

## PROFESSIONAL SERVICES TERMS AND CONDITIONS

These Professional Services Terms and Conditions (these “Terms and Conditions”) apply to any quote, order, order acknowledgement, invoice, and any sale, license or delivery of Professional Services by CipherCloud, Inc. (“CipherCloud”) to you (“Customer”). By authorizing CipherCloud to begin the Services, Customer agrees to these Terms and Conditions and CipherCloud’s acceptance and fulfillment of any order for Services are conditioned upon Customer’s acceptance of these Terms and Conditions.

### 1. DEFINITIONS.

**1.1 “CipherCloud IP”** means all CipherCloud proprietary materials, including without limitation CipherCloud’s Confidential Information, Deliverables, any hardware and/or software used by CipherCloud in performing Services, CipherCloud’s processes and methods, and any CipherCloud templates and/or forms, including report and presentation templates and forms.

**1.2 “Confidential Information”** means the non-public information that is exchanged between the parties, provided that such information is: (i) identified as confidential at the time of disclosure by the disclosing party (“Discloser”); or (ii) disclosed under circumstances that would indicate to a reasonable person that the information should be treated as confidential by the party receiving such information (“Recipient”). The terms and conditions of this Agreement, the nature of the discussions and the relationship between the parties, and the terms of any commercial transaction between the parties shall be considered Confidential Information.

**1.3 “Customer-Owned Property”** means any technology, software, algorithms, formulas, techniques or know-how and other tangible and intangible items that were owned by Customer, or developed by or for Customer prior to the effective date of a Statement of Work (the “Effective Date”) that are provided by Customer to CipherCloud for incorporation into or used in connection with the Deliverables or performance of Services.

**1.4 “Deliverables”** means the materials that are created specifically for Customer as a result of the Services provided hereunder, and that are identified as deliverables on a Statement of Work.

**1.5 “Service” or “Services”** means the professional services described in a Statement of Work.

**1.6 “Specifications”** means written specifications set forth in the Statement of Work.

**1.7 “Statement of Work”** means a mutually agreed-upon document executed by both CipherCloud and Customer, describing Services, rates and timelines (if applicable) for those Services, and incorporating these Terms and Conditions.

### 2. SCOPE OF SERVICES.

**2.1 Service and Deliverables.** CipherCloud agrees to perform the Services and provide the Deliverables, if any, as set forth on each Statement of Work. All Statements of Work shall be deemed part of and subject to these Terms and Conditions. Any changes to a Statement of Work must be mutually agreed upon in writing.

**2.2 Hardware and Software Deployment.** If the Services require the installation and use of hardware and/or software, Customer will facilitate the installation thereof and shall provide physical space, electrical power, Internet connectivity and physical access as reasonably determined and communicated by CipherCloud.

**2.3 Modified Orders.** Customer may from time to time desire to modify a Statement of Work. In such case, CipherCloud will prepare an addendum to the Statement of Work or prepare a new Statement of Work which shall be signed by the parties and added to these Terms and Conditions.

### 3. PAYMENT AND EXPENSES.

**3.1 Payment Terms.** Unless otherwise agreed between the parties, all fees set forth in each Statement of Work shall be due and payable within thirty (30) days of date of invoice. Any payment not received from Customer by the due date may accrue (except for amounts then under reasonable and good faith dispute) interest at the rate of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. CipherCloud may decline to provide Services, if in CipherCloud’s reasonable opinion, circumstances exist which raise doubt as to Customer’s ability or willingness to pay as provided herein. Signing a Statement of Work constitutes a binding commitment to pay and is non-cancelable. All fees are non-refundable except as otherwise set forth herein.

**3.2 Invoicing.** Unless otherwise specified in the Statement of Work, CipherCloud shall invoice Customer for Services set forth in any Statement of Work on either: (i) a time and materials basis based on CipherCloud's actual hours worked; or (ii) a fixed price as set forth in an applicable Statement of Work. One day of Service equals eight (8) man hours. Each invoice shall indicate the nature of the work performed and any reasonable expenses incurred by CipherCloud with appropriate receipts and/or documentation, as well as the total amount due.

