



Cyxtera Software Schedule

This Cyxtera Software Schedule (this "Schedule") is entered into by and between Cyxtera Cybersecurity, Inc., a Delaware corporation ("Cyxtera"), and Customer and is effective on the Effective Date for this Schedule. This Schedule is governed by that certain Cyxtera Master Agreement (the "MA") entered into by and between Customer, or its Affiliate, and Cyxtera, or its Affiliate, located at <https://www.cyxtera.com/pdfs/legal/Cyxtera-Master-Agreement.pdf>. In the event the MA is entered into by an Affiliate of Customer or Cyxtera, then the MA shall apply to this Schedule as if Customer or Cyxtera, as applicable, was a party thereto in lieu of the Affiliate of Customer or Cyxtera, as applicable. In the event the Order Form is entered into by an Affiliate of Cyxtera or Customer, then this Schedule shall apply to such Order Form as if such Affiliate of Cyxtera or Customer, as applicable, was a party hereto in lieu of Cyxtera or Customer, as applicable. Capitalized terms used, but not defined herein, shall have the meaning ascribed thereto in the MA.

1. Products; Fees.

a. Products. This Schedule sets forth the terms generally applicable to all Software licensed hereunder, Hosted Services, Professional Services and Hardware purchased hereunder and Support provided hereunder (whether included as part of another Product licensed or purchased hereunder or purchased separately hereunder) (collectively, the "Products"), as well as terms applicable only to specific Products as noted herein. Cyxtera's Software-as-a-Service offerings are not covered under this Schedule and require a separate Schedule. Cyxtera's Hosted Service offerings are covered under this Schedule as supplemented by the Cyxtera Hosted Service Addendum. Customer, or an Affiliate thereof, may license or purchase Products from Cyxtera, or an Affiliate thereof, pursuant to an Order Form or through the Portal. Each Affiliate of a party providing, licensing or purchasing Products, as applicable, shall be solely and exclusively responsible for all liabilities and obligations arising with respect to such Products.

b. Fees. Customer will pay all applicable fees set forth in the relevant Order Form, any online licensing/purchasing website or portal made available by Cyxtera for Customer's use (the "Portal"), or otherwise agreed to be paid by Customer to Cyxtera pursuant to the Schedule Agreement. Except as set forth in the applicable Order Form or on the Portal or otherwise in the Schedule Agreement, (i) Software license (non-perpetual), Hosted Service and Support fees will be billed annually, in advance; (ii) Software license (perpetual) fees will be billed in advance; (iii) varying or usage-based fees will be billed monthly in arrears; (iv) fees for hourly Professional Services engagements will be billed monthly in arrears; (v) fees for fixed-fee Professional Services engagements will be billed in advance; (vi) any expenses to which Cyxtera is entitled to reimbursement hereunder will be billed monthly in arrears; and (vii) fees for Hardware will be billed in advance.

2. License Grant; Grant of Right to Access and Use; Reservation of Rights; Third-Party Components.

a. License Grant; Grant of Right to Access and Use. With respect to Software licensed (whether or not such Software is to be provided as a Hosted Service) by Customer, Cyxtera grants Customer a non-exclusive, non-transferable and non-sublicensable license to use such Software during the Software Term with respect thereto, solely for use

by Authorized Users in accordance with the Permitted Use. In the event any such Software licensed is to be provided as a Hosted Service, Cyxtera also grants to Customer a non-exclusive, non-transferable and non-sublicensable right to access and use such Hosted Service during the Hosted Service Term with respect thereto, solely for use by Authorized Users in accordance with the Permitted Use. A license to use Software or right to access and use a Hosted Service, as applicable, also includes the non-exclusive, non-transferable and non-sublicensable right for Customer to use the Documentation applicable to such Software or Hosted Service, as applicable, solely in connection with Customer's use of such Software or Hosted Service, as applicable.

b. Reservation of Rights. Cyxtera reserves all rights not expressly granted to Customer in the Schedule Agreement. Except for the limited rights and licenses expressly granted under the Schedule Agreement, nothing in the Schedule Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title or interest in or to the Cyxtera Intellectual Property. Notwithstanding anything in the Schedule Agreement to the contrary, Software is licensed and rights to access and use Hosted Services are granted, in each case for the applicable term set forth herein, and in no event is Software or are Hosted Services sold, even if for convenience Cyxtera makes reference to words such as *sale* or *purchase* herein.

c. Third-Party Components. The Products may contain or be provided with certain components subject to third-party or open source licenses. Attributions and terms relating to such components are available upon request from Cyxtera.

