

USX Cyber Terms of Service

THESE USX CYBER TERMS OF SERVICE ("TERMS") APPLY TO THE WRITTEN PURCHASE ORDER AND/OR STATEMENT OF WORK ("ORDER") ENTERED INTO BETWEEN USX CYBER, LLC ("USX CYBER") AND THE SIGNATORY CUSTOMER ENTITY ("CLIENT") IDENTIFIED THEREIN. THE ORDER AND THESE TERMS TOGETHER CONSTITUTE THE "AGREEMENT" BETWEEN USX CYBER AND CLIENT (EACH A "PARTY" AND COLLECTIVELY THE "PARTIES"). THE PARTIES REPRESENT AND WARRANT THAT THEY HAVE READ, UNDERSTAND, NEGOTIATED, FREELY ENTERED INTO, AND AGREE TO BE BOUND BY THE AGREEMENT IN ALL RESPECTS. THE PARTIES AGREE THAT THE FOLLOWING PROVISIONS SHALL GOVERN THE PARTIES' RESPECTIVE RIGHTS AND OBLIGATIONS UNDER THE ORDER:

1. Services.

1.1 Services. The Order sets forth a description of the services to be provided by USX Cyber hereunder, which may include, each to the extent identified in said Order: (i) USX Cyber's proprietary GUARDIENT™ (also known as GUARDIENT XDR™) security monitoring, reporting, and remediation platform, inclusive of both locally installed and externally hosted software and software-as-a-service components, licensed and made available to Client ("Guardient"); (ii) USX Cyber's proprietary X-MATTERS™ cybersecurity know-how including corresponding documentation such as "playbooks", operating instructions, incident guidance, and training materials licensed and made available to Client ("X-Matters"); and (iii) implementation, professional, technical, support, and other consulting services, including without limitation Managed Security Services, to be provided by USX Cyber to Client ("Professional Services"). Guardient, X-Matters, and Professional Services are collectively "Services". The Order shall also set forth the period(s) of time in which such Services will be rendered to Client (the "Subscription Period"), and any restrictions or specifications with respect to the number, category, or access of Client's authorized end users of Guardient and X-Matters (collectively, "Authorized Users"). The Order may only be modified by mutual written agreement of the Parties, except that USX Cyber shall have right to modify an Order upon written notice to Client at any time: (a) due to changes in the applicable statutes, regulations, rules, orders, and ordinances of any governmental authority ("Laws"); or (b) to account for changes to the features, functionality, or content of Guardient and X-Matters, if the proposed changes do not materially reduce the level of performance, functionality, security, or availability of the Services. From time to time, Client may request, and USX Cyber may elect to provide, certain Services which are outside the scope of Services set forth in the Order; except as otherwise expressly agreed by the Parties in writing, such Services shall be subject to Fees (defined below) calculated on a time and materials basis according to the applicable rates set forth in the Order (or, if the Order does not contain such rates, USX Cyber's then-current standard rates for similar Services).

1.2 Grant of License. Subject at all times to Client's compliance with the terms hereof, USX Cyber hereby grants to Client a limited, non-exclusive, revocable, non-sublicensable, non-transferable right to use and access (and, with respect to the locally installed components of Guardient, to install) Guardient and X-Matters during the Term (defined below), and to permit use and access of Guardient and X-Matters by its Authorized Users, solely in furtherance of its receipt of Services hereunder.

1.3 Restrictions on Use. In any event, Client shall not: (a) use the Services to create any product, service, software, documentation, or other material that performs substantially the same functionality as or otherwise competes with the Services; (b) disassemble, decompile, reverse-engineer or use any other means to attempt to discover any source code, algorithms or trade secrets underlying the Services or any of its components; (c) encumber, transfer, distribute, rent, lease, time-share or use the Services in any service bureau arrangement; (d) adapt, combine, translate, create derivative works of or otherwise modify the Services, or create any compilation, anthology, or similar work or material incorporating the Services or any portion thereof; (e) disable, circumvent, or otherwise avoid or undermine any security device, mechanism, protocol, or procedure implemented in the Services; (f) use or access the Services for any unlawful, fraudulent, deceptive, malicious, or otherwise harmful or injurious purpose; (g) remove, obscure, deface, or alter any proprietary rights notices on any element of the Services or accompanying documentation; or (h) use the Services in any manner which could damage, disable, overburden, or impair the Services or interfere with any third party's authorized use of the Services. Client will not utilize any software, hardware, or other tool to scan or monitor the Services or USX Cyber's servers or network infrastructure for the purpose of measuring or analyzing USX Cyber's operating systems, virtual environments, or other installed applications, including without limitation for stress testing, load testing, or performance benchmarking.

1.4 Equipment. To the extent an Order identifies equipment necessary for Client to use the Services ("Equipment"), Client shall be responsible for obtaining and providing the Equipment ("Client Equipment"), unless the Order specifies that USX Cyber shall provide the Equipment ("USX Cyber Equipment") or that Client shall purchase Equipment from USX Cyber for such purpose ("Client Purchased Equipment"). Risk of loss and title for Client Equipment shall remain with Client. Risk of loss for USX Cyber Equipment and Client Purchased Equipment shall pass to Client upon delivery. USX Cyber shall retain title to USX Cyber Equipment. Title to Client Purchased Equipment shall pass to Client upon payment. Upon the earlier of termination or expiration of this Agreement, Client shall return all USX Cyber Equipment in its original condition except for ordinary wear and tear. Client shall be responsible for the then-current replacement cost of any USX Cyber Equipment that Client fails to return or that Client returns in other than good working condition.