**3.3 Taxes.** Customer will pay all taxes, including sales, use, personal property, value-added, excise, customs fees, import duties, stamp duties and any other similar taxes and duties, including penalties and interest, imposed by any United States federal, state, provincial or local government entity or any non-US government entity on the transactions contemplated by these Terms and Conditions, excluding taxes based upon CipherCloud's net income.

**3.4 Expenses.** Customer shall reimburse CipherCloud for any and all expenses that fall within one or more of the expense categories set forth in a Statement of Work so long as such expenses are attributable to Services performed under these Terms and Conditions.

#### **4. INTELLECTUAL PROPERTY.**

**4.1 Grant of License.** Subject to Customer's timely payment of applicable fees, and subject to the terms of these Terms and Conditions, Customer shall have a perpetual, non-exclusive, nontransferable, right and license to (unless otherwise set forth in a Statement of Work) use, display and reproduce the Deliverables for its internal business purposes. Deliverables may not be shared with any third party.

**4.2 Intellectual Property Rights.** Customer acknowledges that CipherCloud may use CipherCloud IP to provide the Services, and that Customer may obtain access to certain CipherCloud IP as a result of CipherCloud's performance of its obligations under these Terms and Conditions. CipherCloud IP is and shall remain the sole and exclusive property of CipherCloud and CipherCloud shall retain all right, title and interest in and to the CipherCloud IP and all derivative works thereof.

**4.3 Restrictions.** Customer agrees not to reproduce or modify any portion of the CipherCloud IP, and will not disclose, sell, sublicense or otherwise transfer or make available all or any portion of the CipherCloud IP to any third party without the prior written consent of CipherCloud. Nothing contained in these Terms and Conditions shall directly or indirectly be construed to assign or grant to Customer any right, title or interest in or to the trademarks, copyrights, patents or trade secrets of CipherCloud or any ownership rights in or to the CipherCloud IP. Customer shall not cause or permit the reverse engineering, reverse assembly, or reverse compilation of, or otherwise attempt to derive source code from, the CipherCloud IP. Customer shall not create derivative works based upon all or part of the CipherCloud IP. Customer shall not resell, redistribute or make available CipherCloud IP or the Services to any third party, and shall not use the CipherCloud IP, Services or the Deliverables to provide services to any third party.

**4.4 Customer-Owned Property.** Customer will be and remain, at all times, the sole and exclusive owner of the Customer-Owned Property (including, without limitation, any modification, compilation, derivative work of, and all intellectual property and proprietary rights contained in or pertaining thereto). Customer hereby grants to CipherCloud a perpetual, non-exclusive, nontransferable, right and license under Customer's intellectual property rights in the Customer-Owned Property necessary for CipherCloud to use, make, copy, modify, and create derivative works of the Customer-Owned Property for the limited purpose of developing and testing the Deliverables. CipherCloud will promptly return to Customer all Customer-Owned Property upon the termination or expiration of these Terms and Conditions, or sooner at Customer's request.

**4.5 Customer Responsibilities.** In connection with each Statement of Work, Customer acknowledges that Customer's timely provision of (and CipherCloud's access to) Customer's facilities, equipment, assistance, cooperation, data, information and materials from Customer's officers, agents and employees ("Cooperation") is essential to the performance of the Services, and that CipherCloud shall not be liable for any deficiency in performing the Services if such deficiency results from Customer's failure to provide full Cooperation as required hereunder. Cooperation includes, but is not limited to: (i) designating a project manager or technical lead to interface with CipherCloud during the course of the Services; (ii) allocating and engaging additional resources as may be required to assist CipherCloud in performing the Services; and (iii) making available to CipherCloud any data, information and any other materials required by CipherCloud to perform the Services, including, but not limited to, any data, information or materials specifically identified in the Statement of Work (collectively, "Customer Materials"). Customer will be responsible for ensuring that all such Customer Materials are accurate and complete.

**4.6 Competitive Materials.** These Terms and Conditions shall not preclude CipherCloud from developing materials outside of these Terms and Conditions which are competitive, irrespective of their similarity to materials which might be delivered to Customer pursuant to these Terms and Conditions. Nothing in these Terms and Conditions shall be construed as precluding or limiting in any way the right of CipherCloud to provide consulting, development, or other services of any kind or nature whatsoever to any individual or entity as CipherCloud in its sole discretion deems appropriate.