3. Use; Restrictions on Use; Customer Responsibilities.

a. Use; Restrictions on Use. Customer shall not use the Software, Hosted Services or Documentation, as applicable, for any purposes beyond the scope of license or access, as applicable, with respect thereto granted in the Schedule Agreement. Customer shall not (and shall not allow any Authorized User to), directly or indirectly, (i) copy, modify or create derivative works of the Software, Hosted Services or Documentation, as applicable, in whole or in part, (ii) rent, lease, lend, resell, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Products (other than Hardware), (iii) except as expressly set forth on an Order Form, reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any source code or software component of the Software or Hosted Services, in whole or in part, (iv) remove any proprietary notices from the Software, Hosted Services or Documentation, as applicable, or (v) use the Software, Hosted Services or Documentation, as applicable, in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. Customer acknowledges that a threatened or actual breach by it of this Section 3.a may result in immediate, irreparable harm to Cyxtera for which monetary damages may not be adequate compensation and, consequently, that Cyxtera shall be entitled, in addition to all other remedies available to it at law or equity, to seek (without any requirement to post bond) injunctive or other equitable relief to prevent such threatened or actual breach. Cyxtera may deploy the Software and/or Hosted Services with license key or other



technology that prohibits use of the Software or Hosted Services, as applicable, beyond the applicable Software Term, license parameters, Hosted Service Term or grant of right to access and use.

b. Customer Responsibilities. Customer is responsible and liable for all uses of the Software, Hosted Services and Documentation, as applicable, resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of the Schedule Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of the Schedule Agreement if taken by Customer will be deemed a breach of the Schedule Agreement by Customer. Customer shall make all Authorized Users aware of the Schedule Agreement's provisions as applicable to such Authorized User's use of the Software, Hosted Services or Documentation, as applicable, and shall cause Authorized Users to comply with such provisions.

4. **Installation; Configuration; Instruction; Support.** Unless otherwise specified in an Order Form, Cyxtera has no responsibility for (a) assisting Customer in installing or configuring any of the Software or Hosted Services, or (b) providing Customer instruction on use of any Software or Hosted Services (except for any such instruction on use set forth in the Documentation with respect to such Software or Hosted Services, as applicable). Unless otherwise specified in an Order Form, Support is included for Software licenses (non-perpetual) and Hosted Services in accordance with the applicable Support Terms with respect thereto. Unless otherwise specified in an Order Form, Cyxtera has no responsibility for providing Customer Support for a perpetual Software license.

5. Professional Services.

a. Professional Services. Cyxtera will provide Customer with professional services ("Professional Services") purchased on an Order Form or through the Portal.

b. Reimbursement of Expenses. Customer is responsible for reimbursing Cyxtera for all pre-approved reasonable, documented, out-of-pocket expenses incurred by Cyxtera in performing the Professional Services.

c. Customer Facilities. Upon Customer's request, Cyxtera personnel may perform Professional Services at Customer's facilities. While performing Professional Services at Customer's facilities, Cyxtera personnel will comply with Customer's reasonable, applicable codes of conduct and procedures (including policies regarding occupational health and safety requirements, building access, and physical and information security) which are provided in writing in advance by Customer.

d. Customer's Obligations. Customer must: (i) provide Cyxtera personnel with such information, cooperation and support as may reasonably be required for Cyxtera to provide the Professional Services, (ii) permit Cyxtera personnel to access such of Customer's systems, networks, premises and property as is necessary to perform the Professional Services, and ensure that Cyxtera is granted sufficient authorization to use any third party systems, programs, or networks necessary to provide the Professional Services, (iii) ensure that all

necessary consents, authorizations and licenses have been obtained so that Cyxtera's provision of the Professional Services does not breach any statutory or regulatory provisions (of whatever jurisdiction) relating to the use of and access to personal data or otherwise breach any applicable law, and (iv) ensure the health and safety of Cyxtera personnel engaged in providing the Professional Services at Customer's premises.

e. Work Product. Each Order Form may specify "Work Product" to be provided by Cyxtera. Anything specified in an Order Form as "Work Product" will become the property of Customer at the moment such item is fixed in a tangible medium, all rights, title and interest therein will vest in Customer and Cyxtera shall permanently assign and transfer to Customer any and all of Cyxtera's right, title and interest in the Work Product, provided, that, Cyxtera retains all right, title and interest in any Cyxtera Intellectual Property incorporated into Work Product. To the extent any Cyxtera Intellectual Property is incorporated into Work Product, Customer is hereby granted a perpetual, worldwide, non-transferable, non-exclusive, royalty-free, fully paid-up license to use such Cyxtera Intellectual Property solely in conjunction with the Work Product.

