



## SOFTWARE AS A SERVICE TERMS AND CONDITIONS

These Software-as-a-Service Terms and Conditions, together with Purchase Order(s) (collectively, the “**Agreement**”) are entered into by Fidelis Cybersecurity, Inc. (“**Fidelis**”) and the entity listed as the “**Subscriber**” in the Purchase Order. This Agreement is entered into as of the Effective Date set forth on the Purchase Order and governs the relationship between the parties with respect to Subscriber’s use of the Services ordered pursuant to the Purchase Order.

**1. DEFINITIONS.** Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

**1.1 “Access Protocols”** means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Subscriber to access the Services.

**1.2 “Agent Software”** is software provided by Fidelis that Subscriber installs on Subscriber assets (e.g., servers, workstations, laptops, etc.) to allow for monitoring, collection, and delivery of Customer Data or Event Data in connection with the Services.

**1.3 “Authorized Reseller”** means any authorized reseller of the Services who has entered into a reseller agreement with Fidelis, and validly sells Subscriber one (1) or more licenses to specific Services, subject to the terms and conditions of this Agreement.

**1.4 “Authorized User”** means any individual who is an employee or contractor of Subscriber and is authorized by Subscriber to access the Services pursuant to Subscriber’s rights under this Agreement.

**1.5 “Confidential Information”** means all proprietary or confidential information relating to either party that is disclosed or otherwise supplied in confidence by the disclosing party to the receiving party under this Agreement. Confidential Information does not include any information that the receiving party can establish: (i) was known to the receiving party prior to receiving the same from the disclosing party, free of any restrictions; (ii) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information; (iii) is acquired by the receiving party from another source without restriction as to use or disclosure; or (iv) is or becomes part of the public domain through no fault or action of the receiving party.

**1.6 “Documentation”** means the technical materials provided by Fidelis to Subscriber in hard copy or electronic form describing the use and operation of the Services.

**1.7 “Error”** means a reproducible failure of the Services to substantially conform to the Documentation.

**1.8 “Error Corrections”** means bug fixes or workarounds intended to correct Errors in the Services.

**1.9 “Event Data”** means alerts and events, session data and content, executable objects (e.g., files, office macros, and URL and web objects), and network metadata, system health statistics captured by Hardware used in connection with this Agreement.

**1.10 “Hardware”** means the sensor hardware or virtual appliances provided by Fidelis that Subscriber attaches to its networks, to allow for monitoring, collection and delivery of Customer Data in connection with the Services.

**1.11 “Purchase Order”** means a purchase order submitted to and accepted by Fidelis, between Fidelis and Subscriber or Fidelis and an Authorized Reseller on behalf of Subscriber.

**1.12 “Services”** means the services ordered by Subscriber through an Purchase Order, including any Hardware necessary for the performance of such services.

**1.13 “Customer Data”** means any content, data and information submitted by or on behalf of Subscriber to the Services, including any Event Data.

**1.14 “Supported Environment”** means the minimum hardware, software, and connectivity configuration specified from time to time by Fidelis as required for use of the Services. The current requirements (if any) are described in the Purchase Order.

## 2. PROVISION OF SERVICES

**2.1 Access.** Subject to Subscriber’s payment of the Fees and compliance with the terms of this Agreement, Fidelis will provide Subscriber with access to and use of the Services. As soon as reasonably practicable after the Effective Date, Fidelis or the Authorized Reseller shall provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the Services in accordance with the Access Protocols.

**2.2 Support Services.** Fidelis will provide Subscriber with the support services in accordance with the terms of its Maintenance and Support Agreement,

available at <https://www.fidelissecurity.com/maintenance-and-support-agreement>, which may be updated from time to time (“Support and Maintenance Agreement”).

**2.3 Service Level Agreement.** Fidelis will use commercially reasonable efforts to keep the Services operational and available to Subscriber in accordance with the Service Level Agreement available at [https://www.fidelissecurity.com/sites/default/files/Fidelis-SLA\\_Cloud\\_v1\\_2FNCFEC.pdf](https://www.fidelissecurity.com/sites/default/files/Fidelis-SLA_Cloud_v1_2FNCFEC.pdf), which may be updated from time to time.

