

# Intellect Select Limited - CORPORATE END USER LICENSE AGREEMENT

**INTELLECT SELECT LTD.** (as defined below) and **Company** agree to the terms of this Agreement (as defined below).

By downloading, installing, copying, accessing or using this software, Company agrees to this Agreement. If Company is accepting this Agreement on behalf of another person or other legal entity, Company represents and warrants that Company has full authority to bind that person or legal entity to this Agreement. Company must ensure that End Users (as defined below) comply with this Agreement and is responsible for End Users' compliance with or breach of this Agreement.

If Company does not agree to this Agreement, Company must:

- not download, install, copy, access or use the Software; and
- Promptly return and delete the Software and proof of entitlement to the party from whom Company acquired the Software.

## 1. LICENSE GRANT; PROPRIETARY RIGHTS

- 1.1. Right to use the Software: Subject to the terms and conditions of this Agreement, INTELLECT SELECT grants Company a non-exclusive, non-transferable right to use the Software listed in the Confirmation letter solely for Company's own internal business operations. In this Agreement, to use the Software includes to download, install and access the Software.
- 1.2. Tenant and user creation Permission: Subject to the terms and conditions of this Agreement, Company gives permission to INTELLECT SELECT to use the Company name to create subdomain e.g. companyname.squarecruit.com) to access the software and also give permission to create users by using their official email addresses to access the Software.

## 2. COPY AND USE TERMS

- 2.1. Product Specifications: The use of the Software depends on the licenses purchased (e.g. SQUARECRUIT, SQUARECRUIT-LITE and SQUAREHIKE) and is subject to the Product Specification definitions.
- 2.2. Term: The license is effective for the limited time specified in the confirmation Letter.
- 2.3. Affiliates, Managing Parties: Company may permit use of the Software in accordance with this Agreement:
  - 2.3.1. by an employee;
  - 2.3.2. by a third party with which Company enters into a contract to manage Company's recruitment needs (Partner / empanelled vendor) if:
    - a. the Managing Party only uses the Software for Company's internal operations and not for the benefit of another third party or itself;
    - b. the Managing Party agrees to comply with the terms and conditions of this Agreement; and
    - c. Company provides INTELLECT SELECT with written notice that a Managing Party will be using the Software on Company's behalf.

Company is responsible and fully liable for each Affiliates' and Managing Party's compliance with or breach of this Agreement.

- 2.4. General restrictions: Company may not, and may not cause or allow any third party to:
  - a. decompile, disassemble or reverse-engineer the Software, or create or recreate the source code for the Software;
  - b. remove, erase, obscure or tamper with any copyright or any other product identification or proprietary rights notices, seal or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies Company makes of the Software and Documentation;
  - c. lease, lend or use the Software for timesharing or service bureau purposes; sell, market, license, sublicense, distribute or otherwise grant to any person or entity any right to use the Software except to the extent expressly permitted in this Agreement; or use the Software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise;
  - d. modify, adapt, tamper with, translate or create Derivative Works of the Software or the Documentation; combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including any routine, script, code, or program) having any functional attributes, visual expressions or other features similar to those of the Software to compete with INTELLECT SELECT;
  - e. except with INTELLECT SELECT's prior written permission, publish any performance or benchmark tests or analysis relating to the Software;
  - f. attempt to do any of activities in Subsections (a) to (e); or
  - g. run or operate the Software in a cloud, Internet-based computing or similar on-demand computing environment unless Company's confirmation Letter or the applicable Product Specification Definitions specifically allows the use.

### **3. TECHNICAL SUPPORT AND MAINTENANCE**

The Technical Support and Maintenance Terms and Conditions, which are incorporated by reference, apply if Company has purchased Support. After the Support Period or service subscription period specified in a Confirmation letter has expired, Company has no further rights to receive any Support including Upgrades, Updates and telephone Support. INTELLECT SELECT may change the Support offered at any time, effective as of the commencement of any Support renewal period.

### **4. TERMINATION**

4.1. Without prejudice to Company's payment obligations, Company may terminate Company's license at any time by uninstalling the Software.

