, non-infringement; or that the Evaluation Products will be free from errors or defects. Company assumes all risk of use of Evaluation Products. If the laws in Company's jurisdiction do not allow the exclusion of express or implied warranties, the disclaimer in this Section may not apply and the express or implied warranties will be limited in duration to any minimum period required by applicable law, and the aggregate liability of Cavirin and licensors will be limited to the sum of fifty (50) United States dollars (or the then-current value in the relevant local currency) in total.

13. COMPLIANCE WITH LAWS

13.1 Each party will comply with the applicable national, state, and local laws and regulations with respect to its rights and obligations under this Agreement, including applicable privacy and export control laws and regulations, the U.S. Foreign Corrupt Practices Act, and other applicable anti-corruption laws.

13.2 Company will not, directly or indirectly, export, transmit, permit access or use any Product or technical data (or any part of Product or technical data) or system or service incorporating any Product to or in any country to which export, transmission or access is restricted by regulation, statute, or other law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other governmental entity that may have jurisdiction over export or transmission. Company will not use, transfer or access any Product for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license.

13.3 Company acknowledges and agrees that certain Products containing encryption may require authorization from the U.S. and other applicable authorities including the European Union, prior to export. Company also acknowledges and agrees that certain Products containing encryption may be subject to import or use restrictions in other countries.

13.4 If Cavirin receives notice that Company is or becomes identified as a sanctioned or restricted party under applicable law, Cavirin will not be obligated to perform any of its obligations under this Agreement if such performance would result in violation of the sanctions or restrictions.

14. GENERAL PROVISIONS

14.1 Relationship: The parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special



relationship. Neither party intends this Agreement to benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties and listed Affiliates. The Agreement is not intended to create a third-party beneficiary of any kind. Company must not represent to any third party that it has any right to bind Cavirin in any manner and Company will not to make any representations or warranties on behalf of Cavirin.

14.2 Severability: If a court holds that any provision of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from this Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of this Agreement, which will continue in full force and effect.

14.3 No Waiver: A party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the party agreeing to the waiver.

14.4 Force Majeure:

(a) Neither party is liable for delays or failures to perform any of its obligations under this Agreement to the extent caused by a Force Majeure Event.

(b) Cavirin's failures or delays in its performance are excused to the extent they result from:

(i) Company's acts or omissions, or those of its employees, agents, users, affiliates or contractors;

(ii) notwithstanding the generality of Section 14.4(b)(i), Company's failure or delay in the performance of a specific task, obligation, or responsibility under this Agreement or a Schedule, which task, obligation, or responsibility is a condition or requirement for a Cavirin task, obligation, or responsibility;

(iii) reliance on instructions, authorizations, approvals or other information from Company's Representative; or

(iv) acts or omissions of third parties (unless directed by Cavirin).

14.5 Governing Law; Venue: This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without applying its choice of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any suit or proceeding arising out of or relating to this Agreement may be brought only in a court located in Santa Clara County, California and the parties irrevocably submit to the exclusive personal and subject matter jurisdiction and venue of such courts. The prevailing party in any suit or proceeding arising out of or relating to this Agreement shall be awarded its costs and reasonable attorney fees.

14.6 Entire Agreement, Order of Precedence and Amendments:

(a) This Agreement and any Schedules constitute the entire understanding between Cavirin and Company relating to its subject matter and supersede all oral or written proposals, and all communications between the parties relating to its subject matter. The terms of this Agreement will prevail, notwithstanding any variance with any purchase order or other written instrument submitted by Company, whether or not expressly rejected by Cavirin.

(b) If there is any conflict or inconsistency between the terms of any document forming this Agreement, the following order of precedence will apply to the extent of the conflict or inconsistency unless expressly agreed otherwise in any subordinate document:



- (i) The Agreement will prevail over any Service Schedule and Purchase Order; and
- (ii) The Service Schedule will prevail over the Purchase Order.

(c) Cavirin reserves the right to amend any terms of this Agreement at any time. Any amendment will be, effective on the posting of an updated version.

14.7 **Notices:** Any notice given under or in relation to this Agreement must be in writing, signed by or on behalf of the party giving it, and addressed to Cavirin, “Attention CFO”, to the applicable address listed on Cavirin’s website, or Company, at the contact information Company provided when purchasing or registering for the Product. Notices will be considered delivered when received if delivered by hand with receipt, the next business day after sending it by pre-paid, nationally-recognized, overnight air courier with tracking capabilities; or five (5) Business Days after being sent by registered or certified airmail, return receipt required, postage prepaid, to the address mentioned above.

14.8 **Additional Documents and References:** References to hyperlinked terms in this Agreement are references to the terms or content linked to the hyperlink (or the replacement hyperlink as Cavirin may identify from time to time) as amended from time to time. Company acknowledges that the terms or content in the hyperlink are incorporated in this Agreement by reference and that it is Company’s responsibility to review the terms or content in the hyperlinks referenced in this Agreement.

14.9 **Assignment:** Company may not sublicense, assign or transfer its rights under this Agreement without Cavirin’s prior written consent. Any attempt by Company to sublicense, assign or transfer any of its rights, duties or obligations under this Agreement, whether directly, or indirectly by merger or acquisition, will be null and void.

