



TERMS OF USE FOR ALERT LOGIC SERVICES (AWS MARKETPLACE PLATFORM)

ABOUT THIS AGREEMENT

These Terms of Use (this "**Agreement**") set forth the terms and conditions governing the delivery and use of "**Services**" by and between Alert Logic, Inc. ("**Alert Logic**") and the organization listed ("**Customer**") on any transactional record such as a written quote or a web order form that references this Agreement by name or by the URL to which this Agreement is posted (each, a "**Confirmation**").

Alert Logic will provide Customer with the Services identified on the Confirmation in accordance with the Confirmation and this Agreement. However, Alert Logic and Customer agree that this Agreement and any associated Confirmations together constitute a "**Offer**" via Amazon Web Services, Inc. ("**AWS**"). For clarity, AWS is responsible for collecting and processing payments, as well as any credits and refunds associated with this Agreement, but the terms of use and access pertaining to the Services are only those contained herein and in the Confirmation(s).

Unless otherwise noted on a Confirmation, this Agreement is binding on Alert Logic and Customer as of the earlier of: (i) the date of Customer's signature on a written Confirmation or the date on which Customer indicates acceptance of the Agreement via a web form used as a Confirmation; and (ii) the date that Customer first accesses or uses the Services ("**Effective Date**").

CUSTOMER IS RESPONSIBLE FOR CAREFULLY READING THIS AGREEMENT BEFORE ACCESSING OR USING ANY ALERT LOGIC SERVICE. THIS AGREEMENT DEFINES THE PARTIES' RIGHTS AND OBLIGATIONS PERTAINING TO THE SERVICES, AND CUSTOMER SHOULD ENSURE THAT CUSTOMER UNDERSTANDS THE LEGAL COMMITMENTS CONTAINED HEREIN. ALERT LOGIC'S OFFER TO PROVIDE CUSTOMER WITH SERVICES IS EXPRESSLY CONDITIONED ON CUSTOMER'S FREE AND VOLUNTARY ASSENT TO THIS AGREEMENT.

AGREEMENT

Now therefore, in exchange for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1 – SERVICES

1.1 Services; Warranty. Alert Logic warrants and represents that the Services will perform materially as described here: www.alertlogic.com/docs/Alert_Logic_Solution_Description.pdf ("**Documentation**"). Some Services are subject to performance targets ("**Service Levels**") and/or Support Services ("**Support**"). Support and Service Levels descriptions are listed in the "Additional Resources" section of the AWS Marketplace. Alert Logic will use commercially reasonable efforts to provide the applicable Services in accordance with such descriptions. The Services may include professional services, and for purposes of this Agreement, these are incorporated into the Services.

1.2 License. Subject to the terms of this Agreement and any Confirmation, for so long as this Agreement is effective, Alert Logic grants Customer a non-transferable, non-exclusive, limited license to access and use the Services solely for Customer's internal business use within an AWS environment that Customer has licensed from AWS. This Agreement is limited to Alert Logic's Services only and does not itself convey to Customer any right to use any intellectual property owned or operated by AWS.

1.3 Customer Activities.

(a) Support. When requesting Support, Customer agrees to: (i) follow Alert Logic's procedures; and (ii) provide Alert Logic with reasonable access to knowledgeable personnel to answer questions and/or resolve problems. To be eligible to receive Support, Customer must: (i) promptly implement all reasonable updates and error corrections provided by Alert Logic; and (ii) maintain Alert Logic supported versions of required third party (including AWS) hardware and software.

(b) Customer Contacts. Customer shall designate a reasonable number of individuals to serve as contacts between Customer and Alert Logic ("**Customer Contacts**") and shall keep Alert Logic informed as to any changes in the names or contact information for the Customer Contacts. Customer Contacts shall be adequately trained on the Services and shall be knowledgeable regarding Customer's information technology systems. Customer will ensure that information provided by Customer to Alert Logic regarding Customer's information technology systems is accurate and complete.