**4.7 U.S. Government Restricted Rights.** The CipherCloud IP constitutes “commercial items”, “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.2 12, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the CipherCloud IP by the United States Government shall be governed solely by the terms of these Terms and Conditions and shall be prohibited except to the extent expressly permitted by the terms of these Terms and Conditions. The CipherCloud IP was developed fully at private expense.

## **5. SERVICES WARRANTY.**

**5.1 Services Warranty.** CipherCloud warrants that the Services will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of thirty (30) days from the completion of any Services. As Customer’s sole and exclusive remedy and CipherCloud’s entire liability for any breach of the foregoing warranty, CipherCloud will, at its sole option and expense, promptly re-perform any Services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming Services.

**5.2 Disclaimer.** THE ABOVE-STATED LIMITED WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF CONDITION, UNINTERRUPTED USE, ACCURACY, LEVELS OF SERVICE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND CIPHERCLOUD DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

**6. LIMITATION OF LIABILITY.** THE CUMULATIVE LIABILITY OF EACH PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT PAID TO CIPHERCLOUD BY CUSTOMER UNDER THESE TERMS AND CONDITIONS IN THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THESE TERMS AND CONDITIONS HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST REVENUES OR PROFITS, OR OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR THE SERVICES PERFORMED UNDER THESE TERMS AND CONDITIONS, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS OF DAMAGES ARE INDEPENDENT OF THE EXCLUSIVE REMEDY SET FORTH IN SECTION 5.2. THE LIMITATIONS OF LIABILITY CONTAINED IN THESE TERMS AND CONDITIONS WILL APPLY ONLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AND NOTHING IN THESE TERMS AND CONDITIONS PURPORTS TO LIMIT EITHER PARTY’S LIABILITY IN A MANNER THAT WOULD BE UNENFORCEABLE OR VOID AS AGAINST PUBLIC POLICY IN THE APPLICABLE JURISDICTION. THE FOREGOING LIMITATIONS AND EXCLUSIONS WILL NOT APPLY TO EACH PARTY’S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7 (INDEMNIFICATION). The disclaimers, exclusions and limitations of liability set forth in these Terms and Conditions form an essential basis of the bargain between the Parties and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of these Terms and Conditions, including without limitation the economic terms, would be substantially different.

## **7. INDEMNITY.**

**7.1 CipherCloud.** CipherCloud agrees to defend Customer from and against any third party claim that CipherCloud’s provision of the Services infringes any copyright, trade secret or U.S. patent issued as of the Effective Date, and CipherCloud agrees to indemnify Customer from any finally awarded costs and/or damages against Customer in any such infringement claim or action or settlement thereof, provided that: (i) CipherCloud is promptly notified in writing of such claim; (ii) Customer grants CipherCloud sole control of the defense and any related settlement negotiations; and (iii) Customer cooperates with CipherCloud in defense of such claim. CipherCloud shall have no obligation for any alleged infringement that arises from: (a) the combination, operation, or use of the Deliverables or CipherCloud IP with products, services, information, technologies, or processes not furnished or approved by CipherCloud; (b) modifications to the Deliverables or CipherCloud IP not made or authorized by CipherCloud; (c) failure to permit CipherCloud to update the Deliverables or CipherCloud IP; or (d) use of the Deliverables or the CipherCloud IP except in accordance with the express terms of these Terms and Conditions or CipherCloud’s written instructions (the foregoing clauses (a), (b), (c) and (d), collectively, “Customer Indemnity Responsibilities”). Upon the occurrence of a claim for which indemnity is or may be due under this Section, or in the event that CipherCloud believes that such a claim is likely, CipherCloud may, at its option: (1) appropriately modify the Services, the Deliverables and/or the CipherCloud IP so that it becomes non-infringing, or substitute functionally equivalent hardware, software, or services; (2) obtain a license to the applicable third-party intellectual property rights; or (3) terminate these Terms and Conditions on written notice to Customer and refund to Customer a portion of the fees paid by Customer hereunder for the infringing Services, Deliverables, and/or CipherCloud IP, pro-rated on a five (5)-year straight-line basis. The foregoing states the entire liability of CipherCloud and Customer’s sole remedy for any actual or alleged infringement or misappropriation with respect to infringement of any patents, copyrights, trade secrets, or other proprietary rights by the Deliverables, CipherCloud IP, or any part

thereof.