6. Term; Termination; Effect of Expiration or Termination.

a. Term of this Schedule. The term of this Schedule will commence on the Effective Date and continue until terminated in accordance with the terms hereof.

b. Termination Upon Expiration or Termination of all Products. The Schedule Agreement will automatically terminate following expiration or termination of the last effective Product being provided or to be provided under this Schedule.

c. Termination for Cause. An "Event of Default" shall be deemed to occur if (i) Customer fails to make any payment when due under the Schedule Agreement and such failure continues for ten (10) days after Customer's receipt of written notice from Cyxtera, (ii) either party fails to observe or perform any other material term of the Schedule Agreement and such failure continues for thirty (30) days (unless a different period is set forth in the Schedule Agreement) after the defaulting party's receipt of written notice from the non-defaulting party, or (iii) a party (1) becomes insolvent, (2) becomes subject to any voluntary or involuntary bankruptcy, liquidation, insolvency or similar proceedings (which, with respect to any involuntary bankruptcy, liquidation, insolvency or similar proceeding, is not dismissed within sixty (60) days of the date filed), (3) makes an assignment for the benefit of creditors, (4) appoints or consents or acquiesces to the appointment, of a receiver, liquidator, assignee, trustee or similar person or entity for all or any substantial part of its assets, or (5) admits in writing its inability to pay its debts as they become due. Upon the occurrence of an "Event of Default", the non-defaulting party may terminate the Schedule Agreement (and all Products being provided under this Schedule), at any time prior to the defaulting party's curing the Event of Default, by providing written notice to the defaulting party, which written notice must specify the effective date of the termination. The effective date of termination shall be no later than thirty (30) days after the date the non-defaulting party sends such notice to the defaulting party. In the event Customer terminates a Product pursuant to this Section 6.c, (x) Customer will not be liable for any "Early Termination Charge" in connection with such termination and (y) Customer will be entitled to a



refund of all pre-paid fees with respect to such terminated Product and relating to periods of time following such termination. With respect to a perpetual Software license, such refund shall be calculated, as depreciated, on a five (5) year straight line basis. For the avoidance of doubt, in no event shall Customer have the right to terminate any Hardware pursuant to this Section 6.c. "Cause" to terminate the Schedule Agreement (and all Products being provided under this Schedule) pursuant to this Section 6.c will not constitute "Cause" to terminate any other agreements between the parties (including, for the avoidance of doubt, the MA, any other Service Schedule or any other Service (as defined in the MA)). In addition to the right of termination set forth in this Section 6.c, the terminating party shall be entitled to any and all rights and remedies available under the Schedule Agreement and at law or in equity.

d. **Term of Order Forms and Products.** Software licenses (non-perpetual), Hosted Services and Support services have a minimum term which begins on the billing commencement date ("BCD") and continues for the period set forth in the relevant Order Form or in the Portal (the "Initial Term"). Except as set forth in the applicable Order Form or in the Portal, as applicable, upon conclusion of the Initial Term or a renewal term, as applicable, (i) if the Initial Term is less than one (1) year, each Software license, Hosted Service or Support service, as applicable, will automatically renew for successive periods equal to the Initial Term, unless either party provides the other party with at least thirty (30) days advance written notice prior to the expiration of the then-current Software Term, Hosted Service Term or Support Term, as applicable, and (ii) if the Initial Term is one (1) year or longer, each Software license, Hosted Service or Support service, as applicable, will automatically renew for successive periods of one (1) year, unless either party provides the other party with at least sixty (60) days advance written notice prior to the expiration of the then-current Software Term, Hosted Service Term or Support Term, as applicable. With respect to a Software license (non-perpetual), the Initial Term and any renewal terms of such Software license are collectively referred to as the "Software Term". With respect to a Software license (perpetual), the "Software Term" is perpetual. With respect to a right to access and use a Hosted Service, the Initial Term and any renewal terms of such Hosted Service are collectively referred to as the "Hosted Service Term". With respect to a Support service, the Initial Term and any renewal terms of such Support service are collectively referred to as the "Support Term".

e. **Effect of Expiration or Termination.** Upon expiration or earlier termination of a Product for any reason, the license or right to access and use, as applicable, such Product granted by Cyxtera to Customer will also terminate. Upon termination of the license or right to access and use, as applicable, Customer must immediately cease using the applicable Software, Hosted Service and Documentation and, to the extent applicable, return, delete or destroy all copies thereof as well as all other Cyxtera Intellectual Property relating thereto (in each case, in whatever form). Upon Cyxtera's request, Customer will certify in writing to Cyxtera that Customer has performed the foregoing obligation.

