Vigilant LLC
7570 Bales St.
Suite 250
West Chester, OH. 45069

VIGILANT SUBSCRIPTION LETTER

CUSTOMER
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

TRIAL PERIOD

The decisions you make involving cyber security protection services are significant. You need to know our services do what we say they will do. That is the concept behind our trials. **There is no obligation to subscribe to our services after a trial is run**, and at no cost you will receive a valuable forensic Review Meeting specific to your trial. Additionally, we provide up to ten hours of free incident response during the trial. **These services would cost anywhere between $30-60k, but we provide it free because we believe in our services and what a trial will reveal.**

Vigilant will provide Customer a trial of the Vigilant Services you have chosen, as reflected in the Vigilant Services section below. Within 3 business days after your trial is complete, Vigilant will meet with your team to present a detailed report on threats Vigilant found during the trial and our recommendations to resolve any threats.

- CyberDNA™ Subscription services (5-day Trial Period)
- Managed Endpoint Subscription Services (20-day Trial Period)

Once your Review Meeting is complete, you must notify Vigilant in writing within 5 business days whether you wish to cease use of all Vigilant Services.

If you choose to discontinue the Vigilant Services you will be required to return any equipment to Vigilant within 10 business days and uninstall and permanently delete any software provided. If equipment is not returned within the allotted time, you will be invoiced the full value of the equipment.

If a cease of use request is not submitted in writing your trial will convert to a full subscription account consistent with the Vigilant Services you have selected below. In this event, your Contract Start Date will be established as 6 days after the installation of the Vigilant hardware or software and will continue for the Term identified below. Upon conversion to a full subscription account, your initial invoice will be prorated back to the Contract Start Date.

SUBSCRIPTION AGREEMENT

Company agrees to pay all monthly fees that are invoiced properly and consistently with the below. All Vigilant Services are subject to incur additional charges according to applicable Local, State and Federal Taxes.

FINE PRINT

If Company improperly or fraudulently uses any Vigilant materials during the subscription period, Company shall bear all risk of loss arising therefrom. Company expressly authorizes and grants Vigilant the right to monitor all network and host-related traffic on Company networks and to retain a copy of all information captured by VIGILANT on Company systems and networks consistently with VIGILANT Terms and Conditions. Such terms and conditions are located attached as Appendix A, and by signing this Agreement, Company agrees to such terms and conditions as if fully restated here.

Excepting any non-disclosure agreement or business associate agreement entered into between Company and Vigilant, which agreement(s) shall remain in effect pursuant to their express terms, this agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind proceeding the date of this agreement shall not be binding upon either party except to the extent incorporated into this agreement. Both parties acknowledge that they have read and understand this agreement, the products and services being delivered, and agree to be bound by its terms.

VIGILANT SERVICES

SUBSCRIPTION AGREEMENT SERVICES AND PRICING

CYBERDNA

Speed	Sensor Type	Site Location	QTY	MRC	Line Total
	1002	77 Fair Drive Costa Mesa, CA 92626	1	$2,000	$ 2,000
					$ -
					$ -
					$ -
					$ -
					$ -
				Total MRC:	$ 2,000
				Year 1:	$ 24,000
				Total One Time Setup Costs:	$ -

MANAGED ENDPOINT

Protection Type	QTY	MRC	Line Total
Level I – Threat Protection	N/A	N/A	$ -
Level II – Active Response	N/A	N/A	$ -
Level III – Data Protection Services	N/A	N/A	$ -
		Total MRC:	$ -
		Discount (10%):	$ -
		Adjusted MRC:	$ -
		Total One Time Setup Costs:	$ -

SERVICES COST SUMMARY

☐   CyberDNA: 1 Year Term

☐   Managed Endpoint: 1 Year Term

MONTHLY RECURRING COSTS

CYBERDNA MRC	$	2,000
MANAGED ENDPOINT MRC	$	-
(Min. Monthly Managed Endpoint MRC = $ -.--)		
TOTAL MRC:	**$**	**2,000**

IMPORTANT: VIGILANT incurs significant costs at the outset of a transaction once the extent and quantity of Vigilant Services is determined and agreed upon. Accordingly, Customer expressly agrees that if Customer prevents Vigilant from installing the entirety of the Managed Endpoint MRCs reflected in this Agreement, Customer will still be responsible for no less than eighty percent (80%) of the total MRC costs reflected above for each month, and Customer will be invoiced monthly for such amounts.

