

Vigilance Terms of Use

1 Agreement

- 1.1 Vigilance (as defined below) is willing to grant you rights to use the Web Services (as defined below) subject to your acceptance of all of the terms contained in the Agreement. Please read the Agreement carefully.
- 1.2 By clicking on "**I ACCEPT**", establishing an account to use the Web Services or accessing or using the Web Services:
 - a you accept the Agreement (as defined below) and agree to be bound by it; and
 - b if you are entering into the Agreement on behalf of a company or other legal entity or person (e.g. a Customer), you represent that you have the authority to, and do in fact, agree to the Agreement on that person's behalf and that, by agreeing to the Agreement on that person's behalf, that person is bound by the terms of the Agreement.
- 1.3 If you do not agree with the Agreement, or if you do not have the authority to bind the entity or person on whose behalf you are acting, then you must not access and use the Web Services.

2 Parties

- 2.1 The Agreement is an agreement directly between you and Vigilance, whether you have entered into it as a result of dealing directly with us or as a result of being an Invited User of a Vigilance Customer. A Vigilance Customer may, at our discretion, enforce the Agreement against you on our behalf.
- 2.2 Where you are a Customer:
 - a you acknowledge that your Invited Users' access to the Web Services is conditional on the Invited User first accepting and entering into these Terms directly with us; and
 - b you must not provide any representations, warranties or guarantees in relation to the Web Services, or impose any liability on us in relation to the Web Services, other than those which we make ourselves expressly under these Terms. Where you are an Invited User, you acknowledge that your rights to access and use the Web Services will terminate automatically on the termination of the Customer's agreement with us.

3 Definitions

3.1 In the Agreement, the following terms have the stated meaning:

"Affiliate." With respect to you, any parent or subsidiary corporation, and any corporation or other business entity controlling, controlled by or under common control with you.

"Agreement." (a) These Terms and the Privacy Policy; (b) if you are the Customer and the processing of User Data is governed by the GDPR, our Data Processing Addendum; and (c) if you are the Customer, the Purchase Agreement and any separate written agreement between you and us relating to the Web Services.

"Customer." The person (other than us) who enters into a Purchase Agreement or on whose behalf the Purchase Agreement is entered into.

"Customer Data". Any information or other data processed, stored or transmitted by or on behalf of the Customer (including by Invited Users other than Suppliers) using the Web Services.

"Data Processing Addendum". The Vigilance Data Processing Addendum accessible on the Site.

"Effective Date." The first day on which the Web Services are provided to you.

"GDPR". The General Data Protection Regulation of the European Union.

"Invited Users." A person, other than the Customer, that uses the Web Services with the authorisation of the Customer from time to time. An Invited User might be, for example, the Customer's personnel, third party consultants, outsourcers, contractors and Suppliers.

"Obfuscated". Data that is disguised to hide its original form e.g. personal data.

"Personal Information." Information about an identifiable, natural person, as defined in the Privacy Act.

"Privacy Act". The New Zealand Privacy Act 2020.

"Privacy Policy". The Vigilance Privacy Policy accessible on the Site.

"Proprietary Rights." Any and all rights anywhere in the world, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, know how, trade secrets, moral rights, confidential or proprietary information, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks,

designs and other similar rights or interests in intellectual or industrial property, whether protected at law or under contract.

"Purchase Agreement". The purchase-specific details agreed to separately by the Customer and us in writing, including the fees.

"Related Company". As defined in the Companies Act 1993.

"Site." The websites at www.vigl.biz, www.vigilance.co.nz, www.vigilanceaml.co.nz, www.vigilantpay.com (or such other domain designated by us that points to the Vigilance Web Services).

"Supplier." An Invited User that is a supplier to the Customer.

"Supplier Data." Any information or other data processed, stored or transmitted by or on behalf of a Supplier using the Web Services.

"Terms". This document titled *Vigilance Terms of Use*.

"User Data." Customer Data and Supplier Data.

"Vigilance, we, us, our." Vigilance Ltd, a New Zealand limited liability company, or its successors or assigns.

"Vigilance Technology." The Site and the underlying hardware, software, and systems used by us to provide the Web Services.