(c) Responsibilities. Customer shall: (i) be solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all data that Customer transmits to or processes through the Services ("**Customer Data**"); (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services and the Credentials; (iii) notify Alert Logic immediately of unauthorized use of the Credentials or the Services or a security breach; (iv) comply with all applicable laws, regulations and guidelines (including laws regarding privacy and protection of personal data) in using the Services; (v) at Customer's expense, obtain all hardware and software needed to access the Services and pay all access charges (for example, Internet fees and AWS fees) incurred in connection



with Customer's use of the Services.

(d) Access. Customer will be provided with specific user identification and password combinations ("**Credentials**") solely for use by Customer's employees and agents (each, a "**Permitted User**") to access the Services as well as to access and download Customer Data. Customer is solely responsible for the acts or omissions of any user or Permitted User who obtains access to the Services through Customer or Customer's systems.

1.4 Pilot Program. If Services are made available to Customer on a trial basis, then Alert Logic will make the Services available for sixty days only, unless otherwise indicated on the Confirmation ("**Pilot Program**"). ANY CUSTOMER DATA ENTERED INTO THE SERVICES AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER DURING THE PILOT PROGRAM WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SERVICES INCLUDED IN THE PILOT PROGRAM PRIOR TO ITS CONCLUSION. DURING A PILOT PROGRAM, NOTWITHSTANDING ANY TERM TO THE CONTRARY IN THIS AGREEMENT: (I) SERVICES ARE PROVIDED "AS-IS" AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTY; (II) ALERT LOGIC'S LIABILITY IS LIMITED TO \$100 USD; AND (III) THE SERVICE LEVELS ARE NOT APPLICABLE.

SECTION 2 –TERM; TERMINATION.

2.1 Term. This Agreement begins on the Effective Date and shall continue until it terminates or expires in accordance with this Section 2. Unless otherwise specified on a Confirmation, the **Subscription Term** for the Services begins forty-five days after the Effective Date or on the date that Alert Logic establishes communications with Customer's network or with any of Customer's devices, whichever is earlier. The Subscription Term is then in effect for the number of months noted on the Confirmation. For clarity, if a Subscription Term is twelve months long, then there are twelve billable monthly periods in that Subscription Term. All payments will be made via the AWS Marketplace in U.S. Dollars. This Agreement and its associated Confirmation(s) have concurrent terms.

2.2 Termination.

(a) Breach. Either party may terminate this Agreement immediately on giving written notice to the other party if the other party commits a material breach of this Agreement and has not cured such breach within thirty days of its receipt of written notice of the breach; however Alert Logic may terminate this Agreement if Customer fails to pay fees in a timely manner and has not cured such non-payment within fifteen days of its receipt of written notice.

(b) Bankruptcy. Either party may terminate this Agreement immediately on giving written notice to the other party if the other party: (i) becomes insolvent, (ii) is generally unable to pay, or fails to pay, its debts as they become due, (iii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy pursuant to any insolvency law, (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.

(c) Changes to Services. The features of the Service (including the terms of any applicable Service Level or Support) are subject to change and Alert Logic may effect such changes at will. If such changes result in a material degradation of the Services, then Customer may provide written notice to Alert Logic including a description of the degradation. If the identified material degradation is not corrected by Alert Logic within thirty days of Alert Logic's receipt of such notice, then Customer may terminate this Agreement and any applicable Confirmation without further obligation and Alert Logic will promptly refund to Customer any pre-paid and unused fees. Customer's remedy for changes to the features of the Services are solely those specified in this Section 2.2(c).

SECTION 3 – INTELLECTUAL PROPERTY

3.1 Ownership. All right, title and interest in and to the Services, the Documentation, Alert Logic's Confidential Information, all methodologies, techniques, designs, processes, and any other tangible or intangible technical material or information used or provided by Alert Logic, and all intellectual property rights in and to the foregoing (cumulatively, the "**Alert Logic Technology**") remains solely with Alert Logic. Other than as expressly set forth in this Agreement, no license or other rights in or to the Services or any Alert Logic Technology are granted to Customer, and all such licenses and rights are hereby expressly reserved.