ONE TIME SETUP AND CONFIGURATION COSTS

CYBERDNA MRC	$	0.00
MANAGED ENDPOINT MRC	$	-
TOTAL MRC:	**$**	**0.00**

YOU – OUR CUSTOMER

Name: LORI ANN Farrell Harrison

Signature: *Lori Ann Farrell H*

Title: City Manager

Date: 10-23-19

ACCOUNTS PAYABLE

Contact: _____

Email: _____

Phone: _____

Address: _____
(if different from above)

APPROVED AS TO FORM:

Name: Kimberly Hall Barlow

Signature: *Kimberly Hall Barlow*

Title: City Attorney

Date: 10/23/19

Vigilant LLC. – 7570 Bales St. Suite 250 West Chester, OH 45069

Name: Katie Nyhuis

Signature: *Katie Nyhuis*

Title: CFO

Date: 10/9/19

Form ver 3.0a

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Appendix A

TERMS AND CONDITIONS

These TERMS AND CONDITIONS ("Terms") apply to and govern all products, Software and Services provided by Vigilant LLC and its Affiliates ("Vigilant") and any Person who uses any Vigilant products, Software and Services ("Customer"). Vigilant reserves the right to revise or otherwise modify these Terms at any time with or without notice to Customer. If Vigilant revises or modifies these Terms, it will provide written notice to Customer of such revisions or modifications, and the revised Terms will thereafter be immediately effective for all later agreements between Vigilant and Customer or any subscription agreements associated with any prior agreement entered into between the Parties.

1. SERVICES

1.1 SUBSCRIPTION AGREEMENTS

a. Vigilant shall, in accordance with all terms and conditions set forth in the Agreement, provide Customer the services described in the Agreement ("Services").

b. The Agreement will be effective only when signed by Customer and Vigilant. Any modifications or changes to any Agreement or the Services will be effective only by a written change order signed by both Parties.

1.2 LIMITATIONS ON VIGILANT'S OBLIGATIONS.

a. Customer specifically acknowledges that certain aspects of the Services are provided or controlled by third parties. At times, actions or inactions by third parties can impair or disrupt the Services. Although Vigilant will use commercially reasonable efforts to remedy and avoid any impaired or disrupted Services, Vigilant cannot and does not guarantee that the Services will not be impaired or disrupted. Customer acknowledges that its performance of all of its obligations under the Agreement is necessary for Vigilant's successful performance of the Services. Any failure by Customer to perform its obligations, that in Vigilant's reasonable judgment prevents or materially hinders Vigilant's performance of the Services, constitutes a material breach of the Agreement.

b. Vigilant is not obligated to: (i) retain or back up any Customer Information, except as deemed necessary by Vigilant for the performance of the Services; (ii) maintain a chain of custody of any Customer Information for any purpose; (iii) initiate a response to a discovered Compromise or Incident except as expressly stated in an Agreement; (iv) implement any remediation tasks or improvements as a result of or to avoid Compromises or Incidents; (v) monitor any elements of Customer's environment except as expressly stated in an Agreement, including traffic on unmonitored portions of Customer's network and non-electronic events such as sharing access credentials; or (vi) identify or correct any errors or inaccuracies in any Customer Information.

c. Both Parties acknowledge that all publicly available and privately built networks are inherently insecure, and Vigilant makes no guarantee against unauthorized access or breach. Vigilant will use commercially reasonable efforts to implement and deploy reasonable security features, procedures, and technologies that will, in Vigilant's reasonable opinion, provide reasonable protection to any Customer Information hosted by Vigilant from unauthorized access. Vigilant is not liable for any loss or damage arising from unauthorized access to Customer Information or any insecure features or design of any publicly or privately available network.

1.3 CUSTOMER ENVIRONMENT

Customer acknowledges that the configuration of Customer's environment may require Vigilant to alter the standard deployment of its Services and may affect the effectiveness or accuracy of the Services. Customer shall promptly notify Vigilant of any changes to its software, hardware, or configuration of the Customer environment that may impact Vigilant's performance of the Services. At times, Vigilant may make recommendations to Customer as part of Services that may require changes to Customer's

environment. Customer is solely responsible for any changes made or not made to its environment during the term of any Agreement. Vigilant may monitor, intercept, and review activities of Customer employees, contractors, and other individuals with access to Customer IT resources and communications systems, including but not limited to email (both outgoing and incoming), instant messages, and internet postings and activities. This might include, without limitation, the monitoring, intercepting, accessing, recording, disclosing, inspecting, reviewing, retrieving, and printing of transactions, messages, communications, postings, log-ins, recordings, and other uses of the systems as well as keystroke capturing and other network monitoring technologies. Vigilant may also store copies of such data and communications for a period of time. Customer consents to such activities by Vigilant.