1.5 Authorized Users. Client shall abide by any restrictions or limitations set forth in the Order with respect to the number or identity of Authorized Users and/or their respective use of and access to the Services. Client shall ensure that all Authorized Users accessing Guardient and X-Matters pursuant to the license grant contained in this Section 1 (whether or not employees of Client or any third party) have read and agreed to be bound by the End User License Agreement which governs all end use of Guardient and X-Matters, available at <https://usxcyber.com/legal/USX-Cyber-EULA>, as may be updated by USX Cyber from time to time in its discretion (the "End User Terms"). The End User Terms shall also govern Client's own use of Guardient and X-Matters, provided that in the event of any conflict between the End User Terms and this Agreement with respect to Client's use of Guardient and X-Matters, this Agreement shall control to the extent required to resolve the conflict. In any event, Client shall be responsible for its Authorized Users' compliance with the terms and conditions of the Agreement and the End User Terms, and liable for any Authorized User's breach thereof.

1.6 Additional Client Obligations. Client shall comply with the requirements of this Agreement, all third-party terms and conditions for any third-party products or tools integrated in the Services (including without limitation as specified in referenced third-party end user license agreements), and all applicable Laws. Client shall cooperate fully with USX Cyber to enable USX Cyber to perform the Services, and USX Cyber shall not be responsible or liable for any delay or failure in performing Services which is caused by Client's failure to provide the appropriate cooperation, communications, facilities, or resources. Without limiting the foregoing, Client shall: (i) provide timely access to personnel, facilities, equipment, hardware, networks and information reasonably required for the performance of Services; (ii) make and timely communicate decisions required for the effective performance of Services; (iii) grant timely approvals and notices with respect to the Services; and (iv) provide all other assistance reasonably requested by USX Cyber for the performance of Services. USX Cyber shall have the right to suspend the Services upon notice to Client during any period of Client's failure to comply with its obligations under this Agreement and Client shall not be entitled to any refund or other compensation for the period of any such suspension of the Services.

2. Fees and Payment.

2.1 Fees. Client shall pay all fees for the Services specified in the Order ("Fees"). All Fees are exclusive of reimbursable expenses in accordance with Section 2.2 and exclusive of Taxes in accordance with Section 2.3. USX Cyber reserves the right to modify its Fee rates for Services upon written notice to Client. The updated rates shall apply on the first day of the billing period on or after the next renewal of the Subscription Period as set forth in the Order.

2.2 Reimbursable Expenses. Client shall reimburse USX Cyber for any reimbursable expenses identified in the Order. In addition, if USX Cyber is required to be present at Client's facilities for the performance of any Services, Client shall reimburse USX Cyber for all reasonable out-of-pocket travel expenses, including hotel, airfare, ground transportation, and meals. If USX Cyber is required by subpoena, civil investigative demand, court order, or other operation of applicable Law to produce Client Reports (as defined below), documentation, or personnel for testimony or interview with respect to the Services in connection with a government investigation or inquiry of Client or a claim, suit, or other proceeding involving Client to which USX Cyber is not a party, Client shall reimburse USX Cyber for reasonable professional time (at USX Cyber's documented then-current standard rates) and attorney's fees incurred in responding to such a request.

2.3 Taxes. Client shall pay all customs, duties, taxes, levies, regulatory charges, and other fees

assessed or imposed on the Services or other amounts charged hereunder by any authority in any country or territory throughout the world other than taxes imposed on USX Cyber's net income or other internal business operations (collectively, "Taxes"). Client shall not be required to pay Taxes for which Client has provided a valid exemption certificate in advance of the invoice date. USX Cyber shall invoice for Taxes on a separate line item. If Client is required by Law to withhold any Tax from Client's payment to USX Cyber, then (i) Fees shall be adjusted such that the net amount received by USX Cyber for the Services in the Order is equal to what the Fees otherwise would be in the absence of the withholding; and (ii) Client shall provide USX Cyber with original or certified copies of all Tax payment receipts or other evidence of payment of such Taxes. If Client fails to provide USX Cyber with such receipts, Client shall promptly reimburse USX Cyber for fines, penalties, Taxes and other costs incurred as a result of such failure, and indemnify, defend, and hold harmless USX Cyber from any third-party claims brought as a result of such failure.

2.4 Invoicing and Payment. USX Cyber shall invoice Client in accordance with the timelines set forth in the Order. Except as otherwise set forth in the Order, payment for all invoices shall be due within thirty (30) days of the invoice date. Except for amounts that are disputed in good faith by Client in accordance with Section 2.5, USX Cyber shall have the right to charge Client a late fee of one and one-half percent (1.5%) per month, or the maximum rate permitted by Law, whichever is less, for any amounts not paid by the due date of the applicable invoice. In addition, without waiving any other rights or remedies to which it may be entitled, USX Cyber shall have the right, upon written notice to Client, to suspend the Services until payment has been received. If USX Cyber retains a collection agency, retains an attorney, or files suit in a court of competent jurisdiction ("Collection Action") to collect undisputed amounts more than sixty (60) days past due from Client, all costs and expenses thereof, including, without limitation, reasonable attorney's fees and costs, shall be charged to Client and paid immediately by Client upon demand.

2.5 Payment Disputes. If Client reasonably and in good faith disputes any portion of an invoice, prior to the date on which the applicable invoice first becomes due, Client shall timely pay any undisputed portions of the invoice and provide USX Cyber with written notice specifying the disputed amount, the reason for the dispute, and the affected Services. Client waives the right to dispute any invoiced amounts not subject to a notice of dispute under this paragraph within sixty (60) days of the invoice due date.

3. Term and Termination

3.1 Term. Except as otherwise expressly set forth in the Order, the initial term of the Agreement commences on the date the Order is last executed by both Parties and continues for an initial period of one (1) year (the "Initial Term"). Upon the expiration of the Initial Term, the Agreement shall renew automatically for successive periods of one (1) year commencing on the date of such expiration (each a "Renewal Term") unless either Party provides notice to the other Party of its intent not to renew. If the Initial Term set forth in the Order is less than one (1) year, the non-renewing Party shall provide such notice at least thirty (30) days prior to the expiration date. If the Initial Term is one (1) year or longer, the non-renewing Party shall provide such notice between six (6) and nine (9) months prior to the expiration date. The Initial Term together with any applicable Renewal Term(s) constitute the "Term" of the Agreement.

