



North America Platform and Service Terms

SME Customers

Version 2.0 (11 April 2018)

These terms (the **Terms**) govern the use of Our Platform and any Services provided by Egress Software Technologies Inc. (**We, Us, Our**) and Our Group. They're incorporated into each transactional document, including 'Quotations', 'Order Forms' and 'Order Confirmations' (each, an **Order Document**) entered into by you, the customer (**you, your**) and Us. They form a legally binding contract and govern your, your Group and your Users use of Our Platform and Services, on whatever device. They apply to the exclusion of any terms you seek, or have sought, to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1 USE OF OUR PLATFORM

1.1 **Right of access and use:** You may access Our Platform only in accordance with these Terms. We grant you a non-exclusive, revocable, non-transferable (subject to section 17.6), non-sub-licensable right to permit Users to access and use it while these Terms are in force solely for your business purposes. Access and use for personal or private use, or for the benefit of any third party, is not permitted. You'll use Our Platform as directed by Us.

1.2 **Software:** Depending on how you access Our Platform, you may need to install or use Software. If you do, We grant you a non-exclusive, revocable, non-transferable (subject to section 17.6), non-sub-licensable licence to use the Software strictly for the purpose of receiving and using Our Platform in accordance with section 1.1.

1.3 **Group companies:** Your Group companies will only benefit from the rights under these Terms where expressly set out on your Order Confirmation.

2 USER SUBSCRIPTIONS

2.1 **User Subscriptions:** Your right of access is capped at the number of User Subscriptions you purchase. You'll not permit more than this number to access Our Platform. User accounts may not be shared and you won't permit or encourage the sharing of User accounts.

2.2 **Changing and re-assigning Users:** You can re-assign User Subscriptions. You must do so entirely (i.e. the previous user will have no right of access or use afterwards).

2.3 **Adding User Subscriptions:** You can purchase additional User Subscriptions by notifying Us (or a relevant reseller) and paying the additional fees. How long additional User Subscriptions are for will be discussed with you at the time.

2.4 **Reducing User Subscriptions:** You can reduce your User Subscriptions by notifying Us prior to the 1st day of the next Renewed Subscription. You can't reduce User Subscriptions during a Subscription Period.

3 YOUR RESPONSIBILITIES

3.1 **User accounts:** You'll implement and maintain appropriate controls to ensure that User accounts are only used by those permitted by you. Except if caused by Our breach of these Terms, you're responsible for the acts and omissions of anyone who accesses Our Platform through your accounts, regardless of whether they're authorized or undertaken by you. You'll notify Us promptly if you're aware of any unauthorized access.

3.2 **Acceptable Use:** You'll comply, and will ensure Users comply, with Our Acceptable Use Policy set out at www.egress.com/legal. You'll defend and indemnify Us and Our Group if there's a third-party claim or any regulatory action arising from a breach (or alleged breach) of this section.

3.3 **Your obligations:** You'll comply with these Terms and all laws, rules and regulations applicable to your use of Our Platform and Services. You must: (a) obtain and maintain at

your cost all hardware and connectivity required to access Our Platform and Services; (b) use industry standard protections to prevent unauthorized access to Our Platform through your use; (c) only use Our Platform in accordance with these Terms and documentation or instructions referred to or which We provide; (d) provide Us with any co-operation and access We request; (e) carry out your responsibilities in a timely and efficient manner (We can adjust timelines if you delay); (f) ensure you upgrade your software, services, system and infrastructure within 12 months of any upgrade, new release or new version being made available by Us or the relevant owner (if you don't We may not be able to provide Support).

3.4 **Your warranties:** You warrant that: (a) you own, and will at all times own, all rights in your Content to permit you to grant Us and Our Group the rights and permissions in these Terms; (b) you'll ensure that your Content (and the use of it by you, Us and Our Group) won't infringe any of Our Policies or any law; (c) you'll comply with section 17.7; and (d) you'll obtain and maintain all necessary authority, licences, consents and permissions necessary for you to perform your obligations, and for your use of Our Platform and Services under these Terms.

3.5 **Your Content:** You're solely responsible for your Content and your creation and use of it.

3.6 **Group companies and Users:** If you're an organisation with more than one Group company or User, you'll be deemed to have taken any action you permit, assist or facilitate a person or entity to take in relation to these Terms, Our Platform, Services or your Content. You're responsible for your Group companies' and Users and for their compliance with these Terms. If you become aware of any breach of your obligations by one of your Group companies or Users, you must notify Us promptly. You warrant and represent that you are, and will at all times be, authorized to give instructions for and on behalf of yourself, your Group companies and your Users. You'll indemnify Us and Our Group in respect of the terms of this section.