3.2 General Skills and Knowledge. Notwithstanding anything to the contrary in this Agreement, Alert Logic will not be prohibited or enjoined from freely utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including, without limitation, integration work, publicly available information, or information that could reasonably be acquired via similar work performed for another customer. In addition, Alert Logic shall have the right to use Aggregate Information for research and marketing and to develop, deliver, and provide the Services. "**Aggregate Information**" means any information or data derived from Customer Data or Customer's access to or use of the Services that does not include personally identifiable information (i.e., information that can be used to distinguish or trace an individual's identity) and cannot be used, alone or in conjunction with other information, to identify any specific person.



3.3 Open Source Software. Certain components of the Services may include open source security management tools, utilities, or other open source software. Alert Logic disclaims all copyright interest in such open source software. Any license associated with open source software applies only to that open source software and not to the Services.

3.4 Feedback. Customer may, from time to time, provide suggestions, techniques, know-how, or other feedback to Alert Logic with respect to the Alert Logic Technology (collectively, “**Suggestions**”). Each Suggestion is and shall be given entirely voluntarily. Alert Logic shall be free to use, disclose, reproduce, license, or otherwise distribute and exploit any Suggestion as it sees fit, entirely without obligation or restriction of any kind.

SECTION 4 – CONFIDENTIAL INFORMATION

4.1 Nondisclosure of Confidential Information. Each party (the “**Disclosing Party**”) may provide the other party (the “**Receiving Party**”) with confidential information concerning the Disclosing Party's business, plans, customers, technology, products, or services (“**Confidential Information**”). Confidential Information includes this Agreement and all Confirmations, and also includes all information exchanged between the parties in tangible or intangible form that: (i) is marked or designated as confidential at the time of disclosure; or (ii) a reasonable person should consider to be confidential given the nature of the information and/or the context of disclosure. For the avoidance of doubt, Alert Logic Technology is Confidential Information of Alert Logic, and Customer Data is Confidential Information of Customer. 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 by this Agreement, provided that Receiving Party may disclose Confidential Information of Disclosing Party to its directors, officers, employees and subcontractors (collectively, “**Representatives**”) who have a bona fide need to know such Confidential Information for the purposes of this Agreement, provided that each such Representative is subject to obligations of confidentiality and non-use no less restrictive than those set forth in this Agreement. Receiving Party will be responsible for any breach of this Section 4 by its Representatives. Receiving Party will take reasonable precautions to protect the confidentiality of Disclosing Party's Confidential Information, which precautions will be at least as stringent as the measures that Receiving Party takes to protect its own Confidential Information and in any case no less than reasonable care.

4.2 Exceptions. Confidential Information does not include information that: (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; (iv) is independently developed by the Receiving Party not in reliance upon, use of, or knowledge of the Confidential Information and without breach of this Agreement; or (v) is a Suggestion. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the disclosure.

4.3 Remedies. If Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information in breach of this Section 4, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that other remedies may be inadequate.

4.4 Return; Destruction. Receiving Party will, within thirty days of receiving a written request, return or destroy Disclosing Party's Confidential Information in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirements, provided that Customer Data received in the performance of Alert Logic's Services will be destroyed in accordance with Alert Logic's standard policies as described in the Documentation.

SECTION 5 – DATA PRIVACY AND DATA PROTECTION

5.1 Security. Alert Logic will maintain appropriate administrative, physical, and technical safeguards to maintain the integrity, confidentiality and integrity of Customer Data, as described in the Documentation.

5.2 Sensitive Data. For purposes of this Agreement, **Sensitive Data** is data that requires special protection by law or regulation, such as data that is subject to data privacy or data protection laws or regulations, is classified government information, directly or indirectly identifies an individual, is or contains personal health information, or is subject to PCI, the Gramm Leach Bliley Act, HIPAA, CCPA, the UK Data Protection Act 2018, or the GDPR. Customer will not transmit any system logs or log data to Alert Logic that contain Sensitive Data. Any Sensitive Data transmitted to an intrusion detection system provided by Alert Logic to Customer as part of the Services must be encrypted in accordance with good practice, and any encryption keys provided to Alert Logic must be configured such that only the end points can be decrypted by Alert Logic and the Sensitive Data remains encrypted. Alert Logic assumes no responsibility to interpret or segment Customer Data based upon its contents or characteristics, and reserves the right to delete any decrypted Sensitive Data



that is transmitted to the Service of which Alert Logic becomes aware, with advance notice to Customer.