**2.4 Hardware.** Fidelis shall directly, or through the Authorized Reseller, deliver to Subscriber the Hardware to be used in connection with the Services. Subject to Subscriber’s compliance with the terms and conditions of this Agreement, Subscriber shall be entitled to possession of the Hardware during the Term. Subscriber shall be responsible for attaching the Hardware to its networks. Subscriber acknowledges and agrees that the Hardware contains valuable computer software that is owned by, or licensed to, Fidelis and that enables Fidelis to provide the Services. Subscriber has no right to access or use such software, except as necessary for the Services. In the event that the Hardware becomes damaged or is not functioning properly (through no fault of Subscriber), Fidelis will repair or replace the Hardware. Fidelis reserves the right to charge a replacement or repair fee in accordance with its then-current support terms.

### 3. INTELLECTUAL PROPERTY

**3.1 License Grant.** Subject to the terms and conditions of this Agreement, Fidelis grants to Subscriber a non-exclusive, non-sublicensable, non-transferable (except as permitted under Section 13) license during the Term, solely for Subscriber’s internal business purposes and in accordance with the limitations (if any) set forth in the Purchase Order, (a) to access and use the Services and in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Subscriber’s use of the Services.

**3.2 Restrictions.** Subscriber agrees that it will not, and will not permit any Authorized User or other party to: (a) allow any third party to access the Services or Documentation, except as expressly allowed herein; (b) modify, adapt, alter or translate the Services or Documentation; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the Services or Documentation for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services, except as permitted by law; or (e) create derivative works based on the Services or Documentation. Services include 1TB of outbound data transfer per month

at no charge. Outbound data transfer includes Access Protocols, Event Data, Customer Data, or other data and network traffic that leaves the Services outbound towards the Internet in general, including Subscriber networks and to include traffic encapsulated in tunnels or VPNs connected to Subscriber. Additional outbound data transfer over and above 1TB may incur additional fees

**3.3 Ownership.** Except for the licenses granted by Fidelis under this Agreement, Fidelis owns all right, title and interest (including, but not limited to, all copyright and patent rights) in the Services and Documentation.

**3.4 Open Source Software.** Certain items of software may be provided to Subscriber with the Services and are subject to “open source” or “free software” licenses (“**Open Source Software**”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Section 3.1 or Section 10. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Subscriber’s rights under, or grants Subscriber rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Fidelis makes such Open Source Software, and Fidelis’ modifications to that Open Source Software, available by written request at the notice address specified on the Purchase Order.

### 4. FEES

Subscriber shall pay the fees set forth in the Purchase Order in accordance with the terms set forth thereon (the “Fees”). Fidelis or the Authorized Reseller may increase or otherwise change the amount of the Fees for any upcoming Renewal Term, provided that Fidelis or the Authorized Reseller, as applicable, provides Subscriber with written notice of such change at least sixty (60) days prior to the first day of such Renewal Term. Unless otherwise stated in the Purchase Order, Fidelis or the Authorized Reseller will invoice Subscriber for the Fees monthly in advance and all undisputed amounts payable shall be due thirty (30) days from the date of invoice. Non-payment or late payment of undisputed fees is a material breach of this Agreement. If any amount is past due more than thirty (30) days and Fidelis or the Authorized Reseller has notified Subscriber of such past due status, Subscriber shall pay interest on the overdue balance at the rate of 1% per month or the maximum permitted by law, whichever is less, plus all expenses of collection. All taxes and other governmental charges (except for income taxes), if any, imposed on Subscriber payments hereunder shall be deemed to be in addition to the Fees charged, and borne solely by Subscriber. Outbound data transfer in excess of those included with Services will incur additional fees and

costs. Subscriber agrees that Fidelis may invoice Subscriber for any overages, with amount due (30) days from the date of invoice.