7. **Suspension of Services.** Cyxtera may immediately suspend Products if Customer fails to make any payment when due under the Schedule Agreement and such failure continues for ten (10) days after Customer's receipt of written notice of such failure from Cyxtera. In the event of any suspension of Products by Cyxtera pursuant to this Section 7, Customer shall continue to be obligated to pay the fees for the

Products during such period of suspension. If Cyxtera suspends a Product pursuant to this Section 7, unless Cyxtera has subsequently terminated such Product in accordance with the terms of the Schedule Agreement, Cyxtera will resume the suspended Product as soon as reasonably practical after Cyxtera is reasonably satisfied that the reason giving Cyxtera the right to suspend has been cured. Cyxtera will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of Cyxtera's suspending Products pursuant to this Section 7.

8. **Billing Commencement Date (BCD) (Software (non-perpetual), Hosted Services and Support).** The BCD for a Software license (non-perpetual), Hosted Service or Support service, as applicable, is the earlier to occur of (a) the later to occur of (i) if applicable, the date specified in the Order Form as the date on which the Software Term, Hosted Service Term or Support Term, as applicable, commences and (ii) the date the Software, Hosted Service or Support service, as applicable, is made available to Customer for use and (b) the date that the Software, Hosted Service or Support service, as applicable, is used by Customer. In the event an Order Form specifies a date range for the Initial Term of the Software license, Hosted Service or Support service (e.g., January 15 of year 1 to January 14 of year 2), as applicable, as opposed to a set term (e.g., one (1) year), but the BCD for such Software license, Hosted Service or Support service, as applicable, is a different date than the date specified in the Order Form as the date on which the Initial Term of the Software license, Hosted Service or Support service, as applicable, commences (e.g., the BCD is January 5 of year 1 instead of January 15), the Initial Term of such Software license, Hosted Service or Support service, as applicable, shall commence on the BCD for such Software license, Hosted Service or Support service, as applicable, and continue for the period of time that the Initial Term of such Software license, Hosted Service or Support service, as applicable, was intended to be for (e.g., one (1) year commencing on January 5 of year 1 and ending on January 4 of year 2).

9. **Early Termination Charges.** In the event any Product ordered pursuant to this Schedule is terminated prior to the conclusion of the applicable Software Term, Hosted Service Term or Support Term or completion of the Professional Services engagement, as applicable, unless otherwise set forth in the Schedule Agreement, then Customer shall be liable for an "Early Termination Charge", payable in a single lump sum, equal to 100% of the unpaid charges and fees with respect to such Product for the remainder of the applicable Software Term, Hosted Service Term or Support Term, as applicable, or, with respect to Professional Services engagements, that would have been payable had such Professional Services engagement been completed. No waiver of Early Termination Charges shall be effective unless explicitly set forth in a writing signed by Cyxtera. Upon any termination of a Product prior to the conclusion of the applicable Software Term, Hosted Service Term or Support Term or completion of the Professional Services engagement, as applicable (whether by Cyxtera for Cause, Customer for Cause or Cyxtera or Customer for any other reason), Customer shall be liable for all Product charges and fees accrued but unpaid as of the termination date. Customer agrees that (a) Cyxtera will incur considerable consequences and losses in the event Customer terminates a Product prior to the expiration of the applicable Software Term, Hosted Service Term or Support Term or completion of the Professional Services engagement, as applicable, (b) such consequences and losses would be



difficult, if not impossible to estimate, and (c) the Early Termination Charge constitutes liquidated damages based on fairly estimated harm to Cyxtera, which is a reasonable estimate of the consequences and losses that Cyxtera would actually incur if Customer terminates a Product early, and is not intended as a penalty.

10. **LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, CYXTERA'S OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNIFIED PARTIES IN SECTION 11, A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD OR CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF CYXTERA'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY, NOR ITS AFFILIATES, SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ANY LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, COST OF REPLACEMENT GOODS, PRODUCTS OR SERVICES, LOSS OF PROFITS OR REVENUE, LOSS OF OR CORRUPTION OF DATA OR DATA USE, OR COMPUTER FAILURE, DELAY OR MALFUNCTION, UNDER THE SCHEDULE AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, AND REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY. EXCEPT WITH RESPECT TO A PARTY'S BREACH OF ITS PAYMENT OBLIGATIONS HEREUNDER, A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, CYXTERA'S OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNIFIED PARTIES IN SECTION 11, A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD OR CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF CYXTERA'S INTELLECTUAL PROPERTY RIGHTS, (A) IN THE EVENT THE FIRST EVENT GIVING RISE TO A CLAIM OR CAUSE OF ACTION HEREUNDER OCCURS DURING THE FIRST TWELVE (12) MONTHS OF THE TERM OF THIS SCHEDULE, EACH PARTY'S MAXIMUM LIABILITY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THE SCHEDULE AGREEMENT WILL NOT EXCEED TWELVE (12) TIMES THE TOTAL FEES AND CHARGES PAID OR PAYABLE BY CUSTOMER AND ITS AFFILIATES TO CYXTERA AND ITS AFFILIATES UNDER THE SCHEDULE AGREEMENT IN THE MONTH DURING WHICH THE FIRST EVENT GIVING RISE TO A CLAIM OR CAUSE OF ACTION HEREUNDER OCCURRED AND (B) IN THE EVENT THE FIRST EVENT GIVING RISE TO A CLAIM OR CAUSE OF ACTION HEREUNDER OCCURS AFTER THE FIRST TWELVE (12) MONTHS FROM THE EFFECTIVE DATE OF THIS SCHEDULE, EACH PARTY'S MAXIMUM LIABILITY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THE SCHEDULE AGREEMENT WILL NOT EXCEED THE TOTAL FEES AND CHARGES PAID OR PAYABLE BY CUSTOMER AND ITS AFFILIATES TO CYXTERA AND ITS AFFILIATES UNDER THE SCHEDULE AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DAY THE FIRST EVENT GIVING RISE TO A CLAIM OR CAUSE OF ACTION HEREUNDER OCCURRED.