3.7 **Accepting these Terms:** If you're accepting them on behalf of an organisation, you're agreeing to bind the organisation and any relevant Group companies to them. You promise you have the authority to do so.

3.8 **Accurate Information:** You warrant that the information you've provided to Us and which is captured in the Order Documents is true, accurate and up-to-date. You'll ensure that this is kept up-to-date whilst these Terms are in force.

4 TERM AND TERMINATION

4.1 **Start date:** These Terms and your Initial Subscription start on the date of your Order Confirmation or that We tell you your account is active (whichever is earlier). They remain in effect until terminated.

4.2 **Renewal:** On expiry of a Subscription Period, your subscription automatically renews for a further 12-month period (a **Renewed Subscription**) unless either of us has given the other not less than 60 calendar days' notice prior to its expiry to cancel it on expiry.

4.3 **Suspension:** We may suspend access to an account, Our Platform and/or Services if We: (a) have the right to terminate; (b) determine that: (i) you're in breach of any of these Terms; (ii) your use of Our Platform poses a security risk; could impact Our Platform or its use by any third party; could subject Us or Our Group to liability; or is fraudulent; (c) are required to do so by any legal, governmental or regulatory authority; or (d) need to in an emergency or to

- respond to fraudulent activity. Suspension won't prejudice or waive Our ability to later terminate. During suspension you'll remain responsible for payment of fees during that period.
- 4.4 **Termination for cause:** These Terms may be ended: (a) by Us immediately by notice to you: (i) for cause if We've the right to suspend your access; (ii) if you fail to pay any amount when due to Us or a reseller; (iii) if you breach a Policy; (iv) if Our relationship with a third-party sub-contractor who provides software or technology used to provide Our Platform to you expires, terminates or requires Us to change the way We use it; (v) in order to comply with legal, governmental or regulatory obligations or authorities. (b) by either of us immediately by notice to the other if the other: (i) is in material breach of these Terms which is either irremediable or is not remedied within 30 calendar days of being notified of it; (ii) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; (iii) or a third party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; (iv) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sections (ii) and (iii) above; or (v) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 4.5 **Effect of termination or expiry:** (a) generally: (i) all licences and rights granted by one of us to the other under these Terms will immediately cease (except as provided in this section 4.5); (ii) We'll stop permitting access to Our Platform and Services, and you'll stop trying to access them; (iii) both of us will return, or if instructed destroy, equipment, property and other items and copies that we have belonging to the other (except that we may retain Confidential Information where required by law); (iv) either We or you (whoever's most appropriate) will delete any and all copies of Software from your systems. If you do so, you'll confirm to Us in writing that you've done so. Where We do it, you hereby grant Us all necessary physical or remote access to your sites and systems to do so; (v) any unpaid fees relating to a period prior to the date of termination or expiry shall be immediately due and payable; and (vi) any rights, remedies, obligations or liabilities that accrued prior to termination or expiry won't be affected or prejudiced. (b) Post termination or expiry: (i) you'll have 30 calendar days from termination or expiry to request a copy of your Content. We reserve the right to charge for this at Our then current rates. If you don't request it, We'll destroy or otherwise securely dispose of your Content after that period and will have no obligation to store it. You may request that We continue to store it subject to: (A) paying any applicable fees; and (B) providing Us with a written statement outlining the lawful basis for Us to do so on your behalf signed by an authorized signatory of your organisation. (ii) We may retain copies of your Content where required to do so for legal or regulatory reasons, and it may continue to be stored and processed by Us where it forms part of another user's Content.
- 4.6 **Survival:** Without prejudice to section 4.5, sections 3.4, 3.5, 4.5, 4.6, 5.1, 5.9, 6, 7.5, 7.10, 8, 9.1, 11 – 14 (inclusive) and 16 - 19.1 (inclusive) shall survive termination or expiry of these Terms for whatever reason.
- 5 CONTENT**
- 5.1 **Ownership:** You or your licensors own, and will continue to own, all right, title and interest in your Content. You've sole responsibility for the legality, reliability, integrity, accuracy and quality of it.
- 5.2 **Controller:** You'll be the Controller of your Content and We'll be a Processor.
- 5.3 **Compliance:** We won't process, disclose or use your Content other than on your written instructions or to comply with legal or regulatory obligations, or a binding order of a legal, governmental or regulatory authority, or for the prevention or detection of crime. If We're required to process your Content by law, governmental or regulatory authority We'll let you know (if We're allowed to). We'll also notify you if We believe compliance with Our obligations under this section 5 would breach Our obligations under the GDPR.
- 5.4 **Your instructions:** You agree that these Terms and the Order Confirmation set out your documented instructions to Us in relation to your Content and that We and Our Group may process it as reasonably necessary for the provision of Our Platform and the Services You've purchased. Any additional instructions outside of these Terms will be subject to written agreement and payment of any additional fees. You'll ensure that your instructions comply with all rules, laws and regulations applicable to your Content at all times, and that Our, Our Group's and sub-contractors processing of it in accordance with these Terms won't cause any of us to breach the GDPR.
- 5.5 **Performance of our agreement:** We'll store your Content in the territory requested by you. You acknowledge that Our Platform is a 'platform-as-a-service' solution and that notwithstanding that territory, you, Users and recipients may access your Content outside the European Economic Area (EEA) or the country you or they are located in. Where this happens, Content may be processed by you or them outside the EEA or relevant country and We'll facilitate this to perform Our agreement with you or them.
- 5.6 **Lawful basis:** You're responsible for ensuring: (a) you've a lawful basis for sending, storing and receiving your Content; (b) you're entitled to transfer your Content to Us and Our Group so that it may be lawfully processed by Us, Our Group and Our authorized sub-contractors in accordance with these Terms. Further specific terms in sections 18 and 19 may apply; and (c) all relevant third parties have been informed of Our role as a third party processor. You acknowledge that We're reliant on your compliance with this section.
- 5.7 **Confidentiality:** We restrict access to your Content to those that 'need to know' for Us, Our Group and sub-contractors to fulfil Our obligations under these Terms. We impose contractual obligations on Our Personnel in respect of confidentiality, data protection and security.
- 5.8 **Technical and organisational measures:** We've implemented and will maintain technical and organisational measures for Our Platform, taking into account the state of the art, the costs of implementation, the type of processing and the likelihood and severity of risk to the rights and freedoms of data subjects. These include the security of it, physical security of the facilities used by Us and Our sub-processors to deliver it, measures to control access rights to it and relevant networks, and processes for testing the effectiveness of these measures.
- 5.9 **Description of processing:** The details of the data processing that We or Our Group may carry out is as follows: (a) *Subject Matter:* Your Content. (b) *Duration:* as determined by you in accordance with these Terms; (c) *Purpose:* the provision of Our Platform and Services under these Terms