5.3 Data Privacy and User Data. To the extent that Alert Logic processes **Personal Data** (as defined by applicable law) in the course of providing Services hereunder: (i) the parties each agree to Alert Logic's Data Processing Agreement located at <https://www.alertlogic.com/docs/Alert-Logic-Inc-Data-Protection-Agreement.pdf> (the "DPA") and further agree that the terms of the DPA are incorporated into this Agreement by reference whether or not a copy of the DPA is signed by Customer. Customer represents and warrants that: (i) Customer has obtained all permissions and rights and provided all notices necessary to permit Alert Logic to legally process Customer Data, including, without limitation, data from endpoints, servers, cloud applications and logs; and (ii) in transferring Customer Data to Alert Logic, Customer has not violated any laws, regulations or any rights of a third party.

SECTION 6 –DISCLAIMER

6.1 Security Vulnerability Services. Some components of the Services include functionality to scan and evaluate the security of Customer's systems and/or network devices. Customer acknowledges and agrees that scanning IP addresses and/or domain names on these systems or network devices may expose vulnerabilities and/or cause disruption of Customer's operations, systems, or the functioning of equipment, and may cause loss of Customer Data or other information. Customer will back-up all Customer Data or other information on any system or device on which Customer intends to conduct vulnerability scanning.

6.2 No Other Warranty. Alert Logic takes no responsibility for and makes no warranty as regards any technology or service provided to Customer by AWS. The Service warranty in Section 1.1 does not apply to the extent a failure to meet the warranty is caused by: (i) the interoperability of specific Customer applications or equipment with the Services unless such use is authorized by Alert Logic or specified in the Documentation; (ii) a Force Majeure Event; or (iii) service provided by any third-party engaged by Customer or outside of Alert Logic's control. EXCEPT AS SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALERT LOGIC AND ITS THIRD-PARTY LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, TERMS, UNDERTAKINGS AND GUARANTIES, WHETHER THEY ARE EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALERT LOGIC'S LIABILITY UNDER ANY WARRANTY, CONDITION, TERM, REPRESENTATION, UNDERTAKING OR GUARANTY IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE SERVICES AGAIN OR, SUBJECT TO SECTION 8.2, WHERE RESUPPLY IS IMPOSSIBLE, PAYING THE COST OF SUPPLYING THE SERVICES AGAIN. ALERT LOGIC AND ITS THIRD-PARTY LICENSORS MAKE NO REPRESENTATION, WARRANTY OR COVENANT CONCERNING THE ACCURACY, COMPLETENESS, SECURITY, TIMELINESS, OR AVAILABILITY OF THE SERVICES OR ALERT LOGIC TECHNOLOGY. NEITHER ALERT LOGIC NOR ITS THIRD-PARTY LICENSORS REPRESENT OR WARRANT THAT THE SERVICES OR ALERT LOGIC TECHNOLOGY WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICES OR THE SERVER(S) THAT HOST THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALERT LOGIC AND ITS THIRD-PARTY LICENSORS SHALL NOT BE RESPONSIBLE FOR ANY INTERRUPTION OF SERVICES, DELAYS OR ERRORS CAUSED BY ANY TRANSMISSION OR DELIVERY OF THE SERVICES, DATA OR ANY OTHER INFORMATION OR CAUSED BY ANY INTERNET OR COMMUNICATIONS SERVICE PROVIDER. DEPLOYMENT OF THE SERVICES DOES NOT ACHIEVE THE IMPOSSIBLE GOAL OF RISK ELIMINATION AND THEREFORE ALERT LOGIC MAKES NO GUARANTEE THAT INTRUSIONS, COMPROMISES, OR ANY OTHER UNAUTHORIZED ACTIVITY WILL NOT OCCUR ON AN END-USER NETWORK.

THIS SECTION 6 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

SECTION 7 – MUTUAL REPRESENTATIONS AND WARRANTIES. Each party warrants and represents that: (i) it has the right, power and authority to enter into this Agreement and to fully perform all its obligations hereunder; and (ii) the making of this Agreement does not violate any agreement existing between that party and any third party.