11. **Indemnification.**

a. Cyxtera Indemnification. Cyxtera will defend, indemnify and hold harmless Customer, its Affiliates and each of their respective agents, officers, directors, representatives and employees from and against all third-party claims, demands, liabilities, losses, costs and expenses, including reasonable attorneys' fees (each, a "Claim"), to the

extent alleging that Customer's use of Software or a Hosted Service infringes or misappropriates such third-party's intellectual property rights. In the event any Software or Hosted Service becomes the subject of a Claim (or Cyxtera believes such claim appears possible) under this Section 11, Cyxtera may, at its sole discretion: (i) contest the Claim, (ii) obtain permission from the third-party claimant for Customer's continued use of such Software or Hosted Service, as applicable, (iii) replace or modify such Software or Hosted Service, as applicable, to make it non-infringing, or (iv) if the foregoing subclauses (i) through (iii) are not commercially reasonable, then terminate Customer's use of such Software or Hosted Service, as applicable, and any Support services directly related to the terminated Software or Hosted Service, as applicable. In the event of termination of a Software license, Hosted Service or Support services, as applicable, in accordance with this Section 11, (x) Customer will not be liable for any "Early Termination Charge" in connection with such termination and (y) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Software, Hosted Service or Support Service, as applicable, and relating to periods of time following such termination. With respect to a perpetual Software license, such refund shall be calculated, as depreciated, on a five (5) year straight line basis. Notwithstanding anything in this Section 11 to the contrary, Cyxtera shall have no obligation or liability to Customer under this Section 11 to the extent the Claim arises from (1) any use of the Software or Hosted Service, as applicable, other than in accordance with the Documentation and the Schedule Agreement, (2) a modification to the Software or Hosted Service, as applicable, made or caused by Customer or any other party acting on behalf of Customer, (3) any data uploaded by or for Customer and processed in the Software or Hosted Service, as applicable, (4) use of the Software or Hosted Service, as applicable, in violation of applicable law, (5) use of the Software or Hosted Service, as applicable, after termination of the Software Term or Hosted Service Term, as applicable, with respect thereto, (6) use of the Software or Hosted Service, as applicable, in combination with any hardware, software, application, equipment, technology or material that was not provided by Cyxtera, (7) Customer's or any Authorized User's failure to use any new or corrected version of the Software or Hosted Service, as applicable, made available by Cyxtera to Customer, (8) Customer's or any Authorized User's use of the Software or Hosted Service, as applicable, after Cyxtera has notified Customer of the potential infringement or misappropriation, or (9) Customer's or any Authorized User's negligence or willful misconduct. This Section 11 states Cyxtera's sole obligation, and Customer's sole and exclusive remedy, for any Claim that the Software or Hosted Service, as applicable, infringes or misappropriates the intellectual property rights of a third party.

b. Indemnification Process. Cyxtera's obligations under this Section 11 are contingent upon the indemnified party (i) providing prompt written notice to Cyxtera of such Claim (provided, however, that any failure or delay in notice shall not affect any of the indemnified party's rights hereunder except to the extent Cyxtera is materially prejudiced thereby), (ii) allowing Cyxtera to control the defense and any related settlement of any such Claim, and (iii) furnishing Cyxtera with reasonable assistance, at Cyxtera's sole cost and expense, in the defense or settlement of any such Claim. The indemnified party shall have the right to participate in the defense of such Claim with counsel of its own choosing at its own expense. Cyxtera shall not enter into any settlement of any such Claim without the prior written consent of the indemnified party (such consent not to be unreasonably withheld, conditioned or delayed) if the indemnified party's rights would be



directly and materially impaired thereby. For the avoidance of doubt, any settlement that does not include a full and unconditional release of the indemnified party from any and all liability arising out of the Claim, shall be deemed to directly and materially impair the indemnified party's rights.