3.2 Termination for Cause. Either Party may terminate this Agreement for cause upon written notice to the other Party in accordance with Section 10.4 if (i) the other Party materially breaches any of its obligations under this Agreement, said breach (if capable of cure) remaining uncured for thirty (30) days following the breaching Party's receipt of notice thereof from the non-breaching Party. In addition, USX Cyber may terminate this Agreement immediately if: (i) Client institutes or has instituted against it proceedings for insolvency, receivership, bankruptcy or other settlement of Client's debts; (ii) Client makes an assignment for the benefit of its creditors; (iii) Licensee ceases to do business or dissolves; or (iv) Licensee becomes unable to pay its debts as they become due.

3.3 Termination without Cause. Either Party may terminate this Agreement for any reason or for no reason upon thirty (30) days' written notice to the other Party, provided that in the event of termination by Client under this paragraph, Client shall promptly pay to USX Cyber an amount equal to the total amount of all unpaid Fees applicable to the Services under the Order for the remainder of the then-current Subscription Period (including the period of time both prior to and following said termination).

3.4 Effect of Termination. Immediately upon the termination or expiration of this Agreement: (i) the Services and all grant of rights to Guardient and X-Matters shall terminate immediately; (ii) USX

Cyber shall be entitled to invoice for and Client shall be required to pay for all Services provided up to the date of expiration or termination; and (iii) all undisputed amounts invoiced by USX Cyber and not yet paid immediately shall become due and payable. In the event of a termination for breach under Section 3.2, the non-breaching Party shall be entitled to all breach remedies available at Law or in equity subject to the limitations and exclusions of liability expressly contained in this Agreement. Sections 3.4, 3.5, 4, 5.5, 5.6, 7, 8, and 11, together with any other provision of this Agreement which expressly by its terms or should by its nature survive, shall survive the termination or expiration of this Agreement for any reason.

3.5 Return of Client Data. Within thirty (30) days following the termination or expiration of this Agreement, USX Cyber shall return or otherwise make retrievable in an industry standard format (or such other format as the Parties may mutually agree in writing) all Client Data (defined below) uploaded to or residing in Guardient. Thereafter, USX Cyber shall destroy all Client Data in its possession or control and shall have no obligation to maintain Client Data in any format or otherwise make Client Data available to Client.

4. Confidential Information

4.1 Definition. In connection with its performance of its respective obligations hereunder, a Party (the “Disclosing Party”) may disclose or make available to the other Party (the “Receiving Party”) its Confidential Information. “Confidential Information” means information in any form or medium (whether oral, written, electronic or other) that is confidential or proprietary to Disclosing Party, which: (i) is marked or labeled as “confidential” or “proprietary”; or (ii) which Receiving Party should reasonably know to be confidential or proprietary to Disclosing Party under the circumstances of disclosure. Without limiting the foregoing, all documentation, specifications, or other materials provided by USX Cyber to Client in connection with the Services are the Confidential Information of USX Cyber.

4.2 Exclusions. Confidential Information does not include information that: (a) was rightfully known to Receiving Party without restriction on use or disclosure prior to receipt of such information from Disclosing Party; (b) becomes generally known by the public without the breach, negligence, or other wrongdoing of Receiving Party; (c) is rightfully received by Receiving Party by a third party which is under no obligation of confidentiality with respect to such information; or (d) was independently developed by Receiving Party without reference to or use of any portion of Confidential Information.

4.3 Obligations. Receiving Party may use Confidential Information of Disclosing Party solely in connection with the performance of its obligations and exercise of its rights under the Agreement. Receiving Party will exercise at least the same standard of care to prevent unauthorized disclosure or use of Confidential Information as it employs with respect to its own information of a like nature, but in any event no less than a reasonable standard of care. Receiving Party may permit access to Confidential Information only to its employees, officers, and professional advisors who have a need to know Confidential Information in furtherance of Receiving Party’s rights and obligations hereunder, and who have agreed to be bound by confidentiality restrictions with respect thereto at least as stringent as those set forth hereunder; provided that in any event Receiving Party shall be responsible for any breach of this Section by such individuals. In addition to and without limiting the foregoing, Client agrees to keep the terms and conditions of the Agreement confidential in accordance with this paragraph. Notwithstanding any other provision of this Agreement, USX Cyber shall not be liable for any breach of this Section 4 resulting directly or indirectly from a third party’s unauthorized access to Client’s or any third party’s networks or systems infrastructure, unless such unauthorized access was both (a) through endpoints or devices that USX Cyber was required to monitor as part of the Services rendered under this Agreement and (b) caused directly by the gross negligence or willful misconduct of USX Cyber.

4.4 Compelled Disclosure. If Receiving Party is ordered, as part of an administrative or judicial proceeding of competent jurisdiction or other operation of applicable Law, to disclose any of Disclosing Party’s Confidential Information, Receiving Party will, to the extent permitted by applicable Law: (i) notify Disclosing Party of such request as promptly as practicable; (ii) cooperate with Disclosing Party, at Disclosing Party’s expense, in its efforts to contest the disclosure or secure a protective order or similar confidential treatment for such Confidential Information; and (iii) disclose only those portions of Confidential Information strictly required for compliance with said order or Law, as reasonably determined by Receiving Party’s qualified legal counsel.

4.5 Return of Confidential Information. Upon the written request of Disclosing Party at any

time, Receiving Party shall, at Disclosing Party's option, either: (i) return all Confidential Information in its possession or control in any tangible or intangible medium, including any copies or derivations thereof, to Disclosing Party, or (ii) destroy all Confidential Information in its possession or control in any tangible or intangible medium, including any copies or derivations thereof, and deliver a written certification of such destruction to Disclosing Party. Notwithstanding the foregoing, the Receiving Party may maintain one (1) archival copy of Confidential Information for its own internal, non-public archival and compliance purposes, provided that any such copy shall remain subject to the confidentiality obligations of this Section for as long as it is maintained. For avoidance of doubt, the obligations of this paragraph shall not apply to Client Data (regardless of whether such Client Data is Confidential Information), which shall instead be subject to the procedures of Section 3.5.