4.2. INTELLECT SELECT may terminate Company's license if Company materially breaches this Agreement and Company fails to cure the breach within thirty (30) days of receiving INTELLECT SELECT's notice of the breach. Upon termination, Company must promptly return, destroy or delete permanently all copies of the Software and Documentation.

### **5. CONFIDENTIALITY**

5.1. Each party acknowledges that it may have access to Confidential Information of the other party in connection with this Agreement, and that each party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third parties or used in violation of this Agreement.

Each Recipient of Confidential Information under this Agreement must:

- a. keep the Disclosing Party's Confidential Information confidential and protect it at least to the same extent it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information;
- b. not use the Disclosing Party's Confidential Information in any way for its own account or the account of any third party except to perform its duties, exercise its rights or is otherwise authorized under this Agreement; and
- c. not disclose the Disclosing Party's Confidential Information except to perform its duties or exercise its rights under this Agreement or as otherwise authorized under this Agreement, provided that:
  - i. any disclosure made to the Recipient's employees, contractors or agents is on a need-to-know basis; and
  - ii. the Recipient's employees, contractors or agents in receipt of the Confidential Information are under an obligation of confidentiality no less stringent than that set forth in this section.
  - iii. Notwithstanding the restrictions in Section 5.1, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any regulator, court, arbitral, administrative, or legislative body, the Recipient must:
    - (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
    - (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
    - (c) assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.

Company will immediately, and at least within forty-eight (48) hours, notify INTELLECT SELECT if Confidential Information of INTELLECT SELECT is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threatens to violate the terms of this section, INTELLECT SELECT is immediately entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other rights or remedies it may have.

5.2. Upon the Disclosing Party's request and upon termination of this Agreement (unless agreed otherwise by the parties at the time), each party will return, destroy or delete permanently (at the Disclosing Party's election) the other party's Confidential Information.

5.3. On termination of this Agreement, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for two(2) years in accordance with this section.

### **6. INTELLECTUAL PROPERTY RIGHTS**

6.1. The Software, including its object code and source code, whether or not provided to Company, is Confidential Information of INTELLECT SELECT. INTELLECT SELECT (or its licensors) owns exclusively and reserves all rights, title and interest in and to the INTELLECT SELECT Products and Documentation, including all Intellectual Property Rights as well as any Derivative Works. Company may not exercise any right, title and interest in and to the INTELLECT SELECT Products, Documentation or any related Intellectual Property Rights, except for the limited usage rights granted to Company in this Agreement. Company agrees, on behalf of itself and its Affiliates, that Company and its Affiliates will take no action

inconsistent with INTELLECT SELECT's Intellectual Property Rights.

- 6.2. This Agreement is not an agreement of sale, and does not transfer any title, Intellectual Property Rights or ownership rights to the INTELLECT SELECT Products or Documentation to Company. Company acknowledges and agrees that the INTELLECT SELECT Products, Documentation and all ideas, methods, algorithms, formulae, processes and concepts used in developing or incorporated into the INTELLECT SELECT Products or Documentation, all future Updates and Upgrades, and all other improvements, revisions, corrections, bug-fixes, hot- fixes, patches, modifications, enhancements, releases, DATs, signature sets, upgrades, and policy and database updates and other updates in, of, or to the INTELLECT SELECT Products or Documentation, as applicable, all Derivative Works based on any of the foregoing, and all copies of the foregoing are trade secrets and proprietary property of INTELLECT SELECT, having great commercial value to INTELLECT SELECT.