"Web Services." The particular web services described and specified as part of the Purchase Agreement, incorporating the VigilantPay product, VigilanceAML product and Data Anomaly Detection Tool provided by our backend services provider and made available via the Site, and any modifications, updates, upgrades and additional modules to such services which may be generally released by Vigilance from time to time.

"you, your." You, or if clause 1.2b applies, both you and the other person on whose behalf you are acting.

3.2 In the Agreement:

a **including** and similar words do not imply any limit;

b a reference to:

i a **party** includes that party's permitted assigns;

- ii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity; and
 - iii **personnel** includes officers, employees, contractors and agents, but a reference to your personnel does not include us, and a reference to our personnel does not include you;
- c words in the singular include the plural and vice versa;
- d a reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them; and
- e if there is any conflict between the documents that form part of the Agreement, they will have precedence in the descending order of priority set out below:
- i if you are the Customer:
 - A the Data Processing Addendum, if the processing of User Data is governed by the GDPR;
 - B the Purchase Agreement; and
 - C any separate written agreement between you and us relating to the Web Services;
 - ii the Privacy Policy; and
 - iii these Terms.

4 Provision of the Web Services

4.1 We will provide the Web Services:

- a in accordance with the Agreement and applicable law; and
- b exercising reasonable care, skill and diligence.

4.2 Our provision of the Web Services to you is non-exclusive. Nothing in the Agreement prevents us from providing the Web Services to any other person.

- 4.3 The Web Services may interoperate with or link to a range of third party service features, for example, the Companies Office and bank feeds. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party service or feature provider ceases to provide that service or feature or ceases to make it available on reasonable terms, we may cease to make available that service or feature to you, without liability to provide any refund, discount or other compensation. Those third party services and features may be subject to additional terms, and additional privacy policies and you undertake to comply with those in any use you make of those third party services or features.

5 Modification of these Terms

- 5.1 Unless agreed otherwise in writing:
- a we reserve the right to modify these Terms at any time by posting amended Terms on the Site (accessible through links placed on one of the Web Services or login pages). You should check periodically for modifications to these Terms; and
 - b our continued use of the Web Services following our posting of amended Terms will constitute binding acceptance of the modified Agreement by you. If any modification is unacceptable to you, your only recourse is to terminate the Agreement.

6 Eligibility

- 6.1 The Web Services are not intended for use by minors under 18 years of age or for any Customer or Invited User whose access to the Web Services has been suspended or terminated. If you are under 18 years of age or have had your access suspended or terminated, you must not attempt to use the Web Services.

7 Use and Restrictions

- 7.1 As soon as practical on our receipt of the Customer's first payment for the Web Services, we will commence providing to you the Web Services in accordance with the Agreement.
- 7.2 You must access and use the Web Services only through the login protocols provided to you, and only for your own and, if you are an Invited User, the Customer's internal and standard business purposes. All rights not expressly granted in the Agreement are reserved by us and our licensors.
- 7.3 You will be granted authorised login protocols for the Web Services, and you must not use the Web Services in excess of your authorised login protocols (including, where you are a Customer, any maximum number of Invited Users or of any particular types of Invited Users). You must not and must not permit any other person to:

- a access (or attempt to access) the Web Services by any means other than through the login protocols we provide; and/or
 - b access (or attempt to access) the Web Services through any automated means (including use of scripts or web crawlers).
- 7.4 You are responsible for maintaining the confidentiality of your login protocols, and any additional information that we may provide regarding accessing the Web Services. If you knowingly share your login protocols with another person who is not authorised to use the Web Services, the Agreement is subject to termination for cause. You agree to immediately notify us of any unauthorised use of your login protocols or any other breach of security. You are responsible and liable for any action or inaction taken by any person using your login protocols.
- 7.5 You must not, and must not permit any of your personnel to:
- a resell, sublicense, transfer, assign, or distribute the Web Services or content;
 - b copy, modify or make derivative works based upon the Web Services or content other than as is strictly necessary to operate and access the Web Services in the ordinary course for their intended purpose;
 - c "frame" or "mirror" the Web Services or content on any other server or Internet-enabled device;
 - d reverse engineer, decompile any part of the Vigilance Technology or the Web Services except as expressly permitted by law;
 - e attempt to undermine the security or integrity of the Web Services or the Vigilance Technology;
 - f use or misuse the Web Services or the Vigilance Technology in any way which may impair their functionality or the ability of another person to use the Web Services; or
 - g in relation to your use of the Web Services, impersonate another person or misrepresent authorisation to act on behalf of others or us, or misidentify the sender of any electronic messages.
- 7.6 You must not use the Web Services or Vigilance Technology for the propagation, distribution, housing, processing, storing, or otherwise handling in any way information or material which is illegal, infringing of a third party's rights (including privacy and intellectual property rights), false or misleading, lewd, obscene, pornographic, or is in any other way