**7.2 Customer.** Customer agrees to indemnify, hold harmless and, at CipherCloud's option, to defend CipherCloud, its officers, directors, employees and agents (each an "Indemnified Party") from and against any losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) incurred by any such Indemnified Party as a result of the Customer Indemnity Responsibilities.

**7.3 Both Parties.** Each party will defend (the "Indemnifying Party") the other party (the "Indemnified Party") against any third party lawsuit or action based on the negligent acts or willful misconduct of its employees or agents, that directly causes bodily injury to persons or tangible or real property, and such property damage or bodily injury directly arises out of performance of these Terms and Conditions. The Indemnifying Party will pay those costs and damages finally awarded (or agreed to in a settlement) against the Indemnified Party in any such suit or action that are specifically attributable to such claim. This Indemnifying Party's obligations are subject to the Indemnified Party giving the Indemnifying Party prompt written notice of the lawsuit or action, sole control of the proceedings or settlement, and reasonable cooperation in the defense or settlement negotiations.

## **8. CONFIDENTIAL INFORMATION.**

**8.1 Maintenance of Confidentiality.** Each party agrees that it shall: (i) take reasonable measures to protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential information of a like nature; (ii) limit disclosure to those persons within Recipient's organization with a need to know and who have previously agreed in writing, prior to receipt of Confidential Information either as a condition of their employment or in order to obtain the Confidential Information, to obligations similar to the provisions hereof; (iii) not copy, reverse engineer, disassemble, create any works from, or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and/or which are provided to the party hereunder; and (iv) comply with and obtain all U.S. export control laws or regulations. Confidential Information shall not be reproduced in any form except as required to accomplish the purposes and intent of these Terms and Conditions. Any reproduction of Confidential Information shall be the property of Discloser and shall contain any and all notices of confidentiality contained on the original.

**8.2 Exceptions.** The parties agree that the foregoing shall not apply to any information that Recipient can evidence: (i) is or becomes publicly known and made generally available through no improper action or inaction of Recipient; (ii) was already in its possession or known by it prior to disclosure by Discloser to Recipient; (iii) is independently developed by Recipient without use of or reference to any Confidential Information; or (iv) was rightfully disclosed to it by a third party Recipient rightfully obtains from a third party. Recipient may make disclosures required by law or court order provided that Recipient: (a) uses diligent efforts to limit disclosure and to obtain confidential treatment or a protective order; (b) has given prompt advance notice to Discloser of such required disclosure; and (c) has allowed Discloser to participate in the proceedings.

**8.3** Each party will retain all right, title and interest to such party's Confidential Information. The parties acknowledge that a violation of the Recipient's obligations with respect to Confidential Information may cause irreparable harm to the Discloser for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Discloser shall be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions hereof.

## **9. TERM AND TERMINATION.**

**9.1 Term.** The term of these Terms and Conditions shall commence as of the Effective Date and continue until terminated pursuant to this Section 9.

**9.2 Termination.** Either Party shall have the right to terminate these Terms and Conditions: (i) upon thirty (30) days' written notice for any reason; or upon fifteen (15) days' written notice in the event that the other Party, or any of its officers, employees or agents, violates any provision of these Terms and Conditions and fails to cure such breach within the fifteen (15) day notice period; or (ii) immediately in the event the other Party: (a) terminates or suspends its business; (b) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute; or (c) becomes insolvent or becomes subject to control by a trustee, receiver or similar authority. Termination of the Agreement shall be in addition to and not in lieu of any other remedies.

**9.3 Statements of Work.** The term of each Statement of Work will be as set forth in that Statement of Work. If no term is expressed in a Statement of Work, then the term of that Statement of Work will begin on the effective date of that Statement of Work (as defined in the Statement of Work) and continue until the Professional Services described in that Statement of Work are complete or the Statement of Work is earlier terminated as set forth herein.