## **7. LIMITED WARRANTY AND DISCLAIMER**

- 7.1. Limited warranty: INTELLECT SELECT warrants that, for a period of sixty (60) days from the purchase date (Warranty Period), the Software licensed under this Agreement will perform substantially in accordance with the Documentation (Limited Warranty). Company's exclusive remedy and INTELLECT SELECT's entire obligation and liability for any breach of the Limited Warranty is to repair or replace the Software or refund to Company the price Company paid for the Software if a repair or replacement of the Software would, in INTELLECT SELECT's opinion, be unreasonable. The Limited Warranty is conditioned upon Company providing INTELLECT SELECT prompt written notice of the Software's failure to perform substantially in accordance with the Documentation.
- 7.2. Exclusion of warranty: The Limited Warranty will not apply if:
- 7.2.1. the Software is not used in accordance with this Agreement or the Documentation;
  - 7.2.2. the Software or any part of the Software has been modified by any entity other than INTELLECT SELECT; or
  - 7.2.3. a malfunction in the Software has been caused by any equipment or software not supplied by INTELLECT SELECT.
- 7.3. Disclaimer of warranties: EXCEPT FOR THE LIMITED WARRANTY, THE SOFTWARE IS PROVIDED "AS IS". TO THE EXTENT PERMITTED BY LAW, INTELLECT SELECT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE SOFTWARE AND SUPPORT, AND INTELLECT SELECT DISCLAIMS ALL OTHER OBLIGATIONS AND LIABILITIES, OR EXPRESS OR IMPLIED WARRANTIES REGARDING THE SOFTWARE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION. INTELLECT SELECT MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE SOFTWARE'S USE OR PERFORMANCE, OR THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL- SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS; OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.
- 7.4. High Risk Systems terms: THE SOFTWARE MAY FAIL AND IS NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH-RISK SYSTEMS. INTELLECT SELECT HAS NO RESPONSIBILITY FOR, AND COMPANY WILL INDEMNIFY AND HOLD HARMLESS INTELLECT SELECT FROM, ALL CLAIMS, SUITS, DEMANDS AND PROCEEDINGS ALLEGING, CLAIMING, SEEKING, OR ASSERTING ANY LIABILITY, LOSS, OBLIGATION, RISK, COST, DAMAGE, AWARD, PENALTY, SETTLEMENT, JUDGMENT, FINE OR EXPENSES (INCLUDING ATTORNEY FEES) ARISING FROM OR IN CONNECTION WITH COMPANY'S USE OF THE SOFTWARE ON OR IN A HIGH RISK SYSTEM, INCLUDING THOSE THAT COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL- SAFE OR FAULT-TOLERANT FEATURES TO THE HIGH RISK SYSTEM, OR ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF HIGH RISK SYSTEM DEPENDS OR DEPENDED ON THE FUNCTIONING OF THE SOFTWARE, OR THAT THE FAILURE OF THE SOFTWARE CAUSED A HIGH RISK SYSTEM TO FAIL.
- 7.5. Third parties: The INTELLECT SELECT Products may contain independent third-party products and rely on them to perform certain functionality, including malware definitions or URL filters and algorithms. INTELLECT SELECT makes no warranty as to the operation of any third-party products or the accuracy of any third-party information.

## **8. LIMITATION OF LIABILITY:**

EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL PAYMENTS PAID OR PAYABLE BY COMPANY TO INTELLECT SELECT UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRIOR TO THE CLAIM. NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE DAMAGES WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR OTHERWISE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER

## APPLICABLE LAW.

### 9. INDEMNIFICATION

- 9.1. Company indemnification obligations: Company will unconditionally indemnify and defend INTELLECT SELECT, its Affiliates, and their officers, directors, employees, contractors and agents (each a INTELLECT SELECT Indemnified Party) against any claims, liabilities and expenses (including court costs and reasonable attorney fees) that a INTELLECT SELECT Indemnified Party incurs as a result of or in connection with:
- 9.1.1. any third-party claims arising from:
    - 9.1.1.1. Company's failure to obtain any consent, authorization or license required for INTELLECT SELECT's use of data, software, materials, systems, networks or other technology provided by Company under this Agreement;
    - 9.1.1.2. Company's use of the Software in a manner not expressly permitted by this Agreement;
    - 9.1.1.3. INTELLECT SELECT's compliance with any technology, designs, instructions or requirements provided by Company or a third party on Company's behalf;
    - 9.1.1.4. any claims, costs, damages and liabilities whatsoever asserted by any Company Representative; or
    - 9.1.1.5. any violation by Company of applicable laws; and
  - 9.1.2. Any reasonable costs and attorneys' fees required for INTELLECT SELECT to respond to a subpoena, court order or other official government inquiry regarding Company's use of the Software.
- 9.2. INTELLECT SELECT indemnification obligations
- 9.2.1. INTELLECT SELECT will indemnify Company and, at INTELLECT SELECT's election, defend Company against a third-party claim asserted against Company in a suit or action if the claim is for direct patent infringement, for direct copyright infringement, or for INTELLECT SELECT's trade secret misappropriation, and the claim is asserted against the Software alone and not in combination with anything else, or solely a combination of INTELLECT SELECT Products.
  - 9.2.2. Exclusions: Notwithstanding anything to the contrary in this Agreement, INTELLECT SELECT will not indemnify or defend Company for claims asserted, in whole or in part, against:
    - 9.2.2.1. technology, designs or requirements that Company gave to INTELLECT SELECT;
    - 9.2.2.2. modifications or programming to Software that were made by anyone other than INTELLECT SELECT; or
    - 9.2.2.3. the Software's alleged implementation of some or all of a Standard.
  - 9.2.3. Remedies: INTELLECT SELECT may, in its sole discretion and at its own expense, with respect to any Software that is subject to a claim:
    - 9.2.3.1. procure Company with the right to continue using the Software;
    - 9.2.3.2. replace the Software with a non-infringing Software;
    - 9.2.3.3. modify the Software so that it becomes non-infringing; or
    - 9.2.3.4. upon Company's return of the Software to INTELLECT SELECT and removal of the Software from Company's systems, refund the residual value of the purchase price Company paid for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to Company.
- 9.3. Indemnification procedure: The indemnified party (Indemnitee) will: (a) provide prompt written notice to the indemnifying party (Indemnitor) of the claim (provided that the failure to provide timely notice that prejudices the Indemnitor will relieve the Indemnitor of its obligations under this section to the extent the Indemnitor has been prejudiced and the failure to provide timely notice will relieve the Indemnitor of any obligation to reimburse the Indemnitee for its attorney's fees incurred prior to notification); (b) reasonably cooperate in connection with the defense or settlement of the claim; and (c) give the Indemnitor sole control over the defense and settlement of the claim, provided that any settlement of a claim will not include a specific performance obligation or admission of liability by the Indemnitee.
- 9.4. Personal and exclusive indemnity: The foregoing indemnities are personal to the parties and may not be transferred anyone. This section states the parties' entire indemnification obligations, and Company's exclusive remedy claims involving Intellectual Property Rights.

### 10. ADDITIONAL TERMS

- 10.1. Evaluation Software: If INTELLECT SELECT identifies the Software licensed to Company as "Evaluation" Software, this section and Section 10.3 apply and supersede any conflicting term of this Agreement. Company's royalty-free, non-transferable, limited license to use the Evaluation Software, for evaluation purposes only, is limited to sixty (60) days unless agreed otherwise in writing by INTELLECT SELECT. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. Company may use any information about the Evaluation Software gathered from its use solely for evaluation purposes and must not provide that information to any third parties. The restrictions described in Section 2.6 apply. If Company fails to stop using the Evaluation Software after the evaluation

period has expired, INTELLECT SELECT may, at its discretion, invoice Company in an amount equal to the INTELLECT SELECT user subscription price for the Software and Company must pay such invoice upon receipt.