4.6 Injunctive Relief. The Parties acknowledge that the breach of Receiving Party's confidentiality obligations under this Section may cause Disclosing Party to suffer irreparable harm in an amount not readily calculable as money damages. Accordingly, the Parties agree that in the event of any such breach, whether threatened or actual, Disclosing Party shall have the right to seek preliminary and/or final injunctive relief therefor, without the necessity of posting bond or other security, in addition and without prejudice to any other remedy available to Disclosing Party at Law or in equity.

4.7 Data Privacy. "Personal Data" shall mean information relating to an identified or identifiable natural person. Client authorizes USX Cyber to collect, use, store, transfer and otherwise process the Personal Data that USX Cyber obtains from Client for the purpose of complying with USX Cyber's rights and obligations under this Agreement and for any additional purpose described in this Agreement. The USX Cyber Data Protection Policy shall apply to all activities concerning the processing of Personal Data. The USX Cyber Data Protection Policy is located on the USX Cyber website.

5. Proprietary Rights.

5.1 Definition. The term "Intellectual Property" shall mean all inventions, developments, discoveries, improvements, innovations, techniques, processes, concepts, methods, designs, drawings, specifications, algorithms, software and works of authorship, in each case whether or not patentable or registerable, and all patents, patent applications, copyrights, trademarks, trade secrets and other intellectual property or other intangible proprietary rights of any type which may be recognized in any jurisdiction worldwide.

5.2 Client Data. Client represents and warrants that: (i) Client has the necessary rights, consents, licenses, authorizations, and certifications required under applicable Law to transmit and to allow USX Cyber to store, access, use, and process all data and information that Client provides or makes available to USX Cyber (including without limitation Personal Data), authorizes USX Cyber to access, upload or transmit through Guardient, or otherwise provides to USX Cyber under this Agreement (collectively "Client Data") in connection with the Services; and (ii) Client has fulfilled and shall continue to fulfill all obligations required to permit USX Cyber to access and use the Client Data as contemplated by this Agreement. Client shall not transmit or otherwise make available to USX Cyber, or authorize USX Cyber to access or use, Client Data in any manner that violates applicable Law or the rights of any third parties. Client grants to USX Cyber a limited, non-exclusive license to use, access, store, transmit, and process Client Data as reasonably required to perform the Services during the Term. Client further grants to USX Cyber a limited, non-exclusive, perpetual, worldwide, irrevocable license to use information collected during USX Cyber's provision of Services related to security events ("Security Event Data"), during and after the Term, to improve the ability of networks and systems to resist unlawful or malicious actions and to develop or enhance any USX Cyber product or services; provided that USX Cyber shall not disclose Security Event Data to any third party (a) unless it has been rendered in an anonymized, aggregated, or de-identified format such that it cannot be used to individually identify Client or an Authorized User or (b) the third party has agreed to be bound by confidentiality obligations with respect thereto.

5.3 Client Reports. Client shall be the owner of all written summaries, reports, analyses and findings or other deliverables prepared uniquely and exclusively for Client and delivered to Client as part of the Services expressly identified in the Order ("Client Reports"). Subject to Client's payment in full of all Fees applicable thereto, USX Cyber assigns to Client all of its ownership rights, title, and interest in and to the Client Reports. For avoidance of doubt, no component of Guardient and X-Matters shall be deemed part of the Client Reports.

5.4 USX Cyber Intellectual Property. As between the Parties, USX Cyber is the sole owner of all Intellectual Property rights and other proprietary rights, title, and interest in and to Guardient, X-Matters, the Services, and any documentation or materials provided or made accessible by USX Cyber in connection therewith (excluding Client Reports), as well as any proprietary ideas, inventions, techniques, methodologies, processes, or know-how utilized by USX Cyber in connection therewith, and any modifications, improvements, versions, iterations, or derivative works of any of the foregoing (whether or not authorized). USX Cyber reserves all rights in its Intellectual Property not expressly herein granted, and nothing herein shall be construed as any assignment of any Intellectual Property rights in or to Guardient, X-Matters, or the Services.

5.5 Data Analytics. Client acknowledges that USX Cyber may collect certain data, information, or other analytics generated by Authorized Users' use of and access to Guardient and X-Matters (collectively, "Analytics"). As between the Parties, USX Cyber is the sole owner of all Analytics, and may use Analytics for any purpose in its discretion (including without limitation the improvement and development of the Services), provided that USX Cyber shall only disclose Analytics to third parties if (a) such Analytics have been rendered in an anonymized, de-identified, or aggregated format, or (b) the third party has agreed to be bound by confidentiality obligations with respect thereto.

5.6 Further Assurances. Each Party agrees to reasonably cooperate with the other Party's efforts to memorialize, perfect, register, or otherwise evince the assignments and grants of Intellectual Property rights set forth in this Section, including without limitation via the execution of affidavits or other confirmatory documentation therefor.

6. Representations and Warranties.

6.1 Mutual. Each Party represents and warrants that: (i) it is duly organized, validly existing, and in good standing as a legal entity under the Laws of its applicable jurisdiction; (ii) the execution of the Agreement by its representative whose signature is set forth at the end of the Agreement has been duly authorized and effective to bind said Party; and (iii) the execution and delivery of, and said Party's performance under, the Agreement does not and will not breach any agreement or other legal duty that said Party owns to any third party.