12. Warranties.

a. **Software Warranties.** Cyxtera warrants to Customer that Software will function materially in accordance with the Documentation for a period of thirty (30) days from commencement of the Software Term with respect thereto (the "Warranty Period"). Any failure of the Software to function materially in accordance with the Documentation during the Warranty Period for such Software shall be a "non-conformity". In the event Customer sends written notice to Cyxtera during the Warranty Period notifying Cyxtera of any non-conformity with respect to the Software (the "Non-Conformity Notice"), Cyxtera will use commercially reasonable efforts to remedy such non-conformity. In the event Cyxtera fails to remedy such non-conformity or provide a mutually agreed work around within thirty (30) days after its receipt of the Non-Conformity Notice, either party may terminate such non-conforming Software and any Support services directly related to such non-conforming Software by providing written notice to the other party, provided, that, the terminating party exercises its right to terminate before Cyxtera is able to remedy such non-conformity. Notwithstanding the foregoing, Customer shall not have the right to terminate such non-conforming Software or Support services, as applicable, in the event Customer fails to provide Cyxtera all information reasonably requested by Cyxtera to resolve the non-conformity. In the event of any delay in Customer providing Cyxtera any such information, the thirty (30) day period for Cyxtera to remedy such non-conformity or provide a mutually agreed work around shall be deemed extended by the number of days of such delay. In the event of termination of a Software license or Support services, as applicable, in accordance with this Section 12.a, (i) Customer will not be liable for any "Early Termination Charge" in connection with such termination and (ii) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Software or Support service, as applicable, and relating to periods of time following such termination. With respect to a perpetual Software license, such refund shall be calculated, as depreciated, on a five (5) year straight line basis. Notwithstanding anything in this Section 12.a to the contrary, this warranty shall not apply to any non-conformity to the extent resulting from (1) any use of the Software other than in accordance with the Documentation and the Schedule Agreement, (2) a modification to the Software made or caused by Customer or any other party acting on behalf of Customer, (3) any data uploaded by or for Customer and processed in the Software, (4) use of the Software in violation of applicable law, (5) use of the Software in combination with any hardware, software, application, equipment, technology or material that was not provided by Cyxtera, (6) Customer's or any Authorized User's failure to use any new or corrected version of the Software made available by Cyxtera to Customer, or (7) Customer's or any Authorized User's negligence or willful misconduct. Except as set forth in the Support Terms with respect to the Software, if any, this Section 12.a states Cyxtera's sole obligation, and Customer's sole and exclusive remedy, in connection with any failure of the Software to function in accordance with the Documentation.

b. **Professional Services Warranties.** Cyxtera warrants that (i) it and the Cyxtera personnel performing the Professional Services have the necessary knowledge, skills, experience, and qualifications to perform the Professional Services in accordance with the applicable Order Form(s), and (ii) the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

c. **Support Warranties.** Cyxtera warrants that (i) it and the Cyxtera personnel performing the Support have the necessary knowledge, skills, experience, and qualifications to perform the Support in accordance with the applicable Support Terms, and (ii) the Support will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

13. **Hardware.** Cyxtera is not the manufacturer of any Hardware resold by Cyxtera to Customer hereunder. Notwithstanding anything in the Schedule Agreement to the contrary, Hardware is resold "as is" without indemnification, support or warranties of any kind, provided, that, Cyxtera will assign to Customer all assignable warranties and indemnities granted to Cyxtera by the party that Cyxtera purchased such Hardware from. In no event will Cyxtera be liable for any losses, costs, expenses or damages whatsoever, including, without limitation, direct, incidental, special, indirect, or consequential damages, loss of business, loss of profits, loss of data, or tortious conduct relating to, or arising from the Hardware.

14. Intellectual Property Ownership; Feedback.

a. **Cyxtera Intellectual Property.** Customer acknowledges that, as between Customer and Cyxtera, Cyxtera owns all right, title and interest, including all intellectual property rights, in and to Cyxtera Intellectual Property.

b. **Feedback.** Cyxtera encourages Customer to provide suggestions, proposals, ideas, recommendations and other feedback (collectively, "Feedback") regarding changes or improvements (including, without limitation, new features or functionality relating thereto) to Cyxtera Intellectual Property. To the extent Customer provides such Feedback, notwithstanding the definition of "Confidential Information" in the Schedule Agreement to the contrary, in no event shall any such Feedback be deemed to be Customer's Confidential Information. Cyxtera shall have the right to make, use, sell, offer for sale, import and otherwise exploit such Feedback (including by incorporation of such Feedback into Cyxtera Intellectual Property) without restriction. Customer hereby assigns to Cyxtera on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title and interest in, and Cyxtera is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Cyxtera is not required to use any Feedback.