1.4   USER DATA AND FORENSIC DATA RETENTION AND PRIVACY

a. Your signature below expressly grants Vigilant the right to monitor all network and host related traffic on Customer networks and to retain a copy of all information captured by Vigilant from Customer systems and networks ("Captured Data"). Any Captured Data, which in Vigilant's sole discretion, is identified as malware, forensic threat-specific data, or is in any way related to a Compromise or Incident shall be separately designated as "Threat Data." Customer grants Vigilant, a worldwide, perpetual, irrevocable, non-exclusive, royalty-free license to duplicate, sell, transmit, publish, modify, distribute, publicly display, summarize, alter, compile, and create derivative works of any Threat Data. Before sharing Threat Data with a third party, Vigilant will undertake commercially reasonable and good faith efforts to determine if any Customer Confidential Information is contained in or attached to the Threat Data, and, if so, will undertake the following steps before proceeding:

   i.   undertake reasonable efforts to remove Customer Confidential Information from the Threat Data unless required to remain for analysis by Vigilant or as required by law; and

   ii.   except as required by law, before Threat Data that includes Customer Confidential Information is submitted to any third party, Vigilant will provide Customer the full submission sample for Customer's prior approval.

b. Vigilant may be exposed to or collect the Private Information of Customer and Customer employees, contractors, and agents during its performance of Services or its retention of Forensic Data. To the extent Vigilant is exposed to or collects Private Information or Customer provides Private Information to Vigilant, it shall be Customer's responsibility to identify such information and ensure both Parties' compliance with regard to all applicable privacy Laws, regulations, and restrictions, including all data privacy Laws, and all related license requirements. Customer represents and warrants that (i) it has obtained all necessary permissions and documents, including consent forms, licenses, agreements, and certifications, necessary for Vigilant to perform the Services in a manner consistent with Law; and (ii) Customer complies with all applicable laws for processing and transferring Customer Information to Vigilant. Vigilant may disclose Customer Information, including Private Information and Confidential Information, where Vigilant reasonably believes it is required by law to make such disclosure. Prior to such disclosure, Vigilant shall promptly notify Customer in writing of such requirement and its intent to disclose.

1.5   ALERTING AND REPORTING

a. Vigilant shall monitor and evaluate alerts generated by the Services consistent with the Agreement (24/7/365 or 8:00-5:00 Monday-Friday). If Vigilant determines that the alert is a threat to the security of Customer's environment, Vigilant shall provide an analysis of each alert or category of alert to Customer pursuant to the Agreement, but typically within four (4) hours after the alert is determined. If Vigilant determines that an alert is a "false positive" or that it otherwise poses no legitimate threat to Customer's environment, Vigilant shall have no obligation to provide an alert analysis.

b. Communicating initial threat information will be via phone, email, or a unique Customer portal. Alert details will only contain information available to Vigilant. For example, actual source IP address for an alert may be obscured from Vigilant by infrastructure within the customer environment such as proxy servers. Determination of actual source of an alert may require additional investigation by the Customer and Vigilant. Analysis performed beyond alert notification is considered "Incident Response." Unless expressly stated in the Agreement, Vigilant is not responsible to provide Incident Response.

2. GRANT OF LICENSE

2.1 LICENSE GRANT

Vigilant grants to Customer, exercisable solely by Authorized Users, a non-exclusive and non-transferable right and license to use the Software and Services during the Term. Customer shall use the Software and Services solely for internal business purposes and as set forth in the Agreement. Customer shall have transfer, assignment or sublicense rights absent express written consent from Vigilant. Customer acknowledges and agrees that Customer is solely responsible for ensuring that Authorized Users comply with the Agreement, and Customer shall be solely responsible for any breach of the Agreement due to the action or inaction of any Authorized User or of any employee, agent, customer, or contractor of Customer. Customer shall not, and shall not permit any third party to: (i) remove of modify any markings or reference to Vigilant or its licensors' proprietary rights from Vigilant Software or Services; (ii) make the Software, Services, or any materials thereof available in any manner to any third party for use in the third party's business operations; (iii) download, reproduce, copy, republish, alter, adapt, modify, improve, translate, create derivative works from, reverse engineer any part of the Services or Software, disassemble, decompile or otherwise attempt to reveal the trade secrets, know-how, or other Intellectual Property Rights underlying or included in the Software or Services; (iv) access or use the Software or Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to Vigilant; (v) interfere in any manner with the hosting of the Software or the Services; (vi) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit time-sharing, or otherwise commercially exploit or make the Services, Software, or related materials available to any third party; or (vii) otherwise use the Services or Software not in accordance with the Agreement. Upon expiration or termination of the Agreement, for any reason, Customer's right to access or use the Software and Services shall immediately terminate.