6.2 Limited Warranty. USX Cyber represents and warrants that the Services shall be performed in a professional and workmanlike manner, consistent with industry standards for similar Services, and in material compliance with the specifications set forth in the Order. In the event that any Services do not conform to the foregoing warranty, Client shall notify USX Cyber in writing of the nonconformity within fourteen (14) days of its first knowledge of such nonconformity; failure to so notify USX Cyber shall constitute Client's full, final, and irrevocable waiver of any claim against USX Cyber with respect to such nonconformity. Upon USX Cyber's receipt of such notification, USX Cyber shall, at its option, either: (i) repair, replace, or re-perform the Service so that it is no longer subject to the nonconformity; or (ii) terminate the applicable Service and provide a refund to Client of any prepaid, unused Fees applicable to the period of time following the effective date of termination. The foregoing items (i) and (ii) set forth USX Cyber's sole and exclusive liability, and Client's sole and exclusive remedy, for any breach by USX Cyber of the warranty set forth in this paragraph and/or nonconformity of the Services with their specifications.

6.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, USX CYBER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WHATSOEVER WITH RESPECT TO THE SERVICES OR THE SUBJECT MATTER OF THE AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, USX CYBER EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SERVICES AND DELIVERABLES, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY, NON-INFRINGEMENT, AND/OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM STATUTE, CUSTOM, COURSE OF DEALING, TRADE USAGE, OR ANY OTHER SOURCE. USX CYBER DOES NOT WARRANT OR GUARANTEE THAT THE SERVICES WILL MEET CLIENT'S EXPECTATIONS, SPECIFICATIONS, OR REQUIREMENTS, OR THAT THE SERVICES WILL BE ACCURATE, ERROR-FREE, OR UNINTERRUPTED.

7. Indemnification and Limitation of Liability.

7.1 Definitions. "Indemnified Parties" shall mean: (i) in the case of USX Cyber, USX Cyber, its

parent, subsidiaries, and affiliates under common control (collectively, “Affiliates”) and subcontractors, and each of their respective directors, officers, employees, contractors, agents, successors, and assigns, and (ii) in the case of Client, Client, its Affiliates, and each of their respective directors, officers, employees, contractors, agents, successors, and assigns.

7.2 USX Cyber Indemnity. USX Cyber shall indemnify, defend, and hold harmless Client and its Indemnified Parties from and against any and all losses, liabilities, damages, claims, costs, and expenses (including without limitation reasonable attorney’s fees) (collectively, “Losses”) incurred by such Indemnified Parties as the result of third-party claim, suit, action, government investigation, government enforcement action, or other legal proceeding (each an “Indemnifiable Claim”) brought in connection with the allegation that the Services infringe the Intellectual Property rights of a third party, provided that USX Cyber shall have no responsibility hereunder for any Indemnifiable Claim that results from: (i) the combination of the Services with any material not provided by USX Cyber; (ii) a change to the Services made by any person or entity other than USX Cyber; or (iii) any use of the Services by Client which does not comply with the terms of the Agreement or applicable Law. In the event of an Indemnifiable Claim of infringement under this paragraph, or if USX Cyber reasonably anticipates any such Indemnifiable Claim, USX Cyber may, at its option, either: (a) replace or modify the allegedly infringing Service so that it is no longer infringing; (b) procure for Client additional licenses or rights sufficient to permit continued use of the allegedly infringing Service; or (c) terminate the applicable Service upon written notice to Client and refund to Client all prepaid, unused Fees applicable to the period of time following the effective date of termination. This Section sets forth USX Cyber’s sole and exclusive liability, and Client’s sole and exclusive remedy, for any Indemnifiable Claim of intellectual property infringement regarding Guardient, X-Matters, or other Services.

7.3 Client Indemnity. Client shall indemnify, defend, and hold harmless USX Cyber and its Indemnified Parties from and against any and all Losses incurred by such Indemnified Parties as the result of an Indemnifiable Claim brought in connection with: (i) Client’s breach of any of its representations, warranties, or obligations hereunder; (ii) Client’s gross negligence, willful misconduct, or violation of applicable Laws; and (iii) the allegation that Client Data or any other proprietary material provided or submitted by Client to USX Cyber hereunder infringes, misappropriates, or otherwise violates the personal or proprietary rights of any third party.

7.4 Mutual Indemnity. Each Party agrees to indemnify, defend and hold harmless the other Party’s Indemnified Parties from any and against any Losses incurred in connection with an Indemnifiable Claim brought for personal injury, wrongful death, or damage to real or personal property arising from or relating to the Indemnifying Party’s gross negligence or willful misconduct.

7.5 Indemnification Procedure. Upon an Indemnified Party’s receipt of an Indemnifiable Claim, the Indemnified Party shall notify the Party subject to the indemnification obligation hereunder (“Indemnifying Party”) in writing of such receipt, provided that any failure by Indemnified Party to so notify shall not relieve Indemnifying Party of any of its indemnification obligations hereunder except to the extent that Indemnifying Party is materially prejudiced by such failure. Indemnified Party shall reasonably cooperate with Indemnifying Party’s defense and investigation of the Indemnifiable Claim, at Indemnifying Party’s cost and expense. Indemnifying Party must obtain the prior written approval of the Indemnified Party, which may not be unreasonably withheld, prior to entering into any settlement of any Indemnifiable Claim hereunder which involves the admission of any guilt, liability, or wrongdoing on behalf of the Indemnified Party. Notwithstanding the foregoing, an Indemnified Party may at any time participate in the defense of any Indemnifiable Claim at its own cost and expense.