objectionable (“**Objectionable**”). The designation of any information or material as Objectionable is entirely at our sole discretion.

7.7 If you are a Customer:

- a You may grant access to Invited Users by creating user accounts for those Invited Users with separate login details and may, at any time, restrict Invited Users’ access to certain features.
- b You are responsible for any Invited User accounts you create, and must delete the Invited User’s account if you no longer wish the Invited User to have access (for example, where a staff member leaves your organisation or you end a relationship with a Supplier). Vigilance takes no responsibility for the level of access granted to an Invited User, or for the deletion of Invited Users’ accounts.
- c You must procure each Invited User’s compliance with clauses 7.2 to 7.6 and any other reasonable condition notified by Vigilance to you in writing.
- d Any breach of the Agreement by your Invited Users is deemed to be a breach of the Agreement by you.

8 Inquiries Regarding Web Services

- 8.1 You agree to make all inquiries regarding the Web Services and technical support directly to us.

9 Ownership and Intellectual Property

- 9.1 The Web Services and Vigilance Technology are protected by law, including, but not limited to, copyright law and international treaties. All rights, title and interest (including the copyright and other intellectual property rights) in the Web Services and the Vigilance Technology, and to any modifications, adaptations, enhancements or derivative works of those, are owned by us and our licensors. Except for the limited rights of use granted herein, all other rights are reserved by us and our licensors. You agree not to challenge the validity of, or our ownership of, those rights.
- 9.2 The Site and the domain name(s) for the Site, the product and service names, brands, logos and other marks associated with the Web Services are our trademarks or the trademarks of our licensors, and no rights of use or other rights in those trademarks are granted to you under the Agreement.
- 9.3 You grant us a royalty-free, transferable, irrevocable and perpetual licence for us to use for our own business purposes any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or your personnel relating to the

Web Services (together “**feedback**”) and agree that we may use the feedback for our own business purposes.

- 9.4 As between the parties, all rights, title and interest in the Customer Data remains the property of the Customer and all rights, title and interest in the Supplier Data remains the property of the relevant Supplier.
- 9.5 Subject to clause 12, you grant us a worldwide, non-exclusive, fully paid-up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate your User Data for any purpose in connection with (and only in connection with) the exercise of our rights and performance of our obligations in accordance with this Agreement.
- 9.6 If you are a Supplier, you grant the relevant Customer and its service providers a worldwide, non-exclusive, fully paid-up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Supplier Data for the Customer’s own internal business purposes.
- 9.7 We grant you a worldwide, non-exclusive, fully paid-up, royalty-free, non-transferable, revocable licence to use our intellectual property for any purpose in connection with (and only in connection with) your use of the Web Services and the exercise of your rights and performance of your obligations in accordance with the Agreement.
- 9.8 Any link to any third party website or feeds from the Site or the Web Services does not imply any endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility and liability for those websites and feeds.
- 9.9 You acknowledge and agree that:
 - a we may require access to the User Data to exercise our rights and perform our obligations, for example, for technical support and training of your personnel;
 - b to the extent that clause 9.9a is necessary, then we may authorise a member or members of our personnel to access the User Data for this purpose;
 - c you must arrange all consents and approvals necessary for us to access the User Data in the foregoing ways; and
 - d to the extent that the User Data contains Personal Information, in collecting, holding and processing that information through the Web Services, we are acting as an agent of the Customer for the purposes of the Privacy Act and any other applicable privacy law and as the data processor for the purposes of the GDPR (if applicable).