- 10.2. Beta Software: If INTELLECT SELECT identifies the Software licensed to Company as “Beta” Software, this section, Sections 10.1 (with all references to “Evaluation Software” being replaced with “Beta Software”) and 10.3 apply. INTELLECT SELECT has no obligation to Company to further develop or publicly release the Beta Software. Support is not available for Beta Software. If requested by INTELLECT SELECT, Company will provide feedback to INTELLECT SELECT regarding testing and use of the Beta Software, including error or bug reports. Company grant INTELLECT SELECT a perpetual, non-exclusive, royalty-free, worldwide license to use, copy, distribute and make Derivative Works and incorporate the feedback into any INTELLECT SELECT Product, at INTELLECT SELECT’s sole discretion. Upon receipt of a later unreleased version of the Beta Software or release by INTELLECT SELECT of a publicly released commercial version of the Beta Software, Company must return, destroy or delete permanently all earlier Beta Software received from INTELLECT SELECT.
- 10.3. Disclaimer of warranties: INTELLECT SELECT’s indemnification obligations under Section 9 do not apply to Evaluation Software and Beta Software. Evaluation Software and Beta Software are provided to Company solely on an “AS IS” basis. To the extent permitted by law, INTELLECT SELECT makes no other warranties of any kind, express or implied, with respect to the Evaluation Software and Beta Software, and disclaims all other obligations and liabilities, or express and implied warranties regarding the Evaluation Software and Beta Software, including quality, conformity to any representation or description, performance, merchantability, fitness for a particular purpose, non-infringement; or that the Evaluation Software and Beta Software will be free from errors or defects. Company assumes all risk of use of Evaluation Software and Beta Software. If the laws in Company's jurisdiction do not allow the exclusion of express or implied warranties, the disclaimer in this section may not apply and the express or implied warranties will be limited in duration to any minimum period required by applicable law, and the aggregate liability of INTELLECT SELECT and licensors will be limited to the sum of fifty (50) United States dollars (or the then-current value in the relevant local currency) in total.
- 10.4. “Free” or Open-Source Software: The Software may include components (including programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source software licensing model (FOSS Code). FOSS Code components included with the Software are redistributed by INTELLECT SELECT under the terms of the applicable FOSS Code license for such component; Company’s receipt of FOSS Code components from INTELLECT SELECT under this Agreement neither enlarges nor curtails Company’s rights or obligations defined by the FOSS Code license applicable to the FOSS Code component. Copies of the FOSS Code licenses for FOSS Code components included with Software are included with or referenced in the Software’s Documentation.

## **11. PRIVACY AND COLLECTION OF PERSONAL DATA OR SYSTEM INFORMATION**

- 11.1. The Software or Support may employ applications and tools to collect Personal Data, sensitive data or other information about Company and End Users ( including End Users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (including information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, INTELLECT SELECT products installed, INTELLECT SELECT components, processes and services information, frequency and details of update of INTELLECT SELECT components, information about third party products installed, extracts of logs created by INTELLECT SELECT, usage patterns of INTELLECT SELECT products and specific features, etc.) (collectively, Data).
- 11.2. The collection of the Data may be necessary to provide Company and End Users with the relevant Software or Support functionalities as ordered (including detecting and reporting threats and vulnerabilities on Company’s and End Users’ computer network), to enable INTELLECT SELECT to improve Software or Support (including content synchronization, device tracking, troubleshooting, etc.), to enable INTELLECT SELECT to manage licenses to Software or Support, and to further or improve overall security for Company and End Users. Company may be required to uninstall the Software or disable Support to stop further Data collection that supports these functions.
- 11.3. By entering into this Agreement, or using the Software, Support or service subscription, Company and End Users agree to the INTELLECT SELECT Privacy Policy available at <https://www.squarecruit.com/intellectselect-privacy-policy/> and to the collection, processing, copying, backup, storage, transfer and use of the Data by INTELLECT SELECT and its service providers, in, from and to the United States, United Kingdom, Europe, or other countries or jurisdictions potentially outside of Company’s or End Users’ own jurisdiction as part of the Software, Support or service subscription. INTELLECT SELECT will only collect, process, copy, backup, store, transfer and use Personal Data in accordance with the INTELLECT SELECT Privacy Policy including INTELLECT SELECT’s Data Processing Agreement found on such page, if such is applicable and is executed by the parties.
- 11.4. Company will secure any and all privacy-related rights and permissions from individual persons as may be required by regulation, statute, or other law or Company’s internal policies or guidelines in order to disclose Company Personal Data, in

order to use the Software, and/or in connection with INTELLECT SELECT's performance of Support or otherwise under this Agreement.