- as initiated by you; (d) *Nature of processing*: computing, storage, support and such other services by Us, Our Group and authorized sub-contractors as initiated by You in accordance with these Terms from time to time. (e) *Type of Content*: Content uploaded, stored or shared through Our Platform using your accounts. (f) *Categories of Data Subjects*: You, Users, suppliers, recipients and other third parties. A detailed description of the uses, and purposes of the processing of your Content is set out in Our Platform Privacy Policy at www.egress.com/privacy-policy.
- 5.10 **Security Breach Notifications**: We'll notify you without undue delay if We become aware of a Personal Data breach affecting your Content. As part of that notification where known We'll provide: (a) a description of the breach and Content concerned; (b) the likely consequences of it; and (c) the reasonable steps taken or proposed to be taken by Us to address, and where appropriate mitigate, any adverse effects of it. We'll use the contact details We have on record for you so you must ensure these are kept up-to-date. Any notification or response to a Personal Data breach is not, and won't be construed as, acknowledgement by Us or Our Group of any fault or liability in respect to it.
- 5.11 **Unsuccessful Security Incidents**: You agree that where there is an unsuccessful security incident We'll have no obligation to notify you under section 5.10 or otherwise under these Terms. An '**unsuccessful security incident**' is an attempt to gain access to your Content or the infrastructure and networks that provide Our Platform or Services that results in no unauthorized access (including denial of service attacks, pings, attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, packet sniffing or other unauthorized access to traffic data that doesn't result in access beyond headers).
- 5.12 **The licence you grant**: You grant Us, Our Group and Our authorized sub-contractors a non-exclusive, royalty-free, sub-licensable licence to process, copy, cache, store, display and reproduce your Content for the purposes of providing Our Platform and Services under these Terms. The right to process, display and reproduce is granted on a worldwide basis to enable access to your Content through your and recipients' accounts wherever in the world you or they access them.
- 6 ACCOUNT INFORMATION AND SYSTEM DATA**
- 6.1 **Ownership**: We own, and will continue to own, all right, title and interest in and to Account Information and System Data.
- 6.2 **Controller**: We'll be the Controller of Account Information and System Data where they contain Personal Data.
- 6.3 **Legitimate Business Interests**: We rely on Our legitimate business interests for the storage, maintenance and processing of Personal Data within Account Information and System Data. To operate Our Group effectively We use shared systems, resources and sub-contractors so Account Information and System Data may be transferred to these parties, stored or processed outside the EEA or the country where you or a User is located. Where We do so We'll ensure that any transfer is subject to appropriate safeguards. Account Information and System Data may be used in accordance with the uses and purposes set out in Our Platform Privacy Policy at www.egress.com/legal.
- 6.4 **Performance of our agreement**: In addition to the lawful basis set out in section 6.3, We'll also facilitate any processing of Account Information or System Data by Our Group and sub-contractors where necessary for the provision of Services. Such processing would be carried out to perform Our agreement with you.
- 6.5 **Sharing**: We may share Account Information and System Data with sub-contractors as set out in Our Privacy Policies at www.egress.com/legal, including to provide the Services to you, for Us or Our Group to receive services, and for the operation of Our Platform. Further specific terms in sections 18 and 19 may apply.
- 7 GDPR COMPLIANCE**