- 9.10 If you are the Customer: (a) the additional terms in the [Data Processing Addendum](#) form part of the Agreement if the GDPR applies; and (b) you must, notwithstanding clause 9.11, obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process Personal Information contained in the User Data in accordance with the Agreement.
- 9.11 If you are a Supplier, you warrant to us that you have obtained all necessary consents from the relevant individual to enable us and the Customer to collect, use, hold and process Personal Information contained in your Supplier Data in accordance with the Agreement and (if you are an individual) you grant such consent to us and the Customer.
- 9.12 You acknowledge and agree that:
- a we may:
 - i use User Data and information about your, and your Invited Users' use of the Web Services to generate obfuscated and aggregated statistical and analytical data ("**Analytical Data**"); and
 - ii use Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - iii supply Analytical Data to third parties;
 - b our rights under clause 9.12a will survive termination of expiry of the Agreement; and
 - c title to, and all Proprietary Rights in, Analytical Data is and remains our property.
- 9.13 You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that the Customer Data infringes the rights of that third party (including Proprietary Rights and privacy rights) or that that Customer Data is Objectionable (as defined in clause 7.6), incorrect or misleading.
- 9.14 We indemnify you against any liability, claim or proceeding brought against you to the extent that claim or proceeding alleges that your use of the Web Services in accordance with the Agreement constitutes an infringement of a third party's Proprietary Rights ("**IP Claim**"). The indemnity is subject to you:
- a promptly notifying us in writing of any IP Claim;

- b making no admission of liability and not otherwise prejudicing or settling the IP Claim, without our prior written consent; and
- c giving us complete authority and information required for us to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for our account.

9.15 The indemnity in clause 9.14 does not apply to the extent that an IP Claim arises from or in connection with:

- a your breach of the Agreement; or
- b any User Data or third party data.

10 Mutual Exchange of Confidential Information

10.1 The parties anticipate that each may disclose confidential information to the other. Accordingly, the parties desire to establish in this clause terms governing the use and protection of certain information one party ("**Owner**") may disclose to, or have obtained about them by, the other party ("**Recipient**").

10.2 For purposes of this clause 10; "**Confidential Information**" means the terms and conditions of the Agreement; in the case of the Vigilance, non-public aspects of Vigilance's Site and the operation thereof, Vigilance Technology, its intellectual property rights, and the Web Services and additional services provided by Vigilance, and Vigilance's business and technical information; and, in the case of the Customer, non-public aspects of the Customer's technology, computer programs, organisation, operations, administration, methods, finances, suppliers, employees, residents, business and technical information, any similar information concerning any member of the Customer's group, and User Data. In addition, Confidential Information includes information which, although not related to the Web Services or this Service Agreement, is nevertheless disclosed by, or obtained about, an Owner and can reasonably be expected to be confidential (including by way of any document or other tangible form bearing an appropriate legend indicating its confidential or proprietary nature).

10.3 Recipient must keep confidential all the Confidential Information of Owner. Recipient may use Confidential Information of Owner only for the purposes of the Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case will at all times act carefully and to a high standard, and, in the case of Vigilance, in accordance with accepted industry practice and at all times exercising the due care, diligence and skill that a prudent and experienced provider of software or a platform similar to the Web Services would exercise in similar circumstances. Recipient may disclose Confidential Information received hereunder only as reasonably required to

exercise its rights and perform its obligations under the Agreement and only to its employees who have a need to know for such purposes and who are bound by equivalent obligations to protect the received Confidential Information from unauthorised use and disclosure.

10.4 The restrictions in this clause 10 on use and disclosure of Confidential Information shall not apply to information that:

- a is in the possession or control of Recipient at the time of its disclosure hereunder;
- b is, or becomes publicly known, through no wrongful act of Recipient;
- c is received by Recipient from a third party free to disclose it without obligation or restriction to Owner;
- d is independently developed by Recipient as evidenced by its written and dated records and without any breach of this clause 10 or any other obligation of confidentiality; or
- e is expressly authorised for disclosure by Owner in writing; or
- f is required to be disclosed pursuant to the requirements of a governmental agency or by operation of law, provided that Recipient gives Owner written notice thereof if and as soon as practicable and reasonably cooperates with Owner to contest such disclosure.