15. **Auditing Rights and Required Records.** Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the term of the Schedule Agreement and for a period of two (2) years after termination or expiration of the Schedule Agreement with respect to matters necessary for accurately determining amounts due by Customer hereunder and Customer's compliance with the Schedule Agreement.



Cyxtera may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by the Schedule Agreement. If such inspection and audit reveals that Customer has underpaid Cyxtera with respect to any amounts due and payable during the term of the Schedule Agreement, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with the MA, and reimburse Cyxtera for the costs of conducting such audit. In the event any such underpayment is the result of Customer's use of Software or Hosted Service expanding beyond the Permitted Use or number of permitted Authorized Users, the amounts owed by Customer to Cyxtera for such underpayment shall be based on Cyxtera's then-current list prices applicable to such expanded use. Such inspection and auditing rights will extend throughout the term of the Schedule Agreement and continue for a period of two (2) years after the termination or expiration of the Schedule Agreement.

16. **Uniform Computer Information Transactions Act and United Nations Convention on Contracts for the International Sale of Goods.** Notwithstanding anything in the Schedule Agreement to the contrary, including, for the avoidance of doubt, the "Governing Law" and "Venue" sections of the MA, in no event shall the Uniform Computer Information Transaction Act or the United Nations Convention on Contracts for the International Sale of Goods apply to the Schedule Agreement.

17. **Export Regulation.** The Products, the underlying software and technology and the Documentation may be subject to US export controls and sanctions laws and regulations, including, without limitation, the US Export Administration Regulations and the various economic sanctions measures administered by the US Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Customer shall not, directly or indirectly, sell, export, re-export, transfer, re-transfer, provide or release the Products, the underlying software or technology or the Documentation to, or make the Products, the underlying software or technology or the Documentation accessible from, any jurisdiction, country, person or entity without first securing all applicable U.S. government export authorizations, nor will Customer sell, export, re-export, transfer, re-transfer, provide or release the Products, the underlying software or technology or the Documentation to any jurisdiction, country, person or entity, or for any end-use, that is prohibited by applicable law, rule, or regulation. Customer shall not, directly or indirectly, sell, export, re-export, transfer, re-transfer, provide or release the Products, the underlying software or technology or the Documentation to any party named on OFAC's Specially Designated Nationals list or any other U.S. government list of prohibited parties, or to any entity owned 50% or more in the aggregate by any sanctioned party or parties, nor shall Customer use the Products, underlying software or technology, or the Documentation, directly or indirectly, in connection with any prohibited party. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, transferring, re-transferring, providing or releasing, or otherwise making the Products or the underlying software or technology or the Documentation available outside the US.

18. **Modifications to Support Terms.** Unless a modification is required by applicable law or industry standard, if Cyxtera modifies applicable Support Terms pursuant to the definition of "Support Terms"

in Section 19 ("Support Terms Change") and Customer believes that its use of a Product (other than Hardware) is, or its rights or obligations with respect to a Product (other than Hardware) are, materially and adversely affected by the Support Terms Change, Customer may, at any time prior to the effective date of such Support Terms Change, send written notice to Cyxtera indicating such Product(s) and including details sufficient to demonstrate the adverse material affect. With respect to any Products (other than Hardware) set forth in Customer's written notice that Customer and Cyxtera mutually agree that the Support Terms Change materially and adversely affects Customer's use of such Products, or Customer's rights or obligations with respect to such Products (the "Affected Products"), Cyxtera may (a) agree to waive the applicability of the Support Terms Change with respect to the Affected Products, provided, that, any such waiver shall not be made by Cyxtera until the parties execute an amendment to the Schedule Agreement setting forth the terms of such waiver, or (b) decline to waive the applicability of the Support Terms Change with respect to the Affected Products. In the event Cyxtera declines to waive the applicability of the Support Terms Change with respect to the Affected Products, Customer may, within thirty (30) days of receipt of Cyxtera's written notice of Cyxtera's election to do so, terminate the Affected Products by providing written notice of such termination to Cyxtera, with such termination to be effective as of the date set forth in Customer's written notice to Cyxtera, but no later than ninety (90) days from Customer's receipt of such notice from Cyxtera. In the event Customer terminates a Product pursuant to this Section 18, (i) Customer will not be liable for any "Early Termination Charge" in connection with such termination and (ii) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Product and relating to periods of time following such termination. With respect to a perpetual Software license, such refund shall be calculated, a depreciated, on a five (5) year straight line basis.