## 12. COMPLIANCE WITH LAWS

- 12.1. Each party will comply with the applicable national, state and local laws with respect to its rights and obligations under this Agreement, including applicable privacy and export control laws and regulations, the UK Foreign Corrupt Practices Act, and other applicable anti-corruption laws.
- 12.2. Company will not, directly or indirectly, export, transmit, permit access or use any INTELLECT SELECT Products or technical data (or any part of INTELLECT SELECT Products or technical data) or system or service incorporating any INTELLECT SELECT Products to or in any country to which export, transmission or access is restricted by regulation, statute or other law, without the authorization, if required, of the Bureau of Industry and any competent governmental entity that may have jurisdiction over export or transmission.

## 13. GENERAL PROVISIONS

- 13.1. Relationship: The parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special relationship. Neither party intends this Agreement to benefit or create any right or cause of action in or on behalf of, any person or entity other than the parties and listed Affiliates. This Agreement is not intended to create a third-party beneficiary of any kind. Company must not represent to any third party that it has any right to bind INTELLECT SELECT in any manner and Company will not to make any representations or warranties on behalf of INTELLECT SELECT.
- 13.2. Severability: If a court holds that any provision of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from this Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of this Agreement, which will continue in full force and effect.
- 13.3. No waiver: A party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the party agreeing to the waiver.
- 13.4. Force Majeure; other excusable failures or delays in performance
  - (a) Neither party is liable for delays or failures to perform any of its obligations under this Agreement to the extent caused by a Force Majeure Event.
  - (b) INTELLECT SELECT's failures or delays in its performance are excused to the extent they result from:
    - (i) Company's acts or omissions, or those of its employees, agents, users, affiliates or contractors;
    - (ii) notwithstanding the generality of Section 13.4(b)(i), Company's failure or delay in the performance of a specific task, obligation or responsibility under this Agreement or a Schedule, which task, obligation, or responsibility is a condition or requirement for a INTELLECT SELECT task, obligation, or responsibility;
    - (iii) reliance on instructions, authorizations, approvals or other information from Company; or
    - (iv) acts or omissions of third parties (unless directed by INTELLECT SELECT).
- 13.5. Governing law: All disputes arising out of or relating to this Agreement or its subject-matter will be governed by the laws of United Kingdom. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.
- 13.6. Jurisdiction: The United Kingdom courts will have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject- matter.
- 13.7. Entire Agreement, order of precedence and amendments
  - (a) This Agreement constitutes the entire understanding between INTELLECT SELECT and Company relating to its subject-matter and supersede all oral or written proposals, and all communications between the parties relating to its subject-matter. This Agreement, including all document incorporated by reference, as well as the Confirmation letter will prevail, notwithstanding any variance with any purchase order or other written instrument submitted by Company, whether or not expressly rejected by INTELLECT SELECT.
  - (b) INTELLECT SELECT reserves the right to amend any terms of this Agreement at any time.
- 13.8. Notices: Any notice given under or in relation to this Agreement must be in writing, signed by or on behalf of the party giving it, and addressed to the relevant INTELLECT SELECT entity, "Attention Legal Department", at the corresponding address, or to Company, at the contact information Company provided when purchasing or registering for the INTELLECT SELECT Products. Notices will be considered delivered when received if delivered by hand with receipt; the next Business Day after sending it by pre-paid, nationally-recognized, overnight air courier with tracking capabilities; or five (5) Business Days after being sent by registered or certified airmail, return receipt required, postage prepaid, to the address mentioned above.

- 13.9. Additional documents and references: References to hyperlinked terms in this Agreement are references to the terms or content linked to the hyperlink (or the replacement hyperlink as INTELLECT SELECT may identify from time to time) as amended from time to time. Company acknowledges that the terms or content in the hyperlink are incorporated in this Agreement by reference and that it is Company's responsibility to review the terms or content in the hyperlinks referenced in this Agreement.
- 13.10. Assignment: Company may not sublicense, assign or transfer its rights under this Agreement without INTELLECT SELECT's prior written consent. Any attempt by Company to sublicense, assign or transfer any of its rights, duties or obligations under this Agreement, whether directly, or indirectly by merger, acquisition or change of control, will be null and void.
- 13.11. Survival: The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 5 (Confidentiality), 6 (Intellectual Property Rights), 7 (Limited warranty and disclaimer), 8 (Limitation of liability), 9 (Indemnification), 10.3 (Disclaimer of warranties regarding Evaluation Software and Beta Software), 11 (Privacy and collection of Personal Data or system information), 13.5 (Governing law), 13.6 (Jurisdiction), 14 (Definitions and interpretation) and this Section 13.11 (Survival).