**9.4 Effect of Termination.** Upon termination or other expiration of these Terms and Conditions: (i) Customer shall pay CipherCloud for all unpaid fees and expenses, including those related to Services performed prior to such termination or expiration;

(ii) Customer's license to the Deliverables will immediately terminate. Termination or expiration of these Terms and Conditions will not be deemed a termination or expiration of any Statement of Work in effect as of the date of termination or expiration, and these Terms and Conditions will continue to govern and be effective as to those outstanding Statements of Work until those Statement of Works have expired or terminated by their own terms or as set forth herein. When these Terms and Conditions and all Statement of Work have terminated or expired, then within thirty (30) days after the date when these Terms and Conditions and all Statement of Works have expired, each party will return to the other party or destroy all of such other party's Confidential Information, at such other party's discretion, and upon request provide such other party with an officer's certificate attesting to such return and/or destruction, as appropriate. Any unbilled amounts, including, but not limited to delayed invoicing, will continue to be due and payable as set forth herein.

**9.5 Survival.** The obligations of any party which have been incurred prior to the effective date of termination (including, without limitation, the obligations of Customer under Section 3), and other provisions of these Terms and Conditions which by their nature extend beyond the expiration or termination of these Terms and Conditions, shall continue in full force and effect notwithstanding the expiration or termination of these Terms and Conditions and whether or not an invoice has been rendered with respect thereto. Without limiting the foregoing, termination of these Terms and Conditions shall not relieve Customer of the obligation to pay for Services rendered or goods provided prior to such termination.

**10. INDEPENDENT CONTRACTOR.** CipherCloud's relationship with Customer during the term of these Terms and Conditions will be that of an independent contractor. Neither party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other. Nothing in these Terms and Conditions shall be deemed to create any agency, partnership or joint venture relationship between the parties. Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party's activities or those of its employees or agents in the performance of these Terms and Conditions.

## **11. EXPORT CONTROL; ANTI-CORRUPTION.**

**11.1 Export Control.** Customer represents and warrants that it shall comply with all laws and regulations applicable to Customer with respect to the purchase and use of the Deliverables. Customer further acknowledges and agrees that the Deliverables purchased, and licensed, under these Terms and Conditions may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Customer agrees to comply with all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically, Customer covenants that it shall not -- directly or indirectly -- sell, export, reexport, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from CipherCloud under these Terms and Conditions to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. These prohibitions include, but are not limited to the following: (i) the Deliverables cannot be exported or re-exported to any countries embargoes by the United States (currently including Cuba, Iran, North Korea, Sudan or Syria) which includes nationals of these countries employed by Customer; (ii) the Deliverables cannot be exported or re-exported for military use in country group 'b' prior to valid 'export license' or valid 'license exception'; (iii) engineers cannot have access to CipherCloud's proprietary encryption source code; and (iv) the Deliverables cannot be used for any prohibited end uses including any 'nuclear, biological or chemical weapon related activities'. Customer agrees to notify CipherCloud of any suspicious activities by any employee related to the Deliverables. Customer agrees to indemnify, to the fullest extent permitted by law, CipherCloud from and against any fines or penalties that may arise as a result of Customer's breach of this provision. This export control clause shall survive termination or cancellation of these Terms and Conditions.

**11.2 Anticorruption Laws.** Customer acknowledges that it is familiar with and understands the provisions of the U.S. Foreign Corrupt Practices Act (the "FCPA") and the U.K. Bribery Act of 2010 ("UKBA") and agrees to comply with its terms as well as any provisions of local law related thereto. Customer further understands the provisions relating to the FCPA and UKBA's prohibitions regarding the payment or giving of anything of value, including but not limited to payments, gifts, travel, entertainment and meals, either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in his or her official capacity or inducing the official to use his or her party's influence with that government, to obtain or retain business involving the Deliverables. Customer agrees to not violate or knowingly let anyone violate the FCPA or UKBA, and Customer agrees that no payment it makes will constitute a bribe, influence payment, kickback, rebate, or other payment that violates the FCPA, the UKBA, or any other applicable anticorruption or antibribery law.

## **12. MISCELLANEOUS.**

**12.1 Governing Law.** These Terms and Conditions, and any and all actions arising from or in any manner affecting the interpretation of these Terms and Conditions, shall be governed by, and construed solely in accordance with, the laws of the State of

California, without giving effect to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in Santa Clara County, California for any action permitted under this Section, challenge to this Section, or judgment upon the award entered. The United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transactions Act (UCITA), or any similar federal laws or regulations enacted, to the extent allowed by law shall not apply to these Terms and Conditions.