SECTION 8 – LIMITATIONS OF LIABILITY

8.1 Consequential Damages Waiver. SUBJECT TO SECTION 8.3, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE FOR ANY TYPE OF INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ACTUAL OR ANTICIPATED REVENUE OR PROFITS, COSTS TO PROCURE REPLACEMENT GOODS OR SERVICES, LOSS, DAMAGE TO, OR CORRUPTION OF DATA, BUSINESS INTERRUPTION, LOSS OF USE OF SERVICE OR EQUIPMENT, OR OTHER PECUNIARY DAMAGES, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, ACTS AND OMISSIONS OF THE PARTY CLAIMING DAMAGES OR THE PARTY FROM WHOM DAMAGES ARE SOUGHT OR ANY OTHER THEORY OF LIABILITY.

8.2 Limitation of Liability. SUBJECT TO SECTION 8.3, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM TOTAL LIABILITY OF EITHER PARTY FOR ANY PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED TO



THE TOTAL FEES PAID OR PAYABLE TO ALERT LOGIC FOR THE SUBSCRIPTION YEAR IN WHICH SUCH CLAIM FIRST ACCRUED.

8.3 Exclusions. The limitations in Sections 8.1 and 8.2 do not apply to: (i) nonpayment of undisputed fees; (ii) violation or misappropriation by a party of the other party's intellectual property rights; (iii) either party's gross negligence, willful misconduct or fraud; (iv) death or personal injury; or (v) any claim that arises due to Customer's failure to abide by the restrictions in Sections 5.2 or 10.2, including but not limited to Customer's obligations under Section 9.2. The limitation in Section 8.1 does not apply to either Party's indemnification obligations hereunder.

8.4 Limitation on Actions. To the maximum extent permitted by applicable law and except for actions for non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than one year after the cause of action has accrued.

8.5 Basis of the Bargain; Failure of Essential Purpose. The parties acknowledge that they each entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and further that the limitations and exclusions of liability and the disclaimers specified in this Agreement form an essential basis of the bargain as to the allocation of risk between the parties. All such limitations, exclusions and disclaimers will survive and apply even if found to have failed of their essential purpose.

SECTION 9 – INDEMNIFICATION

9.1 Alert Logic IP Infringement Indemnification. Alert Logic shall defend, indemnify and hold Customer harmless against any loss or damage incurred in connection with any claim, suit, action or proceeding (each, an **"Action"**) brought against Customer by a third party contending that Customer's use of the Services, or any part thereof, infringes upon a U.S. copyright or U.S. patent of such third party. Subject to Section 8.2, Alert Logic shall pay any damages finally awarded to such third party by a court of competent jurisdiction or final binding arbitration resulting from such Action or agreed to by Alert Logic in settlement of the Action in Alert Logic's sole discretion. In the event that the Services or any part thereof become or in Alert Logic's sole opinion are likely to become the subject of an infringement related Action and Alert Logic cannot, at its option and expense, procure for Customer the right to continue using the Services (or any part thereof) or modify the Services (or any part thereof) to make them non-infringing, then Alert Logic may terminate this Agreement and in such case will refund any fees received for the unused portion of the then-current Subscription Term. The above defense and indemnification obligations shall not apply for any Action or demand arising from: (i) use of the Services not in accordance with this Agreement; (ii) an allegation that does not state with specificity that the Services are the basis of the Action; (iii) use or combination of the Services or any part thereof with software, hardware, or other materials not authorized by Alert Logic if the Services or use thereof would not infringe without such combination; (iv) modification of the Services by a third-party, if the use of unmodified Services would not constitute infringement; (v) Customer's failure to promptly install an enhancement provided at no additional charge that would have avoided the alleged infringement; (vi) open source software; (vii) an allegation of infringement deriving from Customer's general use or exploitation of the Internet; (viii) an Action against Customer that arises from Customer's breach of this Agreement or any applicable Confirmation; or (ix) an allegation made against Customer prior to the execution of this Agreement or any allegation based upon actions taken by Customer prior to the execution of this Agreement, or relating to any patent that, prior to the execution of this Agreement, Customer was aware may be asserted by a third party as the basis for a claim of infringement against Customer or Alert Logic. Customer represents that it has brought to Alert Logic's attention any such allegation or patent referred to in clause (viii) of the previous sentence prior to the execution of this Agreement. The foregoing states Alert Logic's entire liability and Customer's exclusive remedy for infringement claims or actions.