2.2 LICENSE RESTRICTIONS

Vigilant will assign to each Authorized User a unique password and identification name ("Authorized User Credentials"). Authorized User Credentials allow the Authorized User to access the administrative components of the Software and Services. Customer must immediately inform Vigilant if it discovers or reasonably believes that Authorized User Credentials or any other security mechanism issued by Vigilant is lost or forgotten, has or is likely to become known to someone not authorized to use it or is being or is likely to be used in an unauthorized way. In such an event, Customer must complete such security checks as Vigilant deems appropriate. Vigilant reserves the right to suspend access to the Software and Services if at any time Vigilant considers that there is or is likely to be a breach of security or if Customer fails to comply with Vigilant's instructions or requests in relation to security matters.

2.3 LIMITED LICENSE FORM THIRD PARTIES

Vigilant may use software/hardware for the Services that are subject to shrink-wrap, click-through, on-screen, open source, or similar licensing arrangements that Customer must timely accept during Vigilant performance of the Services. Vigilant shall obtain Customer's approval prior to accepting the terms of such agreements on behalf of Customer if acceptance of such agreement will require payment from Customer. Where applicable, Vigilant will convey to Customer the requisite license rights to software used by Vigilant to provide the Services. Customer shall either directly pay all costs of all such software/hardware, including all licensing fees, or promptly reimburse Vigilant for all such costs.

2.4 OPEN SOURCE SOFTWARE LICENSE

The Software and Services may utilize one or more open source packages. This open source software is governed by the terms and conditions of the applicable open source license, and Customer agrees that it will be bound by the terms and conditions of the applicable open source license in connection with its use and distribution of the open source software in the Software and Services. The open source software, the applicable open source licenses, and other open source notices will be made available upon request.

3. TERM AND TERMINATION

3.1 TERM AND RENEWAL

The Agreement shall commence on the Effective Date and remain in effect for the term identified in the Agreement (the "Initial Term"). If no Initial Term is identified in the Agreement, the Initial Term shall be deemed to be three (3) years from the Effective Date and shall automatically renew for successive three (3) year periods (each a "Renewal Term"), unless either Party gives at least ninety (90) days prior written notice of intent to cancel to the other Party before the expiration of the then current term in effect (including the Initial Term or any Renewal Term, as the case may be). The Initial Term and any Renewal Term are referred to collectively as, the "Term."

3.2 TERMINATION

Vigilant may terminate the Agreement immediately if in Vigilant's sole discretion Customer misuses the Software or Services, engages in illegal practices, or otherwise materially breaches the Agreement fails to cure such breach within thirty (30) days of written notice from Vigilant. Vigilant may also terminate the Agreement at any time, for any cause, upon thirty (30) days prior written notice. Customer may terminate the Agreement if Vigilant materially breaches the terms of the Agreement and fails to cure such breach within thirty (30) days of written notice.

3.3 EFFECT OF TERMINATION OR EXPIRATION

Upon and after the termination or expiration of any Agreement for any or no reason:

a. Customer shall immediately cease use of all Vigilant Materials and Confidential Information.

b. Subject to continuing rights, licenses and obligations of either Party under the Agreement, all licenses granted hereunder will immediately terminate and the Parties shall cease all activities concerning, including all use of, in the case of Customer, the expired or terminated Services and/or Software and related Vigilant Materials, and, in the case of Vigilant, the Customer Information.

c. Vigilant shall immediately cease use of Customer's Confidential Information except to the extent that such Confidential Information is, in Vigilant's reasonable opinion, inseparable from the Forensic Data Vigilant is entitled to retain and use under the Agreement. In such circumstances, Vigilant shall have no obligation to cease use of or destroy the inseparable Confidential Information.

d. Customer shall pay to Vigilant, (i) all charges and amounts due and payable to Vigilant, if any, for Services performed under the terminated or expired Agreement; (ii) all reimbursements for costs/expenses incurred by Vigilant during the term of the Agreement; (iii) any deferred payments; (iv) 100% of any rate reduction or discount previously granted if the Agreement or any Agreement is terminated before the end of the Term due to Customer's misuse of the Software or Services, engaging in illegal practice, or materially breaching the Agreement and failing to cure such breach within thirty (30) days of written notice from Vigilant. Customer shall not be entitled to any refund of any payments made by Customer.

e. Each Party shall, at the other Party's option and upon its written request and subject to any retention rights in the Agreement: (i) promptly return or destroy and erase from all systems it directly or indirectly uses or controls all originals and copies of all of the other Party's Confidential Information; and (ii) provide a written statement to the other Party certifying that it has complied with the requirements of this section.