10.5 You agree that all non-public information that we provide (if any) regarding the Web Services, including without limitation, our pricing, marketing methodology, and business processes, is our proprietary confidential information. You agree to use this confidential information only for the purposes of exercising your rights while in strict compliance with the Agreement.

11 Disclaimer of Actions of Third Parties

11.1 We do not and cannot control the flow of data to or from the Vigilance Technology and other portions of the Internet. Such flow of data depends on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt your connections to the Internet (or portions thereof). Although we will use commercially reasonable efforts to take all actions we deem appropriate to remedy and avoid such events, we cannot guarantee that such events will not occur. WE DISCLAIM ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES.

12 Onward Transfer of User Data and Personal Information overseas

12.1 Any Personal Information which we may collect, use, process, disclose, store, access or dispose of via the Web Services will be in accordance with, in order of preference, firstly the Privacy Act and then the Privacy Policy. You consent to any transfer, storage and access of personal information outside your country of residence set out in the Privacy Policy, provided that:

- a such transfer, storage and access are made only to the extent required to provide the relevant Web Services to you;
- b the provisions of clause 10 and this clause 12 continue to apply to all your Personal Information;
- c we will be liable to you for any acts or omissions of our Related Companies or subcontractors in relation to the relevant Personal Information, including any failure by such Related Companies or subcontractors to comply with relevant privacy laws applying to such Personal Information.

Please see our Privacy Policy (as may be updated from time to time) for the location of our servers.

13 Registration Data

13.1 Registration is required for you to establish an account at the Web Services. You agree to:

- a provide certain current, complete, and accurate information about you as prompted to do so by our online registration form ("**Registration Data**"); and
- b to maintain and update such Registration Data as required to keep such information current, complete and accurate.

You warrant that your Registration Data is and will continue to be accurate and current, and that you are authorised to provide such Registration Data. You authorise us to verify your Registration Data at any time. If any Registration Data that you provide is untrue, inaccurate, not current or incomplete, we retain the right, in our sole discretion, to suspend or terminate the Agreement and your rights to access and use the Web Services. Solely to enable us to use information you supply us internally, so that we are not violating any rights you might have in that information, you grant to us a nonexclusive use to (i) convert such information into digital format such that it can be read, utilised and displayed by our computers or any other technology currently in existence or hereafter developed capable of utilising digital information; and (ii) combine the information with other content provided by us in each case by any method or means or in any medium whether now known or hereafter devised.

14 Monitoring

- 14.1 Subject to clause 10 at all times, we reserve the right to monitor your access and use of the Web Services without notification to you. Monitoring access includes reviewing user activity logs, for example, to check if a user is no longer active.

15 Security

- 15.1 You shall be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of your link to the Internet. As part of the Web Services, we shall implement reasonable and appropriate security procedures consistent with prevailing industry standards to protect data from unauthorised access by physical and electronic intrusion provided, however, and unless resulting from our failure to perform the foregoing obligations or any other negligent or wilful act or wilful omission by us, the parties agree that we shall not, under any circumstances, be held responsible or liable for situations:

- a where data or transmissions are accessed by third parties through illegal or illicit means; or
- b where the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to us at the time.

- 15.2 In the event that we become aware of a security vulnerability, unauthorised access or data breach of our computer systems or any other location where your Confidential Information (including your Personal Information) is stored, we will notify you as soon as practicably possible of the nature of the vulnerability, steps taken to remedy it and any potential impact on you or, in the case of Personal Information, the individuals concerned. We will use all reasonable efforts to promptly remedy any such security vulnerability, unauthorised access or data breach and take any other steps as we have agreed in writing with you. In the event notification to persons whose Personal Information is included in the User Data is required, you shall be solely responsible for any and all such notifications at your expense.

16 Backups

- 16.1 At no additional charge to you, we make daily incremental backups (the "**Incremental Backup**") and weekly full backups (the "**Full Backups**") of User Data archived with the Vigilance Technology. The previous day's incremental backup and a copy of the weekly backup shall be stored off site in a secure facility designed to store and maintain backups for emergency use. Upon storage of a weekly backup in the off-site facility, the prior weekly backup shall be made available to the Customer by electronic delivery at no additional cost to you. Requests for User Data need to be made by the Customer to us at least 14 days before the termination of the Agreement. User Data will be made available in a standard database document of our choosing.