## 14. DEFINITIONS AND INTERPRETATION

### 14.1. In this Agreement:

- (a) Authorized Partner means any of INTELLECT SELECT's Affiliates, Distributors, Resellers or other business partners.
- (b) Affiliates, means any entity that, directly or indirectly, controls, is controlled by, or is under direct or indirect common control with such entity or one or more of the other Affiliates of that entity (or a combination thereof). For the purpose of this definition, an entity controls another entity if and as long as the first entity:
- (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity;
  - (ii) can elect a majority of the directors of the other entity; or
  - (iii) provides day to day management of such entity under contract or as managing general partner.
- (iv) Affiliate, with respect to INTELLECT SELECT, means any direct or indirect subsidiary of INTELLECT SELECT LIMITED, UNITED KINGDOM.
- (c) Business Day means any day other than a Saturday, Sunday, statutory or public holiday in the place where the INTELLECT SELECT Products are provided.
- (d) Cloud Services means the cloud services that INTELLECT SELECT provides to Company as specified in one or more Grant Letters under the terms and conditions of the Cloud Services Agreement.
- (e) Cloud Services Agreement means the terms and conditions that govern the applicable Cloud Services.
- (f) Confidential Information means any information (regardless of the form of disclosure or the medium used to store or represent it)
- (g) of a party (Disclosing Party), including trade secrets and technical, financial or business information, data, ideas, concepts or know-how, that:
- (i) is designated as "confidential" or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or
  - (ii) the receiving party (Recipient) should reasonably have considered to be confidential under the circumstances surrounding disclosure.
- (iii) However, Confidential Information does not include any information that:
- (iv) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
  - (v) is received from a third party without restrictions on its use or disclosure and not by inadvertence or mistake;
  - (vi) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or
  - (vii) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.
- (h) Consequential Damages means indirect, special, incidental, punitive, exemplary, consequential or extra-contractual damages of
- (i) any kind, including third-party claims, loss of profits, loss of goodwill, loss of personnel salaries, computer or system failure or malfunction, costs of obtaining substitute cloud services, work stoppage, denial of access or downtime, system or service disruption or interruption, or any lost, damaged, or stolen data, information or systems as well as the costs of restoring any lost, damaged, or stolen data, information or systems.
- (j) DATs means detection definition files (also referred to as signature files) that contain the codes anti-malware software uses to detect and repair viruses, Trojan horses, and potentially unwanted programs.
- (k) Distributor means any independent entity authorized by INTELLECT SELECT to distribute INTELLECT SELECT Products to Resellers or End Users.

- (l) Derivative Work means a work that is based on one or more pre-existing works (such as a revision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which pre-existing work may be recast, transformed or adapted) which, if created without the authorization of the copyright owner of the pre-existing work, would constitute copyright infringement.
- (m) Documentation means any explanatory materials, such as user manuals, training materials, product descriptions, regarding the implementation and use of INTELLECT SELECT Products that is provided by INTELLECT SELECT with the INTELLECT SELECT Products. Documentation is provided in printed, electronic or online form.
- (n) End User means the individual or entity that is licensed or authorized to use the Software under this Agreement.
- (o) Force Majeure Event means any event beyond a party's reasonable control that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery by INTELLECT SELECT's vendors, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, or default of suppliers or sub-contractors.
- (p) Confirmation letter means any written (electronic or otherwise) confirmation notice that INTELLECT SELECT issues to Company confirming the INTELLECT SELECT Products purchased and applicable Product Specifications. The Confirmation letter identifies the user number, quantity, Subscription Period or Support Period, and other access and use details.
- (q) Intellectual Property Rights means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including:
  - (i) copyright, trademark and patent rights, trade secrets, moral rights, right of publicity, authors' rights;
  - (ii) any application or right to apply for any of the rights referred to in paragraph (i); and
  - (iii) all renewals, extensions, continuations, divisions, restorations or reissues of the rights, or applications referred to in paragraphs (i) and (ii).
- (r) INTELLECT SELECT means:
  - (i) INTELLECT SELECT LIMITED, with registered office located at 71-75 Shelton Street, Covent Garden, London WC2H 9JQ
- (s) INTELLECT SELECT Products means any of INTELLECT SELECT's products or Support.
- (t) Open Source Software means any royalty-free software that requires, as a condition of use, modification or distribution of the software or any other software incorporated into, derived from or distributed with the software (Derivative Software), any of the following:
  - (i) The source code of the software or any Derivative Software must be released or otherwise made available to third parties;
  - (ii) Permission for creating derivative works of the software or any Derivative Software must be granted to third parties; and
  - (iii) Changes made to the software must be documented and disclosed when the software or any Derivative Software is being distributed.