4. SURVIVAL

The provisions set forth in the following sections, and any other right or obligation of the Parties in the Agreement that, by its nature, should survive termination or expiration of the Agreement, will survive any expiration or termination of the Agreement: Section 3.3, Section 4, Section 6, Section 7, Section 8, Section 9, Section 10, Section 12, and Section 13.

5. FEES, TAXES, AND EXPENSES

5.1 Subject to the terms of the Agreement, Customer shall pay the fees set forth in the Agreement, which shall be determined and invoiced by Vigilant in accordance with the rates, pricing and discounts set forth in the Agreement ("Fees").

5.2 All Fees and amounts set forth in the Agreement are exclusive of taxes. Customer shall be solely responsible for all sales, service, value-added, use, excise, consumption and any other taxes, duties and charges of any kind, if any, imposed by any governmental entity on any amounts payable by Customer under the Agreement, other than any taxes imposed on, or with respect to, Vigilant income, revenues, gross receipts, personnel, real or personal property or other assets.

5.3 Customer shall reimburse Vigilant for direct, documented, out-of-pocket expenses incurred by Vigilant in performing the Services, provided that Customer shall only be obligated to reimburse Vigilant for travel and lodging expenses approved in advance by Customer.

6. OWNERSHIP

6.1 CUSTOMER INFORMATION

Customer will provide Customer Information to Vigilant in connection with the Agreement and Services. Customer will remain the sole and exclusive owner of all right, title and interest in and to all Customer Information, including all Intellectual Property Rights relating thereto, subject only to the licenses granted in the Agreement. Subject to the terms and conditions of the Agreement, Customer hereby grants Vigilant a limited, royalty-free, fully-paid up, non-exclusive, transferable and sublicensable license to Process the Customer Information solely as reasonably necessary to provide the Services and as reasonably necessary to exercise any of the rights granted to Vigilant under the Agreement.

6.2 VIGILANT MATERIALS

Vigilant is and will remain the sole and exclusive owner of all right, title and interest in and to the Vigilant Materials, including all Intellectual Property Rights relating thereto, subject only to any license expressly granted to Customer in the Agreement. Excepting any limited license expressly provided in the Agreement, nothing contained in the Agreement shall be construed as granting Customer, or any third party, any right, title, or interest in or to any Vigilant Materials, in each case whether by implication, estoppel or otherwise.

7. CONFIDENTIALITY

7.1 CONFIDENTIAL INFORMATION

In connection with the Agreement and Services, each Party (as the "Disclosing Party") may disclose or make available Confidential Information to the other Party (as the "Receiving Party"). Subject to the exclusions listed below, "Confidential Information" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party reasonably considers confidential or proprietary, including information consisting of or relating to the Disclosing Party technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations that is either marked, designated or otherwise identified as "confidential" or that should reasonably be understood to be confidential considering the circumstances of its disclosure. Without limiting the foregoing, (i) all Customer Information is and will remain the Confidential Information of Customer and (ii) all Vigilant Materials including the Software, Specifications and Documentation are and will remain the Confidential Information of Vigilant, and (iii) the terms of the Agreement are the Confidential Information of Vigilant.

7.2 EXCLUSIONS

Confidential Information does not include information that: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with the Agreement; (ii) was or becomes generally known by the public other than by the Receiving Party's or any of its employees, agents, contractors, or other representatives' noncompliance with the Agreement; (iii) was or is received by the Receiving Party on a non-confidential

basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iv) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

7.3 SAFEGUARD

As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party (i) shall not access or use, or permit the access or use of Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with or as expressly authorized by the Agreement, and (ii) shall safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its own similarly sensitive information and in no event less than a reasonable degree of care.

7.4 COMPELLED DISCLOSURES

If the Receiving Party or any of its representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy, or waive its rights; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this paragraph, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment. No such compelled disclosure by the Receiving Party will otherwise affect the Receiving Party's obligations hereunder with respect to the Confidential Information so disclosed.