17 Subscription Term, Fees, Termination

- 17.1 The Customer's subscription to the Web Services will be provided for an initial term of one month from the Effective Date, unless agreed otherwise in writing. The initial term shall automatically renew for successive one month terms (or such other subscription term as is agreed in writing) unless and until a party notifies the other party on at least one month's notice that the Agreement will not renew on the expiry of the relevant term. Either party may choose not to renew the Agreement in accordance with this clause 17.1 without cause for any reason. Vigilance may at its discretion offer discounted fees for extended subscription term options for the Customer's consideration.
- 17.2 The periodic subscription fees shall be payable on a recurring basis, in advance of the relevant subscription term, unless agreed otherwise. Periodic subscription fee payments shall, unless otherwise agreed in writing, be as per the rate on the Site, Purchase Agreement, or otherwise notified in writing at the commencement of the relevant subscription period whether that be the initial term or renewal period.
- 17.3 Additional usage rights (e.g. additional Invited Users or transactions) can be added to the Customer's account (with an obligation to pay the further subscription fee) during the initial term and subsequent renewal periods. The fee for additional usage rights will be the rate on the Site, Purchase Agreement, or otherwise notified in writing at the time of requesting additional usage rights. The fee for additional usage rights remains in force until the end of the initial term or subsequent renewal terms. Fees for additional usage rights are payable in accordance with clause 17.2.
- 17.4 We may increase the subscription fees at any time within 30 days' prior notice to the Customer in writing. In addition, we may pass on any and all sales taxes, compliance fees and the like that we incur in the process of providing the Web Services to the Customer and its Invited Users.
- 17.5 Should the Customer not make timely payment to us of any amount payable hereunder, in addition to the remedies available to us we may collect interest on the sum then owing at the rate of 1.5% per month from the due date until payment by the Customer is received, provided, however, that:
- a no interest will be applied to any disputed amounts, subject to those disputed amounts being notified to us by the Customer before the due date for payment; and
 - b in no event shall the aggregate interest charges exceed the maximum rate of interest which could be charged under applicable law.
- 17.6 If a party fails to comply with any material provision of the Agreement, the non-defaulting party may terminate the Agreement and any and all rights upon 15 days' notice to the defaulting party specifying any such breach, unless within the period of such notice, all

breaches specified therein shall have been remedied. Subject to any amounts properly disputed in accordance with clause 17.5a, a failure by the Customer to pay when due the subscription fee or any other amount due and payable to us under the Agreement is deemed to be a failure by the Customer to comply with a material provision of the Agreement. A failure by us to comply with our obligations under the Agreement relating to the protection of the confidentiality, privacy, integrity and security of User Data is deemed to be a failure by us to comply with a material provision of the Agreement.

- 17.7 There will be no refunds of any payments made in advance whatsoever, provided that if the Agreement is terminated by you due to a breach by us, you will be entitled to a refund of any subscription fees paid by you in advance. With appropriate notice we will stop any future scheduled payments following termination by the Customer.

18 Taxes

- 18.1 All fees are exclusive of taxes or duties. If we are required to pay or collect any federal, state, local, or sales or value added, tax or duty on any fees charged under the Agreement, or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on our net income, then such taxes and/or duties shall be billed to and paid by the Customer immediately upon receipt of our invoice and supporting documentation for the taxes or duties charged.