9.2 Customer Indemnification. Customer shall defend, indemnify and hold Alert Logic harmless from any Action brought against Alert Logic arising from: (i) Customer's misuse of the Alert Logic Technology; or (ii) Customer's breach of Sections 5.2 or 10.2 herein.

9.3 Indemnification Procedures. A party's indemnification obligations under this Agreement shall arise only if: (i) the party seeking to be indemnified (the **"Indemnified Party"**) notifies the other party (the **"Indemnifying Party"**) within thirty days of learning of any Action for which indemnification is sought; (ii) the Indemnifying Party has sole control of the defense and settlement of such Action (except that the Indemnifying Party may not settle any Action against the Indemnified Party unless it unconditionally releases the Indemnified Party from all liability), provided that the Indemnified Party shall have the right to participate in such defense or settlement with counsel of its own selection and at its sole expense; and (iii) the Indemnified Party fully cooperates with the Indemnifying Party at the Indemnifying Party's expense.

SECTION 10 – MISCELLANEOUS PROVISIONS

10.1 Survival. These Sections will survive expiration, cancellation or termination of this Agreement: 3, 4, 7, 8, 9, and 10.

10.2 Restrictions; Suspension of Services. Customer will not directly or indirectly: (i) sell, license, rent, transfer, distribute, time share, or otherwise commercially exploit the Services, including but not limited to making the Service available to or permitting use of the



Services by any third party; (ii) modify, create derivative works from, reverse engineer, disassemble or decompile any of the Service(s) or its underlying technology in any way; (iii) copy or reproduce all or any part, including ideas, features, functions or graphics, of the Services; (iv) interfere with or disrupt the Services, including but not limited to by perpetuating or allowing a third-party to perpetuate a denial of service attack, hacking attempt or other malicious activity against Alert Logic's systems; (v) use the Services in violation of applicable law or in a fraudulent, illegal or unauthorized manner, including but not limited to transmitting Customer Data by or through the Services that is unlawful or tortious material; (vi) release to any third party the results of any evaluation or benchmarking of the Services or its underlying technology for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; (vii) access or use the Services to design, develop, build, market or support a competitive or similar product or service; (viii) remove, alter or obscure any proprietary notices associated with the Services; (ix) access or use the Services in a United States embargoed country or in violation of any applicable export law or regulation; (x) use automated scripts to collect information from or otherwise interact with the Services via APIs or other integration methods that are not pre-approved by Alert Logic; or (xi) use the Service to scan IP address and/or map domain names over which Customer does not have right, power, and/or authority. In the event that Customer reasonably appears to be in breach of this Section, Alert Logic may pursue all remedies available at law or equity and in addition may suspend the Services until the issue(s) can be resolved, but only to the extent reasonably required to protect Alert Logic's own systems. Alert Logic will work with Customer to resolve such matters as soon as possible and restore the Services. Alert Logic will provide advance notice to Customer of such suspension where reasonably practicable.

10.3 Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond that party's reasonable control, including but not limited to acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, pandemic, governmental act, discontinuation or removal from production of third-party APIs used by Customer to access or transmit information to the Services, or failure of Internet, telecommunications, or other third-party service providers (each a "**Force Majeure Event**"), provided that the delayed party: (i) gives the other party prompt notice of the Force Majeure Event; and (ii) uses reasonable commercial efforts to promptly correct such failure or delay in performance. For the avoidance of doubt, Force Majeure shall not include: (i) financial distress or the inability of either party to make a profit or avoid a financial loss; or (ii) a party's financial inability to perform its obligations hereunder. If Customer is unable to pay for Services for fifteen business days as a result of a Force Majeure Event, Alert Logic may terminate the applicable Confirmation. If Alert Logic is unable to provide Services for a period of thirty consecutive days as a result of a continuing Force Majeure Event, Customer may terminate the applicable Confirmation on ten business days of advance written notice to Alert Logic provided that such written notice of termination is given during the continuance of the Force Majeure Event. In either case, such termination will be effective on the date specified in the written notice.