14.11 **Notice to U.S. Government Users:** The Product is considered “commercial computer software” and “commercial computer software documentation,” under DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Product by the United States Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement.

14.13 **Survival:** The following Sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 5.5 (Termination Obligations), 7 (Confidentiality), 8 (Intellectual Property Rights), 9 (Warranties; Exclusions: Disclaimers), 10 (Limitation of Liability), 11 (Indemnification), 14.5 (Governing Law; Venue), 15 (Definitions and Interpretation) and this Section 14.13 (Survival).

15. DEFINITIONS AND INTERPRETATION

15.1 In this Agreement:

(a) **Affiliate** means any entity that, directly or indirectly, controls, is controlled by, or is under direct or indirect common control with such entity or one or more of the other Affiliates of that entity (or a combination thereof). For the purpose of this definition, an entity controls another entity if and as long as the first entity:

- (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity;
- (ii) can elect a majority of the directors of the other entity; or



(iii) provides day to day management of such entity under contract or as managing general partner.

(b) **Agreement** means this Agreement, the Service Level Agreement, and any materials available on the Cavirin website that are specifically incorporated by reference.

(c) **Business Day** means any day other than a Saturday, Sunday, statutory or public holiday in the place where the Products are provided or the Professional Services are performed.

(d) **Company Data** means any data provided by Company to Cavirin by and through the Product and applicable Support. Company Data may include Personal Data.

(e) **Consequential Damages** means indirect, special, incidental, punitive, exemplary, consequential or extra-contractual damages of any kind, including third-party claims, loss of profits, loss of goodwill, loss of personnel salaries, computer or system failure or malfunction, costs of obtaining substitute Product, work stoppage, denial of access or downtime, system or service disruption or interruption, or any lost, damaged, or stolen data, information or systems as well as the costs of restoring any lost, damaged, or stolen data, information or systems.

(f) **Confidential Information** means any information (regardless of the form of disclosure or the medium used to store or represent it) of a party (**Disclosing Party**), including trade secrets and technical, financial or business information, data, ideas, concepts or know-how, that:

(i) is designated as “confidential” or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or

(ii) the receiving party (Recipient) should reasonably have considered to be confidential under the circumstances surrounding disclosure.

However, Confidential Information does not include any information that:

(i) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;

(ii) is received from a third party without restrictions on its use or disclosure and not by inadvertence or mistake;

(iii) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or

(iv) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.

(g) **Derivative Work** means a work that is based on one or more preexisting works (such as a revision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which preexisting work may be recast, transformed or adapted) which, if created without the authorization of the copyright owner of the preexisting work, would constitute copyright infringement.

(h) **Documentation** means any explanatory materials, such as user manuals, training materials, user guides, product descriptions, regarding the implementation and use of the Product that are provided by Cavirin. Documentation is provided in printed, electronic or online form.

(i) **Force Majeure Event** means any event beyond a party’s reasonable control that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery by Cavirin’s vendors, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, or default of suppliers or sub-contractors.

(j) **Intellectual Property Rights** means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including:



(k) **Malware** means applications, executable code or malicious content that Cavirin considers to be harmful.

(l) **Product** means the software-as-a service Product that Cavirin provides to Company as specified in one or more Purchase Orders and that are subject to the applicable Service Level Agreement.

(m) **Personal Data** means any information relating to an identified or identifiable individual or is otherwise defined as 'Personal Data' under other applicable data protection laws.

(n) **Purchase Order** means any written (electronic or otherwise) confirmation notice that Cavirin issues to Company confirming access to the Product. The Purchase Order identifies, if applicable, the SKU number, quantity, Subscription Period or Support Period, and other access and use details.

(o) **Representatives** means a party's Affiliates, permitted resellers, subcontractors, employees, or authorized agents.

(p) **Service Level Agreement** means the applicable Product-specific terms and conditions for Support located on Cavirin's website, as amended from time to time.

(q) **Standard** means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP and ETSI.

(r) **Subscription Period** means the period for which Company has purchased the right to receive access to the Product or the time period for which Company has purchased the right to receive Support, as applicable.

(s) **Support** means the technical support services that Cavirin provides for the support and maintenance of the Product, as specified in the applicable Service Level Agreement.

(t) **Support Period** means the period for which Company is entitled to Support, as specified in a Purchase Order.

(u) **User** means a unique individual whom Company has authorized to use the Product pursuant to Company's access rights under this Agreement, including Company employees, subcontractors, authorized agents and Managed Parties.

15.2 In this Agreement, unless a contrary intention appears:

(a) a reference to a party includes its executors, administrators, successors and permitted assigns;

(b) headings are for ease of reference only and do not affect the interpretation or meaning of this Agreement;

(c) the singular includes the plural and vice versa and words importing a gender include other genders;

(d) other grammatical forms or parts of speech of defined words or phrases have corresponding meanings;

(e) a reference to a clause, paragraph, exhibit, schedule or other annexure is a reference to a clause or paragraph of or exhibit, schedule or annexure to this Agreement;

(f) the words "include", "including", "such as" and similar expressions are not used as, nor are intended to be, interpreted as words of limitation; and

(g) the meaning of this Agreement will be interpreted based on its entirety and not just on isolated parts.