19 Technical Support, Training, and Consulting Services

- 19.1 During the term hereof, we shall provide technical support in the form of responses to questions by email at no additional charge to you. If additional services are required for the proper use and operation of the Web Services due to a fault with the Web Services, these services will be provided at no additional charge to you. If additional services are required for the proper use and operation of the Web Services due to a fault with your software or if training or consulting services are requested, we shall provide such services on a time and materials ("**T&M**") basis, that is,
- a we will provide you with a quote or estimate of the relevant cost of such services (including all travel time), plus anticipated materials, reimbursable expenses and taxes for your review and approval in writing prior to the commencement of the services;
 - b you have the right to accept or reject the relevant quote or estimate under clause 19a at your sole discretion;
 - c we will not commence any such services without your prior approval in writing;
 - d once the services are approved in accordance with this clause 19, you shall pay us for all the time spent performing such services (including all travel time), plus

materials, taxes, and reimbursable expenses; and

- e the rates for such services shall be our then current standard rates when such services are provided. A schedule of current standard rates as at the date of the Purchase Agreement is included with the Purchase Agreement provided to the Customer.

20 Your Representations and Warranties

20.1 You represent and warrant that:

- a the performance of your obligations and use of the Web Services (by you and, if applicable, your Invited Users) will not violate any applicable laws, or regulations, including without limitation any and all laws and regulations regarding Personal Information; or
- b cause a breach of any agreements with any third parties or unreasonably interfere with the use by other users of the Web Services.

20.2 You acknowledge that:

- a we do not undertake to monitor the content, the User Data, or any other information passing through the Web Services for any purposes including the purpose of verifying legal compliance by any person; and
- b you must ensure that the information you and, if applicable, your Invited Users input into, store or transmit thereby complies with all applicable laws and regulations.

20.3 Without limiting any other right or remedy available to us, we will have the right to suspend immediately the Web Services and/or delete, edit or remove the relevant User Data:

- a in the event of any material breach by you or any of your Invited Users of any term of the Agreement;
- b if deemed reasonably necessary by us to prevent any harm to us or our business, the Web Services, the Vigilance Technology, or to any person; or
- c if we consider that you or any of your Invited Users have transmitted, inputted or stored any User Data that breaches or may breach the Agreement or any third party right (including Proprietary Rights and privacy rights), or that is or may be Objectionable (as defined in clause 7.6), incorrect or misleading.

We will provide notice to the Customer and an opportunity to cure, if practicable, depending on the nature of the breach. Once cured, Vigilance will promptly restore the Web Services.

21 Warranties and Liability

21.1 In no event shall our maximum aggregate liability arising under or in connection with the Agreement or the Web Services whether in contract, tort (including negligence), breach of statutory duty or otherwise, exceed the amount we are able to recover under our professional indemnity insurance policy, or would have been able to recover but for an act or omission by us, for such liability.

21.2 In no event shall we be liable under or in connection with the Agreement or the Web Services to anyone for any loss of data, revenue, profits, use or other economic advantage or for any indirect, punitive, special, exemplary, incidental, or consequential damages of any type or kind, including without limitation the use or inability to use the Web Services, or for any content obtained from or through the Web Services, any interruption, inaccuracy, error or omission, regardless of cause, even if we have been previously advised of the possibility of such damages, provided that this exclusion of liability will not apply to, and we will be liable to you for, any direct loss or damage (including any loss of money where funds are paid into the incorrect bank account after being submitted to the Web Services) to the extent caused by a breach of these terms and conditions by us, our negligence or any act or omission by us.

21.3 Clauses 21.1 and 21.2 do not limit our liability under the indemnity in clause 9.14.

21.4 We represent and warrant to the Customer that the Vigilance Technology and Web Services will perform substantially in accordance with the documentation, if any, provided to you and support will be provided in a professional and workmanlike manner.

21.5 Except as set out in the Agreement:

- a the Web Services are provided "as-is", and neither we nor any of our licensors make any representation or warranty with respect to the Web Services;
- b other than any warranties provided for in the Agreement, we and our licensors specifically disclaim, to the fullest extent permitted by law, any and all warranties, express or implied, relating to the Web Services, including but not limited to, implied warranties of merchantability, completeness, timeliness and correctness; and
- c we and our licensors do not represent or warrant that the Web Services:

- i will be timely, uninterrupted or error free or operate in combination with any other hardware, software, system or data; or
- ii will meet your requirements or expectations, including meeting any legal obligations that you have; or
- iii will be free of viruses or other harmful components.

21.6 The disclaimers in clause 21.5 constitute an essential part of the Agreement. If implied warranties may not be disclaimed under applicable law, then any implied warranties are limited in scope and duration to the minimum required by applicable law.