Open Source Software includes any software that is subject to: the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, Affero GNU General Public Licenses, or any license listed on [www.opensource.org/licenses](http://www.opensource.org/licenses).
- (u) Personal Data or Personal Information means any information relating to an identified or identifiable individual or is otherwise defined as 'Personal Data' under the General Data Protection Regulation or other applicable data protection laws. to the extent that the definition of 'Personal Data' under the applicable data protection laws is broader than the preceding definitions.
- (v) Product Entitlement means the license or subscription types set forth in the Confirmation letter.
- (w) Representatives means a party's Affiliates, permitted resellers, subcontractors, or authorized agents
- (x) Reseller means a company that has been authorized by INTELLECT SELECT and has agreed to market and resell INTELLECT SELECT Products.
- (y) Software means any software program owned or licensed by INTELLECT SELECT, as the context require, in object code format:
  - (i) licensed from INTELLECT SELECT and purchased from INTELLECT SELECT or its Authorized Partners: or
  - (ii) embedded in or pre-loaded on INTELLECT SELECT-branded hardware equipment purchased from INTELLECT SELECT or its Authorized Partners, in each case including Upgrades and Updates that the End User installs during the applicable Support Period.

Software may also include additional features or functionality that can be accessed with either a subscription or Support agreement to certain Cloud Services as required by the specific offering and subject to the Cloud Services

Agreement.

- (z) Standard means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP and ETSI.
- (aa) Support or Technical Support means the services that INTELLECT SELECT (or an Authorized Partner) provides for the support and maintenance of the INTELLECT SELECT Products, as specified in the Technical Support and Maintenance Terms and Conditions.
- (bb) Support Period means the period for which the End User is entitled to Support, as specified in a Grant Letter.
- (cc) Technical Support and Maintenance Terms and Conditions means the INTELLECT SELECT Technical Support and Maintenance for
- (dd) Hardware and Software terms and conditions that detail Support.
- (ee) Updates means any updates to the content of the Software or Cloud Services, and includes all DATs, signature sets, policy updates, database updates for the Software or Cloud Services, and updates to the related Documentation that are made generally available to End Users after the date of purchase of the Software or of subscription of the Cloud Services as a part of purchased Support. Updates are not separately priced or marketed by INTELLECT SELECT.
- (ff) Upgrade means any and all improvements in the Software or Cloud Services that are generally made available to End Users as a part of purchased Support. Upgrades are not separately priced or marketed by INTELLECT SELECT.

14.2. In this Agreement, unless a contrary intention appears:

- a. a reference to a party includes its executors, administrators, successors and permitted assigns;
- b. headings are for ease of reference only and do not affect the interpretation or meaning of this Agreement;
- c. the singular includes the plural and vice versa and words importing a gender include other genders;
- d. other grammatical forms or parts of speech of defined words or phrases have corresponding meanings;
- e. a reference to a clause, paragraph, exhibit, schedule or other annexure is a reference to a clause or paragraph of or exhibit, schedule or annexure e to this Agreement;
- f. the words "include", "including", "such as" and similar expressions are not used as, nor are intended to be, interpreted as words of limitation; and
- g. the meaning of this Agreement will be interpreted based on its entirety and not just on isolated parts.