8. INDEMNIFICATION

8.1 Customer shall indemnify, hold harmless and defend Vigilant and its managers, officers, directors, employees, agents, Affiliates, contractors, successors and assigns, from and against any losses, damages, liabilities, deficiencies, claims, actions, suits, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including professional fees and reasonable attorneys' fees incurred by Vigilant that arise out of any direct or third-party claim alleging: (i) breach or non-fulfillment of any representation, warranty, or covenant this Agreement by Customer or its managers, officers, directors, employees, agents, Affiliates, contractors, successors and assigns ("Personnel"); (ii) any negligent or more culpable act or omission of Customer or its Personnel (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement; (iii) any use of Customer systems by Vigilant consistent with the Agreement that results in the infringement of any Intellectual Property Rights or other privacy violations; (iv) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Customer or its Personnel (including any reckless or willful misconduct) in the performance of its obligations under this Agreement; or (v) any failure by Customer to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement.

8.2 If Vigilant believes or it is determined that any of the Software may have violated a third party's Intellectual Property Rights, Vigilant may, at its sole discretion and as Customer's sole remedy for such violation either:

    a. modify or replace the Software to be non-infringing (while substantially preserving its utility or functionality);

    b. obtain for Customer a license to allow for continued use of the Software; or

    c. end the relevant license, terminate Customer's access to the Software, refund any prepaid fees not yet earned and terminate the Agreement.

Vigilant is not obligated to take any of the above-described actions to the extent claims or actions are based on or result from: (i) modifications or alterations of the Software by Customer; (ii) use of the

Software outside the scope of use identified in the Agreement or in Vigilant's user Documentation or policies; or (iii) the combination of the Software with any products or services not provided by Vigilant.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL VIGILANT BE LIABLE UNDER THE AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES EVEN IF ADVISED OF OR MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, IN NO EVENT SHALL VIGILANT'S LIABILITY UNDER THE AGREEMENT EXCEED THE FEES FOR SERVICES PAID BY CUSTOMER UNDER THE AGREEMENT IN THE ONE (1) YEAR PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.

10.1 Each Party represents and warrants to the other Party that (i) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization, (ii) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under the Agreement. (iii) the execution of the Agreement by its representative whose signature is set forth at the end of the Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (iv) when executed and delivered by both Parties, the Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms. Customer further represents, warrants, and covenants that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Information so that, as received by Vigilant and used in accordance with the Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, any privacy, or other rights of any third party or violate any applicable law. Vigilant represents and warrants that it has all necessary rights to license the Services and/or provide the products that are the subject of this Agreement. Vigilant represents and covenants that the Services and/or products do not infringe upon any copyright, patent, trade secret or other proprietary rights of any third party. Vigilant agrees to (a) defend Customer against any claim by a third party that its Services and/or products, including applications, corresponding security analyses/data collection probes infringe a valid U.S. Patent or any copyright or misappropriates any trade secret of such third party, except to the extent any such infringement or misappropriation relates to products and or services that belong to Customer, and (b) indemnify Customer for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorney fees) arising out of any such claims.

10.2 **DISCLAIMER OF WARRANTIES**

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, ALL SERVICES AND VIGILANT MATERIALS ARE PROVIDED "AS IS" AND VIGLANT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND VIGILANT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, VIGILANT MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR VIGILANT MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE, OR THAT THE SOFTWARE OR SERVICES WILL PROTECT CUSTOMER AGAINST ALL POSSIBLE SECURITY THREATS, INCLUDING INTENTIONAL MISCONDUCT BY THIRD PARTIES OR BY CUSTOMER OR CUSTOMER'S PERSONNEL. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

10.3 Customer agrees to comply with the requirements of all applicable laws, rules, and regulations in connection with the Agreement and the Services provided. Vigilant reserves the right to take all actions that it believes necessary to comply with any applicable law, rule, or regulation including immediate termination of the Services without notice to Customer.

10.4 Customer agrees that Vigilant is not responsible for any delays caused by Customer. Customer further recognizes that the Software and Services involve a risk of loss of or disruption to Internet services, network services, electronic communications, information, Customer Information, and data, including, but not limited to, third party access to the foregoing in a manner that may have adverse business consequences for Customer. Customer assumes all risk of loss of, or disruption to, the foregoing and hereby releases Vigilant and its Affiliates from any liability for any such loss including, but not limited to (i) the use or inability to use the Software or any system or application; (ii) any infringement or claim of infringement of a copyright, patent or other Intellectual Property Right allegedly implicated by the Software or Services or any other software acquired in connection with the Services; (iii) any loss of or changes to Customer Information or other data, or the inaccuracy of Customer Information or other data; (iv) the content of Customer Information; (v) delays or failures to perform any obligations hereunder due to a Force Majeure event; (vi) impairments to the Services caused by acts within the control of the Customer, its employees, or its agents; (vii) interoperability of specific Customer applications or systems; (viii) Customer's inability to access or interact with other providers or their services through the Internet; (ix) performance impairments caused on the Internet; (x) the cost of substitute goods, services, or technology; and/or (xi) any business loss, including, but not limited to, lost profits.