19. **Definitions.**

a. "Authorized User" means an employee, representative or agent of Customer who is authorized by Customer to access and use the Software licensed hereunder or Hosted Services purchased hereunder, as applicable, and Documentation applicable to such Software or Hosted Service, as applicable, solely in connection with the use of such Software or Hosted Service, as applicable. In the event an Order Form sets forth limitations on the number and/or type of Authorized Users permitted with respect to the Software licensed thereunder or Hosted Service purchased thereunder, as applicable, Customer shall be required to comply with all such limitations. Each Authorized User shall be required to have a unique username and password. Such username and password shall be personal to such Authorized User and Customer shall not permit an Authorized User to, and an Authorized User shall not, share its username and password with other Authorized Users.

b. "Cyxtera Intellectual Property" means the Software, Hosted Services, Documentation, any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing and any other Cyxtera intellectual property.

c. "Documentation" means Cyxtera's then-current user manuals, handbooks, training materials, technical manuals and guides relating to the Software or Hosted Services, as applicable.



d. "Hosted Service" means Software licensed by Customer under an Order Form which will be hosted by Cyxtera on behalf of Customer and made available for access by Customer via the Internet as a service.

e. "Order Form" means an order form, quote, statement of work or other ordering document that includes the types and details of the specific Products ordered by Customer and agreed to be provided by Cyxtera. Any Products licensed or purchased by Customer through the Portal will be deemed to be licensed or purchased pursuant to an "Order Form" notwithstanding that the Products are licensed or purchased through the Portal and neither party physically or electronically executed an actual "Order Form" document.

f. "Permitted Use" means use of the Software or Hosted Service, as applicable, solely in accordance with the Documentation and by an Authorized User for the benefit of Customer in the ordinary course of its internal business operations and in accordance with all of the applicable terms and conditions of the Schedule Agreement, including, without limitation, any terms, conditions and limitations set forth in the Order Form with respect to the Software or Hosted Service, as applicable (e.g., maximum number of computers that the Software may be installed on or that may access the Hosted Service, limitation on locations that the Software may be used at or the Hosted Services may be accessed from, maximum number of records that can be processed or stored at any given time).

g. "Schedule Agreement" means (i) the MA (but only to the extent the MA applies to this Schedule), (ii) this Schedule, (iii) all Order Forms and applicable Support Terms and Documentation, and (iv) any other document governed by, or that is incorporated by reference into, the MA (but only to the extent such document applies to this Schedule), this Schedule or any of the documents referred to in subclause (iii) hereof.

h. "Software" means the software, in object code format, licensed by Cyxtera to Customer under an Order Form, and, in the event Customer is entitled to receive Support for such Software, includes all updates, bug fixes, patches, error corrections and other minor enhancements or improvements thereto that Cyxtera generally makes available free of charge to all licensees of the Software during Customer's Support Term therefor.

i. "Support" means the maintenance and support services specified in the Support Terms.

j. "Support Terms" means the support terms located at <https://www.cyxtera.com/legal/product-and-service-terms-and-conditions/cybersecurity-terms-and-conditions>, if any, applicable to the Software or Hosted Services licensed or purchased by Customer hereunder which may be modified by Cyxtera from time to time by posting updated support terms at such website or a successor website and providing at least thirty (30) days advance notice to Customer. In the event such notice does not specify the date such modification is effective as of, such modification shall be effective thirty (30) days after Customer's receipt of such notice. Notwithstanding anything in the Support Terms to the contrary, in no event shall Cyxtera have any obligation to provide Support to the extent the issue for which Support is being requested resulted from (1) any use of the Software or Hosted Services, as applicable, other than in accordance with the Documentation and the Schedule Agreement, (2) a modification to the Software or Hosted Services, as applicable, made or caused by Customer or any other party acting on behalf of Customer, (3) any data uploaded by or for Customer and processed in the Software or Hosted Services, as applicable, (4) use of the Software or Hosted Services, as applicable, in violation of applicable law, (5) use of the Software or Hosted Services, as applicable, in combination with any hardware, software, application, equipment, technology or material that was not provided by Cyxtera, (6) Customer's or any Authorized User's failure to use any new or corrected version of the Software or Hosted Services, as applicable, made available by Cyxtera to Customer (unless the Support Terms expressly state that Support will be provided for a particular older version), (7) a defect in the version of the Software or Hosted Service, as applicable, being used by Customer that has been corrected in a new or corrected version of the Software or Hosted Service, as applicable, that has been made available by Cyxtera to Customer (regardless of whether the Support Terms expressly state that Support will be provided for such version of the Software or Hosted Service, as applicable, being used by Customer), or (8) Customer's or any Authorized User's negligence or willful misconduct.