**12.2 Compliance.** The parties shall comply with all provisions of any applicable laws, regulations, rules, or orders relating to the rights granted herein and to the testing, production, transport, export, re-export, packaging, labeling, distribution, sale or other use of the Software, Support, Professional Services or as otherwise applicable to a party's activities hereunder.

**12.3 Assignment.** Customer may not assign these Terms and Conditions (whether expressly, by implication, or by operation of law, including in connection with any merger or sale of assets or business), or delegate its performance under these Terms and Conditions (either in whole or in part), to any third party without obtaining CipherCloud's prior written consent. CipherCloud may assign these Terms and Conditions or any rights granted herein. Any purported transfer, assignment, or delegation in violation of this Section shall be null and void when attempted and of no force or effect. Subject to the foregoing, these Terms and Conditions shall bind and inure to the benefit of the successors and permitted assigns of CipherCloud and Customer.

**12.4 Notices.** All notices required to be sent hereunder shall be in writing, addressed to receiving party's current business contact, if known, with a cc: to the Legal Department of the receiving party, and sent to the party's address of record, or as updated by either party by written notice. Notices shall be effective upon receipt and shall be deemed to be received as follows: (i) if personally delivered by courier, when delivered; or (ii) if mailed by first class mail, or the local equivalent, on the fifth business day after posting with the proper address.

**12.5 Waivers; Amendment.** No waiver of any terms or conditions of these Terms and Conditions shall be valid or binding on a party unless such party makes the waiver in hardcopy writing signed by an authorized representative of that party. The failure of one party to enforce any of the provisions of these Terms and Conditions, or the failure to require at any time the performance of the other party of any of the provisions of these Terms and Conditions, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a party to enforce each and every provision thereafter. These Terms and Conditions may not be altered, amended, modified, or otherwise changed in any way except by a hardcopy written instrument signed by the authorized representatives of each party.

**12.6 Severability.** If any provision of these Terms and Conditions is found or held to be invalid or unenforceable by any tribunal of competent jurisdiction, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of these Terms and Conditions, which shall remain in full force and effect.

**12.7 Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under these Terms and Conditions (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of these Terms and Conditions and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

**12.8 Headings; Language.** All headings used herein are for convenience of reference only and will they in any way affect the interpretation hereof. The English language version of these Terms and Conditions controls. These Terms and Conditions, and any associated documentation, shall be written and signed in English.

**12.9 Entire Agreement.** These Terms and Conditions (including any exhibits, accepted purchase orders and any amendments hereto) contains the entire agreement of the parties with respect to the subject matter of these Terms and Conditions and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. CipherCloud does not accept, expressly or impliedly and CipherCloud hereby rejects and deems deleted any additional or different terms or conditions that Customer presents, including, but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgement, or other document, or established by trade usage or prior course of dealing. These Terms and Conditions may be amended only in writing signed by authorized representatives of both parties.

**12.10 Customer Reference Program.** Customer agrees to participate in CipherCloud's Customer Reference Program ("Program"). Participation in Program activities is at the sole discretion of Customer and Customer shall comply with the terms and conditions of the Program.

**12.11 Non-Solicitation.** During the term of these Terms and Conditions, and for a period of one (1) year after completion of the most recent Deliverable, Customer will not solicit or encourage any of CipherCloud's employees to work elsewhere and Customer

will not directly or indirectly hire or retain the services of any of CipherCloud's employees without the prior written consent of CipherCloud. In the event that Customer violates this provision, Customer will immediately remit to CipherCloud an employment fee equal to fifty percent (50%) of the employee's starting salary.

**12.12 Security Clearance.** Customer shall provide the necessary security specifications and/or DD254 to CipherCloud if security resources are required.

**12.13 Third Party Rights.** Other than as expressly set out in these Terms and Conditions, these Terms and Conditions does not create any rights for any person who is not a party to it and no person who is not a party to these Terms and Conditions may enforce any of its terms or rely on any exclusion or limitation contained in it.