7.6 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SPECIAL DAMAGES, COSTS, EXPENSES OR LOSSES. NEITHER PARTY SHALL BE LIABLE FOR LOSS OF REVENUE, INCOME, PROFIT OR SAVINGS, LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEMS OR NETWORK OR RECOVERY OF SUCH, LOST BUSINESS OPPORTUNITY, OR BUSINESS INTERRUPTION OR DOWNTIME. EACH PARTY’S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE BY CLIENT FOR THE SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION GIVING RISE TO SAID CLAIM OR CLAIMS FIRST ACCRUED. THIS SECTION 7.6 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW TO ALL LIABILITY AND CAUSES OF ACTION ARISING UNDER OR RELATING IN ANY WAY TO THIS AGREEMENT, WHETHER ARISING IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. TO THE EXTENT APPLICABLE LAW PROHIBITS ANY LIMITATIONS OR EXCLUSIONS IN THIS SECTION, SUCH LIMITATION OR

EXCLUSION AUTOMATICALLY SHALL BE MODIFIED TO MAKE THE LIMITATION OR EXCLUSION APPLY TO THE FULLEST EXTENT PERMITTED UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION ARE A MATERIAL PART OF THE CONSIDERATION FOR USX CYBER'S GRANT OF LICENSE AND PROVISION OF SERVICES TO CLIENT AND THAT SUCH LIMITATIONS AND EXCLUSIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION 7 SHALL NOT APPLY TO ANY CLAIM FOR INDEMNIFICATION HEREUNDER, ANY BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR A PARTY'S INFRINGEMENT OR MISAPPROPRIATION OF ANY PATENT, COPYRIGHT, TRADEMARK OR TRADE SECRET OF THE OTHER PARTY.

8. Dispute Resolution.

8.1 Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures (the "Procedures") before resorting to arbitration, litigation, or some other dispute resolution procedure. Notwithstanding anything to the contrary in the Procedures, the Parties agree that time is of the essence and that, absent written agreement of both Parties, the mediation shall be terminated no later than thirty (30) calendar days from the initial request for mediation.

8.2 Arbitration. Except for a Collection Action, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration administered by the AAA under its Commercial Arbitration Rules then in effect (the "Rules"), any arbitration shall be undertaken pursuant to the U.S. Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., (the "FAA"), as amended, by a sole arbitrator, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties expressly disclaim the rules of the AAA's International Centre for Dispute Resolution.

- (a) Language. The Parties have agreed to execute this Agreement exclusively in the English language, which shall control for all purposes, and any dispute or communications, written and oral, between the parties or the arbitrator shall be conducted exclusively in the English language, including, without limitation, the award of the arbitrator.
- (b) Time. Notwithstanding anything to the contrary in the Rules, including R-42 (Extensions of Time), the Parties agree that time is of the essence and that the closing of the hearing shall be no later than two hundred seventy (270) calendar days from the filing of the initial written demand for arbitration, which period includes and expressly contemplates the potential filing of counterclaims or amended complaints or counterclaims. The Parties agree to arbitrate on the following time frame: The claimant must disclose and identify the alleged claims, facts supporting the alleged claims, witnesses with knowledge of the alleged claims, all known documents supporting such claims, and a detailed calculation of the requested damages within 20 days of filing the arbitration demand.
- (c) Arbitral Demand. A demand for arbitration shall not be made (i) after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations; and (ii) later than one (1) year from the date the Party became aware or should reasonably have become aware of the facts that give rise to the alleged claim; or (iii) in any event later than two years after any such cause of action accrued.. Notwithstanding any obligation to engage in mediation, a Party may file a demand for arbitration prior to the termination of mediation if necessary to avoid being barred by the terms of this Section.
- (d) Choice of Law; Venue; Lex Loci. This Agreement shall be governed by and construed in accordance with the Laws of the Commonwealth of Virginia without regard to conflict of Law principles (that might dictate the application of the Laws of another jurisdiction). The place of arbitration shall be Tysons Corner, Virginia, and each party waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of any such legal proceeding shall be heard and determined only pursuant to the Rules and agrees not to bring any legal proceeding arising out of or relating to this Agreement (other than a Collection Action) in any court or before any other arbitral body.

- (e) Powers of the Arbitrator. Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of this Agreement or who are proper parties, shall be submitted to and ruled on promptly by the arbitrator. The arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter. The arbitrator shall be bound by the provisions of this Agreement and base the award on applicable Law and judicial precedent.
- (f) Reasoned Award. Notwithstanding R-46(b) (Form of Award), the arbitrator shall render a reasoned award. Upon rendering a decision, the arbitrator shall state in writing the basis for the decision, including the findings of fact and conclusions of Law upon which the decision is based. The decision of the arbitrator shall be final and binding upon the parties and shall not be subject to appeal.
- (g) Costs and Fees. The arbitrator shall award to the prevailing party all of its costs and fees. "Costs and fees" mean all reasonable pre- and post-award fees and expenses of the arbitration, including but not limited to the arbitrator's fees and expenses (R-55), administrative fees (R-53), deposits (R-56) and other expenses (R-54), including but not limited to travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees and expenses, expert witness fees and expenses, attorneys' fees and expenses, and interest (calculated consistent with 28 U.S.C. § 1961 or VA Rule § 6.2-1520(A), whichever is greater), and any fees or expenses arising out of or related to efforts to enforce the award, including confirmation proceedings to obtain a judgement, proceedings involving a challenge of the award (whether pursuant to the FAA or not), or other efforts taken to enforce the award.
- (h) Discovery. Discovery shall be limited and narrowly tailored such that each Party is entitled to (i) two (2) non-expert depositions, each lasting no more than three hours, (ii) ten (10) requests for production of documents, and (iii) the deposition of any experts lasting no more than three (3) hours each.
- (i) Interim Measures. The Parties acknowledge that due to the unique nature of Confidential Information and Intellectual Property, any actual or threatened breach of this Agreement may cause irreparable injury to the Disclosing Party for which a remedy at Law may be inadequate. The rights and remedies of the Parties to this Agreement are cumulative and in addition to any other rights and remedies available at Law or in equity. The Parties understand, stipulate and agree that: (i) a breach of this Agreement by Client would result in immediate and irreparable harm to USX Cyber's business and USX Cyber's goodwill in a manner that would not be possible to accurately calculate in dollars and (ii) that USX Cyber would not have an adequate remedy at Law for any such breach. The Parties understand, stipulate and agree that in the event of a breach of this Agreement by Client, USX Cyber shall be entitled to an injunction to enforce this Agreement without necessity of posting bond in addition to any other relief that may be available to USX Cyber at Law or in equity. Notwithstanding anything to the contrary in the Agreement, including any obligation to engage in mediation, or in the Rules, including (R-37) (Interim Measures) and (R-38) (Emergency Measures of Protection), upon notification by USX Cyber in writing of a need for emergency relief, which may be made on an *ex parte* basis:
 - (1) Arbitrator Appointed. the arbitrator shall issue an injunction granting the requested relief the same day such request is made and shall as soon as possible, but in any event within two business days thereafter, establish a schedule for consideration of the application of emergency relief.
 - (2) No Arbitrator Appointed. The AAA shall appoint a single emergency arbitrator to rule on the emergency application within one calendar day of receipt of such application by USX Cyber, such arbitrator shall issue an injunction granting the requested relief