10.5 Customer specifically acknowledges that each type of information security threat or attack presents unique challenges, not all of which are related to technology (e.g., some security breaches may be due to human factors such as an employee divulging their password), and that Vigilant cannot be responsible for monitoring or analyzing items that are not specifically outlined in the Agreement.

11. FORCE MAJEURE

In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by any circumstances beyond the Party's reasonable control, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of the Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

12. MICELLANEOUS

12.1 Relationship of the Parties

The relationship between the Parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

12.2 Public Announcements

Customer agrees (i) that Vigilant may identify Customer as a recipient of Services and use Customer's name and logo in sales presentations, marketing materials and press releases, and (ii) to develop a brief Customer profile for use by Vigilant for promotional purposes on any promotional materials, including web sites and social media, owned and/or controlled by Vigilant.

12.3 Notices

Except as otherwise expressly set forth in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications under the Agreement have binding legal effect only if in writing and addressed to, in the case of Customer, the name and address or email address identified on the Agreement or, in the case of Vigilant, to legalteam@vigilantnow.com or to such other address or such other person that such Party may designate from time to time in accordance with this paragraph. Notices sent in accordance with this paragraph shall be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by e-mail, (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 5th day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

12.4 **Entire Agreement; Amendments; Waiver**

The Agreement, including any other documents incorporated therein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. The Agreement may be amended, modified or changed only by a writing signed by both Parties. The waiver of a breach of any provision of the Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. In the event of any inconsistency between these Terms and the Agreement or between these Terms and any other documents incorporated herein by reference, the following order of precedence governs (other than an exception expressly set forth as such therein): (a) first, these Terms; (b) second, the Agreement; and (c) third, any other documents incorporated herein by reference.

12.5 **Non-Solicitation**

During the Term and for two (2) years following the expiration or termination of any Agreement, Customer agrees not to: (i) directly or through others, solicit or attempt to solicit or hire any Vigilant Personnel; (ii) encourage Vigilant Personnel to terminate his or her relationship with Vigilant; or (iii) hire or directly contract Vigilant Personnel absent Vigilant's express prior written consent.

12.6 **Restrictive Covenant**

Customer acknowledges that a breach or threatened breach of any of the restrictive covenants in the Agreement or these Terms would give rise to irreparable harm to Vigilant, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Customer or its Affiliates of any such obligations, Customer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

12.7 **Assignment**

Customer shall not assign, delegate, or subcontract any portion of its rights, duties, or obligations under the Agreement without the prior written consent of Vigilant. Any purported assignment in violation of this section and shall be null and void. Customer agrees that Vigilant may subcontract services to be performed in connection with the Agreement; provided that any such subcontracting arrangement will not relieve Vigilant of any of its obligations hereunder. Vigilant may assign the Agreement, including its rights and duties hereunder, without the consent of Customer, provided that Vigilant provides Customer with at least thirty (30) days' written notice of any assignment.

12.8 **Severability**

If any provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify the Agreement so as to affect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12.9 Governing Law and Jurisdiction

This Agreement shall for all purposes be solely and exclusively governed, construed and enforced in accordance with the laws of the State of the filing party (without regard to the conflicts of law provisions thereof). The Parties hereby expressly consent to the exclusive jurisdiction and venue of the federal courts of the United States and the courts of State of the filing party to adjudicate any dispute arising out of this Agreement, and hereby waive the affirmative defenses of lack of personal jurisdiction, lack of venue, and forum non-conveniens.   12.10 **Waiver of Jury Trial**

Customer irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to the Agreement or the transactions contemplated hereby.

12.11 No Third-Party Beneficiary

No third party shall be deemed a third-party beneficiary of the Agreement. Any Customer Affiliate networks may be monitored under the Agreement as long as the Affiliate is wholly owned by Customer, the Affiliate is separately identified in the Agreement, and the Affiliate network traffic passes through the same data pipe.