## **5. CUSTOMER DATA AND RESPONSIBILITIES**

**5.1 License; Ownership.** Subscriber hereby grants Fidelis a non-exclusive, worldwide, royalty-free and fully-paid license (a) to use the Customer Data as necessary for purposes of providing the Services; and (b) to use the Subscriber's trademarks, service marks, and logos as required to provide the Services. As between the parties, Subscriber owns all right, title and interest in the Customer Data.

**5.2 Authorized Users Access to Services.** Subscriber may permit any Authorized Users to access and use the features and functions of the Services as contemplated by this Agreement. User IDs cannot be shared or used by more than one Authorized User at a time. Subscriber is solely responsible for maintaining the confidentiality of log-in accounts and passwords, and credentials and Fidelis will not be liable for any activities undertaken by anyone using Subscriber's log-in accounts, passwords or credentials. Subscriber will immediately notify Fidelis of any unauthorized use of its log-in account, password or credentials or any other breach of security relating to the Services known to Subscriber.

## **6. WARRANTIES AND DISCLAIMERS**

**6.1 Limited Warranty.** Fidelis represents and warrants to Subscriber that the Services will operate free from Errors during the Term. Provided that Subscriber notifies Fidelis in writing of any breach of the foregoing warranty during the Term, Fidelis shall, as Subscriber's sole and exclusive remedy, provide the support set forth in the Support and Maintenance Agreement.

**6.2 Disclaimer.** THE LIMITED WARRANTY SET FORTH IN SECTION 6.1 IS MADE FOR THE BENEFIT OF SUBSCRIBER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, THE DOCUMENTATION, AND SERVICES (INCLUDING ANY HARDWARE) ARE PROVIDED "AS IS," AND FIDELIS MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. FIDELIS DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES AND

JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

## **7. LIMITATION OF LIABILITY**

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS PERFORMANCE HEREUNDER. IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER AS A RESULT OF ANY CLAIM ARISING UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY SUBSCRIBER IN THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE ACT OR OMISSION GIVING RISE TO SUCH CLAIM. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO SUBSCRIBER.

## **8. CONFIDENTIALITY; PRIVACY**

**8.1 Confidentiality.** During the Term, each party (the "Disclosing Party") may provide the other party (the "Receiving Party") with Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Disclosing Party's Confidential Information to Authorized Users (with respect to Subscriber) or to those employees who have a need to know such Confidential Information to perform the Receiving Party's obligations or exercise the Receiving Party's rights under this Agreement, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

## 9. INDEMNIFICATION

**9.1 By Fidelis.** Fidelis shall defend Subscriber against any third-party claims that the use of the Services as permitted hereunder infringes any copyright, patent or other intellectual property right of a third party, and Fidelis shall pay any losses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) finally awarded by a court to such third party or otherwise agreed to in settlement of such claim by Fidelis. If any portion of the Services becomes, or in Fidelis' opinion is likely to become, the subject of a claim of infringement, Fidelis may, at Fidelis' option: (a) procure for Subscriber the right to continue using the Services; (b) replace the Services with non-infringing software or services which do not materially impair the functionality of the Services; (c) modify the Services so that the Services become non-infringing; or (d) terminate this Agreement and refund any fees paid by Subscriber to Fidelis for the remainder of the term then in effect, and upon such termination, Subscriber will immediately cease all use of the Documentation and Services. Notwithstanding the foregoing, Fidelis shall have no obligation under this Section 9.1 or otherwise with respect to any infringement claim based upon (w) any use of the Services not in accordance with this Agreement or as specified in the Documentation; (x) any use of the Services in combination with other products, equipment, software or data not supplied by Fidelis; or (y) any modification of the Services by any person other than Fidelis or its authorized agents. This Section 9.1 states the sole and exclusive remedy of Subscriber and the entire liability of Fidelis, and any of the officers, directors, employees, shareholders, contractors or representatives of Fidelis, for claims and actions described in this Section 9.1.

**9.2 By Subscriber.** Subscriber shall defend Fidelis and the Authorized Reseller against any third-party claims arising out of Subscriber's breach or alleged breach of any of its representations or warranties under this Agreement, and Subscriber shall pay any losses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) finally awarded by a court to such third party or otherwise agreed to in settlement of such claim by Subscriber.