21.7 You agree and represent that you are acquiring the Web Services, and entering into the Agreement, for the purpose of a business. The parties agree that the New Zealand Consumer Guarantees Act 1993 or any other relevant consumer protection legislation does not apply to the supply of the Web Services or the Agreement, and that it is fair and reasonable that the parties are bound by this clause 21.7.

21.8 Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, our liability for any breach of that condition or warranty is limited, at our option, to:

- a supply the relevant Web Services again; and/or
- b paying the costs of having the relevant Web Services supplied again.

22 Consequences of Termination

22.1 Within 10 days of the expiration or termination of the Agreement, you shall return to us any materials provided by us.

22.2 Upon any termination of the Agreement, we shall:

- a cease providing all Web Services and you and your Invited Users shall no longer have access to the Web Services or the Vigilance Technology at the end of the notice period; and
- b if the Customer requests it, we shall provide the Customer with an electronic copy of the User Data in comma separated file (CSV) format.

22.3 Within one month of termination, all User Data will be erased permanently or, if we cannot permanently erase User Data due to technical reasons, we will take all reasonable steps to:

- a come as close as practicable to a complete and permanent erasure of the User Data;
- b fully and effectively anonymise the remaining User Data; and
- c make the remaining User Data which is not deleted or effectively anonymised unavailable for future access or use.

23 Assignment

23.1 You shall not assign the Agreement or any right or interest under the Agreement, nor delegate any work or obligation to be performed under the Agreement, without our prior written consent (such consent not to be unreasonably withheld). Any attempted assignment or delegation in contravention of this clause 23.1 shall be void and ineffective.

23.2 We may assign the Agreement or any right or interest under the Agreement, or delegate any work or obligation to be performed under the Agreement, to a Related Company on written notice to you. We may not otherwise assign the Agreement or any right or interest under the Agreement, or delegate any work or obligation to be performed under the Agreement, without your prior written consent (such written consent not to be unreasonably withheld).

24 Continuing Obligations

24.1 The following provisions shall survive the expiration or termination of the Agreement:

- a any and all warranty disclaimers, limitations of liability and indemnities granted by either party herein;
- b any covenant granted herein for the purpose of determining ownership of, or protecting, the Proprietary Rights, including without limitation, the Confidential Information of either party (including your Personal Information), or any remedy for breach thereof;
- c any obligations relating to the payment of taxes, duties, or any money to us under the Agreement; and
- d any other provisions expressly or impliedly intended to survive termination.

25 Notices

25.1 Either party may give notice by means of:

- a a general notice in your account information;
- b by electronic mail to your email address on record in your Registration Data.

Such notice shall be deemed to have been given upon the expiration of 48 hours from it being placed or sent.

26 Arbitration and Law

26.1 Except for actions to protect intellectual property rights, to seek urgent interlocutory and/or injunctive relief, and/or to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to the Agreement or a breach thereof shall be first attempted to be resolved by the parties using good faith negotiations. Where such negotiations have failed to resolve the dispute within 14 days of a party notifying the other of a dispute, the dispute will be submitted to and finally resolved by arbitration under the rules of the New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall be conducted by telephone or online. The arbitrator shall apply the laws of New Zealand to all issues in dispute. The dispute shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

26.2 The Agreement shall be construed under the laws of New Zealand, without regard to its principles of conflicts of law. Except as agreed otherwise in clause 26.1, the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

26.3 If any provision of the Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of the Agreement, and the Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

26.4 We shall not be liable for any loss or damages for any delay or failure of delivery arising out of causes beyond our reasonable control and without our fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, pandemics, embargoes, Internet disruptions, hacker attacks, or communications failures.

27 Miscellaneous

27.1 The Agreement constitutes the entire understanding of the parties with respect to the subject matter of the Agreement and merges all prior communications, understandings, and agreements.

27.2 Subject to the limited agency set out in clause 9.9d, we are an independent contractor of yours, and no other relationship (e.g. employer/employee, joint venture, agency, trust or partnership) exists under the Agreement, and no party may make, or allow to be made, any representation that any such relationship exists between the parties. No party will have the authority to act for, or incur any obligation on behalf of, the other party.

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