12.12 Export Laws

Export Laws of the United States and any other relevant local export Laws apply to the Software. Customer agrees that such export control Laws govern Customer's use of the Software and Services (including technical data) and any deliverables provided under the Agreement. Customer agrees to comply with all such export Laws (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, software programs, and/or materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of such Laws, or will be used for any purpose prohibited by such Laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

12.13 Audit Rights

Vigilant may, at its sole discretion and at its sole cost, audit Customer's use of the Services during the Term. Customer agrees to cooperate in good faith with Vigilant's audit and provide reasonable assistance and access to all information Vigilant deems necessary to complete the audit. Any such audit shall not unreasonably interfere with Customer's normal business operations. If any audit produces use by Customer in excess of the Agreement, Customer agrees to pay, within thirty (30) days of written notification, any fees applicable to Customer's use of the Services in excess of its rights under the Agreement. If Customer does not pay such fees, Vigilant can, at its sole discretion, terminate the Services and/or the Agreement. Customer agrees that Vigilant shall not be responsible for any of Customer's costs incurred in cooperating with the audit.

12.14 Non-Applicability of UCITA

The Uniform Computer Information Transactions Act does not apply to the Agreement. Customer understands that Vigilant business partners, including any third-party firms retained by Customer to provide computer consulting services, are independent of Vigilant and are not Vigilant agents. Vigilant is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as a Vigilant subcontractor on an engagement ordered under the Agreement.

13. ADDITIONAL DEFINITIONS

13.1 **"Affiliate"** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise/ownership of more than 50% of the voting securities of a Person.

13.2 **"Agreement"** means any document(s) executed by the Parties that contemplates, refers to, or otherwise incorporates these Terms, as they may be amended from time to time.

13.3 **"Authorized User"** means any employee or third-party user that requires access to the Software or Services and has been identified in writing by Customer to Vigilant and approved by Vigilant as being authorized to use the administrative components of the Software or Services.

13.4 **"Compromise"** means any Incident ranging from an individual/small-scale operation (e.g., insiders, suppliers and activists) to large-scale, organized efforts (e.g., perpetrated by criminal networks and foreign governments).

13.5 **"Customer Information"** means any information, records, data, or any other materials (in whatever form) entered into the Software by Customer, or otherwise provided to Vigilant by Customer, any of Customer's Authorized User, or any other employee, agent, contractor, or other representative of Customer.

13.6 **"Disclosing Party"** has the meaning set forth in Section 7.1.

13.7 **"Documentation"** means any manuals, instructions, or other documents or materials that Vigilant provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or Vigilant Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

13.8 **"Effective Date"** has the meaning set forth in the Agreement or if no date is identified, such it shall mean the date of the latest signature on the Agreement.

13.9 **"Forensic Data"** means any data identified by Vigilant in its sole discretion as malware or forensic data related to malware, including any data which contains embedded malware or is related to any Compromise or Incident.

13.10 **"Incident"** means the introduction of malicious software such as trojans, worms, viruses and spyware; password phishing; cyber-attack; cyber-intrusion; hacking; data breach; unauthorized access; denial of service; malware; bots; system Compromise or other computer security breach.

13.11 **"Incident Response"** has the meaning set forth in Section 1.5.

13.12 **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

13.13 **"Law"** or **"Laws"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

13.14 **"Parties"** means both Vigilant and Customer.

13.15 **"Party"** means either Vigilant or Customer individually.

13.16 **"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

13.17 **"Personnel"** has the meaning set forth in Section 8.1.

13.18 **"Private Information"** means information comprising personally identifying or proprietary network information related to Customer and third parties that interact with Customer, and Customer's or a third party's network equipment, files, databases, logs, and other sources of information which may support the Services.

13.19 **"Process"** means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy.

13.20 **"Receiving Party"** has the meaning set forth in Section 7.1.

13.21 **"Software"** means Vigilant software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Vigilant provides access to, use of, or uses as part of the Services or otherwise related to the Agreement.

13.22 **"Specifications"** means the specifications for the Services set forth in the Agreement and, to the extent consistent with and not limiting of the foregoing, the Documentation.

13.23 **"Terms"** has the meaning set forth in the preamble.

13.24 **Threat Data"** has the meaning set forth in Section 1.4.

13.25 **"User Data"** means any and all information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User which is automatically collected or logged by Vigilant or a third party on Vigilant's behalf, including any end user profile-, visit-, session-, impression-, click through- or click stream- data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

13.26 **"Vigilant Materials"** means all devices, documents, data, know-how, methods, processes, software and other inventions, works, technologies and materials, including any and all Services, Software, Documentation, computer hardware, programs, reports and specifications, client software and deliverables that are proprietary to Vigilant and provided or used by Vigilant in connection with performing the Services.