**9.3 Procedure.** The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit, provided, however, that failure to give prompt notice will not relieve the indemnifying party of any liability hereunder (except to the extent the indemnifying party has suffered actual material prejudice by such failure); (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall (at the indemnifying party's expense) reasonably

cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

## 10. TERM AND TERMINATION

**10.1 Term.** This Agreement commences on the Effective Date. The initial term of the Services shall commence on the date which Fidelis or the Authorized Reseller emails Subscriber that the Services are ready for connections, and shall continue for the period of time specified in the Purchase Order (the "Initial Term") unless earlier terminated under Section 10.2. Following the Initial Term, this Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term") unless either party provides written notice to the other of its intention not to renew at least thirty (30) days prior to the expiration of the then-current term. The Initial Term and the Renewal Terms (if any) are, collectively, the "Term."

**10.2 Termination.** Either party may terminate this Agreement immediately upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within (30) days after its receipt of written notice of such breach.

**10.3 Effect of Termination.** Immediately upon termination of this Agreement, (a) the licenses granted to either party shall immediately terminate; and (b) Subscriber shall cease to use the Services and Fidelis shall cease hosting the Services for access by Subscriber. Termination shall not relieve Subscriber's obligation to pay all undisputed charges accrued before the effective date of termination. Sections 3.3, 5.3, 6, 7, 8, 9, 10.3, 12 and 13 will survive the expiration or termination of this Agreement.

## 11. PUBLICITY

If requested by Fidelis, Subscriber agrees to cooperate in good faith with Fidelis on a press release following execution of this Agreement and agrees to allow Fidelis to list (using Subscriber's name and/or Subscriber's logo, as determined by Fidelis) Subscriber as a customer on Fidelis' website.

## **12. GOVERNING LAW AND VENUE**

This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Delaware without reference to conflicts of laws principles. Each party expressly waives any objection that it may have based on improper venue or forum non-conveniens to the conduct of any such suit or action in any such court. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Subscriber shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its use of the Services hereunder.

## **13. MISCELLANEOUS**

The parties are independent contractors and nothing in this Agreement shall be deemed to create the relationship of partners, joint venturers, employer-employee, master-servant, or franchisor-franchisee between the parties. Neither party is, or will hold itself out to be, an agent of the other party. Neither party is authorized to enter into any contractual commitment on behalf of the other party. This Agreement, together with the Purchase Order(s) which reference this Agreement, contains the entire agreement of the parties and supersedes any prior or present understanding or communications regarding its subject matter, and may only be amended in a writing signed by both parties. In the event of a conflict between the terms in the Purchase Order and the Agreement, the terms contained in this Agreement shall control unless otherwise expressly stated in the Purchase Order. In the event any provision of this Agreement is held by a court of law or other governmental agency to be void or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions shall remain in full force and effect. Neither party shall assign this Agreement without the other party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement to its successor pursuant to a merger, consolidation or sale of substantially all of its assets related to this Agreement, provided it promptly notifies the non-assigning party in writing of the assignment and the assignee agrees in writing to be bound by the terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Neither party shall be deemed to be in breach of this Agreement for any failure or delay in performance (other than payment of Fees due hereunder) caused by reasons beyond its reasonable control, including, but not limited to, acts of God, war, terrorism, strikes, failure of suppliers, fires, floods or earthquakes. The use of the Services is subject to U.S. export control laws and may be subject to similar regulations in other countries. Subscriber agrees to comply with all such laws. Any

notice given under this Agreement shall be in writing and shall be effective (i) upon receipt if (a) delivered by hand or (b) sent via overnight mail by a nationally recognized express delivery service; or (ii) three (3) days after deposit in the U.S. mails, postage prepaid, certified mail return receipt requested, when addressed to the address set forth below (or to such other address that a party may specify in a notice given under this Section 13. There are no third-party beneficiaries to this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which shall be taken together and deemed one instrument.