the same day such arbitrator is appointed and shall as soon as possible, but in any event within two business days thereafter, establish a schedule for consideration of the application of emergency relief.

8.3 Waiver of Sovereign Immunity. Each Party hereto, in respect of itself and its Affiliates and all instrumentalities, if any, irrevocably waives, to the fullest extent permitted by applicable Law, all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgment), and execution to which it might otherwise be entitled in any action or proceeding relating in any way to this Agreement. Without limiting the generality of the foregoing, each Party agrees that the waivers set forth herein shall be interpreted and enforced to the fullest extent permitted under applicable Law, including the Foreign Sovereign Immunities Act of 1976 of the United States, as amended, and are intended to be irrevocable for purposes of such Law.

9. Export Compliance.

9.1 Export. Equipment and/or Services (collectively, “Deliverables”) provided under this Agreement may incorporate encryption or other technology subject to customs and export control Laws. Each Party shall comply with all customs and export control Laws of the United States and other countries to which the Deliverables are delivered to the extent applicable to such Party in performing its obligations under this Agreement. USX Cyber shall be responsible for ensuring that the delivery of any Deliverables to Client complies with U.S. export Law, including obtaining any required U.S. export licenses. Client shall comply with all export Laws governing the re-export of the Deliverables and shall be solely responsible for compliance with the Laws governing the importation and use of the Deliverables in other countries, including by making any required customs entry or declaration, paying all Taxes and fees owed as a result of importation or use of the Deliverables and obtaining all necessary licenses, permits and authorizations. Prior to providing USX Cyber any goods, services or data subject to export controls, Client shall provide written notice specifying the nature of the controls and any relevant export control classification numbers.

9.2 Economic Sanctions. Each Party warrants that neither it, nor to its knowledge any person or entity acting on its behalf: (i) has been or is designated on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Department of Treasury Office of Foreign Asset Controls or any similar list of sanctioned persons of any authority; (ii) is a national or citizen of, or organized under the Laws of, or resident or operating in any country or territory that is subject to any country-wide or territory-wide sanctions; (iii) is owned or controlled by any party described in (i) and (ii) of this sentence; or (iv) is a person identified on the U.S. Department of Commerce Bureau of Industry and Security’s “Denied Persons List” or “Entity List”. Each Party shall notify the other Party in writing if the notifying Party becomes aware of any changes to this warranty or if any such change is threatened.

10. Audits.

10.1 Records Retention. Client shall prepare, maintain, and retain complete and accurate books and records relating to the subject matter of the Agreement (“Records”), including without limitation those relating to: (i) Authorized Users’ use of and access to Guardient, X-Matters, and receipt of Services hereunder, including without limitation the number and identity of all Authorized Users; and (ii) all Fees and other payments made hereunder. Notwithstanding any internal record retention or destruction policy to the contrary, all Records shall be retained by Client for the greater of: (a) one (1) year following the expiration or termination of the Agreement for any reason; or (b) the minimum time period required by applicable Law.

10.2 License Audit. At any time during the Term and for a period of one (1) year thereafter, USX Cyber shall have the right, on at least seven (7) days’ advance notice to Client, to inspect and audit, or cause its designee to inspect and audit, Client’s Records to confirm Client’s compliance with the license restrictions and other covenants and obligations hereunder. USX Cyber will perform such audits at its own cost and expense; provided that if any audit discloses (i) any underpayment by Client of two and one-half percent (2.5%) or more of the total amounts of any Fees or other amount due, or (ii) that Client is otherwise not in material compliance with its representations, warranties, and obligations in the Agreement, Client will reimburse USX Cyber for its costs and expenses arising from the audit. The results of any such audit and any copy of Records reviewed in connection therewith shall be considered Client’s Confidential Information, provided that USX Cyber shall not be obligated to return or destroy such results or copies until the

completion of its audit and the final resolution of any claims, controversies, or other proceedings arising therefrom. Audits under this paragraph will be conducted no more than once per calendar year of the Term, unless an audit discloses a material discrepancy in the Fees or in Client's compliance with the Agreement, in which case USX Cyber may conduct as many follow-up audits as necessary to resolve the discrepancy pursuant to the procedure set forth herein.

11. Miscellaneous.

11.1 Force Majeure. Neither Party shall be liable for any delay or failure in performing its obligations hereunder (other than a payment obligation) by the occurrence of unforeseeable and/or unavoidable circumstances beyond a Party's reasonable control, including without limitation acts of God, fire, flood, war, government action, earthquakes, explosions, terrorism, embargoes, or industrial disturbances (each a "Force Majeure Event"), provided that the Party subject to such Force Majeure Event shall provide notice of such Force Majeure Event to the other Party, if notice is reasonably practicable. If a Force Majeure Event and subsequent delay or failure continues uninterrupted for thirty (30) days, either Party may terminate the Agreement upon written notice to other Party.