10.4 Government Regulations. Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information except in compliance with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business. Without limiting the foregoing Customer: (i) represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) shall not access or use Services in violation of any applicable export embargo, prohibition or restriction. Customer acknowledges and agrees that it has not received or been offered any illegal bribe, kickback, payment, gift or thing of value from any Alert Logic employee, agent or representative in connection with this Agreement, other than reasonable gifts and entertainment provided in the ordinary course of business. Customer will promptly notify Alert Logic if it offers or receives any such improper payment or transfer in connection with this Agreement.

10.5 Non-Solicitation. During the Term of this Agreement and continuing through the first anniversary of the expiration or termination of this Agreement, the parties agree that they will not, directly or indirectly, solicit or attempt to solicit for employment any person employed by the other party ("**Employee**"). An Employee shall be deemed covered by this Section while so employed and for a period of six months thereafter. This section does not restrict the right of either party to solicit or recruit generally in the media or prohibit either party from hiring an Employee of the other who answers any general advertisement which is not targeted or directed at the Employee or who otherwise voluntarily applies for hire without having been initially solicited or recruited by the hiring party.

10.6 No Third-Party Beneficiaries. Alert Logic and Customer agree that there shall be no third-party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer.

10.7 Governing Law; Jurisdiction. This Agreement and the rights and obligations of the parties created hereby will be governed by and construed in accordance with the laws of the State of Texas without regard to its conflict of law rules and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods and UCITA. The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement or the Services. Failing that, if any action related to this Agreement or the Services arises, jurisdiction and venue shall lie exclusively in the federal and state courts of Harris County, Texas and each Party irrevocably consents to, and agrees that each party is subject to, the exclusive jurisdiction of such courts.



10.8 Severability. If any provision of this Agreement or a Confirmation is determined to be invalid or unenforceable, that provision shall be deemed stricken and the remainder of this Agreement or the affected Confirmation will continue in full force and effect insofar as it remains a workable instrument to accomplish the original intent and purposes of the parties, and, if possible, the parties will replace the severed provision with a provision that reflects the intention of the parties with respect to the severed provision but that will be valid and enforceable.

10.9 Waiver; Cumulative Remedies. A delay or omission by either party to exercise any right or power under this Agreement or a Confirmation shall not be construed to be a waiver thereof. A waiver by either party of any covenant to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach or of any other covenant. All waivers shall be in writing and signed by the Party waiving its rights. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

10.10 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement (in whole and not in part) together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets related to this Agreement not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Alert Logic may delegate the performance of certain Services to its affiliates and third-party providers, provided Alert Logic remains responsible to Customer for the delivery of such Services and the compliance of such affiliates and third-party providers with this Agreement. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

10.11 Notice. Any notice or communication required or permitted to be given under this Agreement may be delivered by hand, by e-mail, deposited with an overnight courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the other party as listed on the Confirmation or at such other address as may later be furnished in writing by one party to the other. Such notice will be deemed to have been given as of the date it is delivered. Either party may change its address for notice by giving notice of such address change in the manner provided herein.

10.12 Relationship of the Parties. Alert Logic is an independent contractor to Customer and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Alert Logic and Customer. Neither Alert Logic nor Customer will have the power to bind the other or incur obligations on the other's behalf.

10.13 Entire Agreement. This Agreement and any documents incorporated herein constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all of the terms presented on the AWS Marketplace, as well as all prior and contemporaneous proposals, quotes, agreements, representations and undertakings, both written and oral, among the Parties, or any of them, with respect to the subject matter of this Agreement. Any terms or conditions of a purchase order or other documentation provided by Customer shall be of no effect or in any way binding upon Alert Logic and all such terms and conditions shall be null and void.

10.14 Amendments. This Agreement and any Confirmation may be amended, modified, supplemented or changed only by a written document signed by each party.

10.15 Construction. The DPA and each Confirmation are incorporated by reference into this Agreement. In the event of a conflict between or among the terms, the controlling document shall be the DPA, the Confirmation, and then this Agreement. The section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iii) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (iv) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or Agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.