11.2 Assignment and Subcontracting. Neither Party shall assign this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding to the foregoing, USX Cyber may, without Client's consent, assign this Agreement to a successor in interest by way of a change of control, merger, consolidation, or asset sale. USX Cyber, in its sole discretion, may subcontract the performance of all or any portion of this Agreement to a subcontractor. In such event, USX Cyber shall remain responsible for such subcontractor's performance of the applicable subcontracted obligations hereunder.

11.3 Non-Solicitation. During the Term, and for an additional period of twelve (12) months thereafter, Client and its Affiliates shall not solicit or induce any person or entity to leave their employment or service with USX Cyber or its Affiliates in order to accept employment or service of any kind or description with any other person or entity. This prohibition shall not apply to any general solicitation that is not specifically targeted at the personnel of the other Party, such as advertisements, job fairs and the like.

11.4 Non-Disparagement. During the Term, and for a period of two (2) years thereafter, Client shall not make derogatory statements about either USX Cyber or any of the persons or entities that do business with USX Cyber. The persons or entities that do business with USX Cyber include, without limitation, USX Cyber's employees, USX Cyber's service providers, USX Cyber's partners and other Clients. Client shall take all possible steps to remove, retract and cure the publication of any derogatory statements Client causes to be made. Derogatory statements do not include statements made by Client that are inherently proper and made within the scope of Client's Order and this Agreement. Derogatory statements also do not include statements made by Client as part of an official report to the government, within official judicial proceedings, or within any other official government proceedings.

11.5 Notices. All notices, requests, demands, and other communications which are required or may be given under the Agreement shall be in writing and shall be deemed to have been duly given: (i) when received if personally delivered; (ii) two (2) days after sending if sent by a nationally recognized expedited delivery service; and (iii) upon receipt, if mailed by certified mail, return receipt requested. Notices to USX Cyber shall be sent to 1953 Gallows Road, Suite 650, Vienna, VA 22182-4096. Notices to Client shall be sent to the notice address specified in the Order. Either Party may change their notice address by providing notice to the other Party of such change pursuant to this paragraph.

11.6 Relationship of the Parties. Each Party is an independent contractor, and neither Party is, nor shall represent itself to be, an agent, partner, fiduciary, joint-venturer, co-owner, investor, or representative of the other Party. Neither Party shall have the authority, or represent that it has the authority, to bind the other Party. Each Party assumes full responsibility for the actions, supervision and compensation of its personnel. Neither Party shall be responsible for the action, supervision or compensation of any of the other Party's personnel.

11.7 Compliance with Law. Each Party shall comply with all Laws applicable to such Party in the course of performing its obligations under this Agreement.

11.8 Definitions. Capitalized terms shall have the meaning ascribed to them in this Agreement. Where appropriate to the context of this Agreement, the use of the singular shall be deemed also to refer

to the plural and the use of the plural to the singular. The Term “including” shall mean “including without limitation” and shall not be interpreted to limit the Parties’ rights or obligations.

11.9 Entire Agreement. The version of these Terms posted to the USX Cyber website at <https://usxcyber.com/legal/USX-Cyber-Terms-of-Service> by ten (10) days preceding execution of the Order, or by ten (10) days preceding the last day of notice for non-renewal of the Order, shall for the corresponding Initial Term or Renewal Term, be the Terms. Irrespective of the place of contract formation or performance, this Agreement (including its exhibits and attachments) constitutes the Parties’ entire agreement with respect to any Order and fully integrates, merges, and supersedes all prior oral and written agreements, non-disclosure agreements, communications, and representations relating to the Services. Any Service Level Agreement incorporated into the Order shall constitute part of this Agreement, and a breach thereof by either Party shall entitle the nonbreaching Party, as their exclusive remedy, to terminate this Agreement in accordance with Section 3.2. The Parties represent and warrant that they have not relied on any representations or statements other than as expressly included in this Agreement.

11.10 No Presumption Against Drafter. Each Party acknowledges and stipulates that it has read and understood this Agreement, that it has had the opportunity to negotiate this Agreement, and that it has had the opportunity to consult with the counsel of their own choosing. Accordingly, no principle of contract interpretation that requires a contract to be construed against the drafter shall apply to the interpretation of any term of this Agreement.

11.11 Waiver and Modification. Except as otherwise expressly permitted herein, no modification or waiver shall be effective unless it is in writing and signed by authorized representatives of both Parties. A waiver of any right under this Agreement relating to the performance of one or more obligations of the other Party shall not constitute a waiver of the performance of future instances of the same obligation of that Party unless expressly so stated in writing.

11.12 Severability and Reformation. If any provision of this Agreement or the application thereof to any circumstance or person shall be construed by a competent tribunal to be unenforceable, in whole or in part, then such provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the Parties set forth herein. In any case, the remaining provisions of this Agreement or the application thereof to any person or circumstance, other than those to which they have been held invalid or unenforceable, shall remain in full force and effect.

11.13 Material and Independent Obligations. Each of the obligations of this Agreement are material. Except where expressly provided, each of the obligations of this Agreement are independent and are independently enforceable from every other obligation of this Agreement and of any other legal obligation that may exist between the Parties. The real or perceived existence of any claim or cause of action, whether predicated on this Agreement or on some other basis, shall not relieve the Parties of their obligations under this Agreement, and shall not constitute a defense to the enforcement this Agreement.

11.14 No Third-Party Beneficiaries. Except as otherwise expressly stated herein, there are no intended third-party beneficiaries to this Agreement. No third-party shall be entitled to rely on this Agreement or any aspect of the Parties’ performance hereunder, including the Services or any Client Purchased Equipment.

11.15 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the interpretation or construction of any material term hereof.

11.16 Counterparts. This Agreement may be executed in counterparts each of which, once duly executed, shall be deemed an original binding instrument.

[End of USX Cyber Terms of Service.]