- 7.1 **Verification of Our compliance**: We'll provide all information reasonably requested by you to enable you to verify Our compliance with these Terms. You'll be entitled to inspect and audit (or appoint representatives to inspect and audit) at your cost Our Group's facilities that relate directly to the processing of your Content, subject to all involved signing suitable confidentiality terms and complying with all applicable security, access and other site policies. We'll co-operate and provide assistance at your cost (including the provision of any reports provided to Us by sub-processors where available and where We're permitted to disclose those to you). You'll give Us not less than 14 calendar days' prior written notice of any audit, will conduct it during Our normal working hours, and use reasonable endeavours to avoid causing damage, injury or disruption to Our premises, Personnel and business whilst conducting it. You may exercise this right once every 12 months (unless required otherwise by a relevant regulatory authority).
- 7.2 **Privacy Impact Assessments (PIAs)**: We'll provide you with reasonable assistance at your cost with PIAs and consultations you reasonably consider to be required of you by the GDPR.
- 7.3 **Data subjects**: Where We hold Personal Data about a data subject We'll provide assistance at your cost in relation to your compliance with your obligations under the GDPR. If you're the Controller We'll promptly notify you where We, or a member of Our Group, receives a request from a data subject; and (b) will at your cost, assist you in meeting your obligations with respect to data subject access requests and breach notifications with supervisory authorities and data subjects.
- 7.4 **Sub-processing**: You agree We may engage those sub-processors set out at www.egress.com/legal in the provision of Our Platform and Services. We'll remain fully responsible for their acts, omissions and defaults as if they were Our own. Where we authorize a sub-processor: (a) its involvement will be restricted to such access as is necessary to perform its role; and (b) We'll ensure that We've a written agreement with it governing its access to, and use of, your Content, and Account Information and System Data. Further specific authorized sub-contractor terms set out in sections 18 and 19 may apply.
- 7.5 **Deletion or retention**: (a) We may retain Account Information and System Data for Our legitimate interests, including management of accounts, maintaining records required for legal or regulatory reasons, showing that We complied with Our contractual obligations, responding to complaints or queries, and for research and statistical purposes. (b) The amount of time We keep your Content may be subject to limitations depending on the functionality within Our Platform that you've asked Us to provide. Subject to section 4.5 your Content will be deleted in accordance with Our retention policy but may still be stored and processed by Us after you cease to be Our customer or after We've deleted it from your accounts where it forms part of another user's Content.
- 7.6 We'll both comply with all binding laws, rules and regulations applicable to us and these Terms.

- 7.7 You acknowledge that Our Platform provides you with controls that you may use to control access to, and the security of, your Content. You acknowledge that these can be used as technical and organisational measures to assist in your compliance with GDPR and that you're solely responsible for the correct and consistent use by you, your Group and Users.
- 7.8 You'll not do anything which causes Us, a member of Our Group or any sub-processor to be in breach of the GDPR. Equally You'll not fail to do something that would otherwise prevent a breach of the GDPR.
- 7.9 **Electronic Communication:** You acknowledge and agree that We may send, or otherwise display to, you information about Our Platform and Services you purchase and updates, enhancements, and modifications of them. This may include information about how you use them and how you could do so more efficiently, faults, issues, new features, updates or notices of times when they'll not be available. This is for the performance of Our agreement with you.
- 7.10 **Sharing:** We reserve the right to share and transfer Our obligations, rights and permissions in respect of your Content, and the Account Information and System Data with and to any third party that propose to, or does, buy or acquire all or a relevant part of Our business or assets.
- 7.11 **HIPAA/BAA:** If you're a "covered entity" or a "business associate" and you include "protected health information" in Content (as each of those terms are defined in 45 CFR § 160.103 of HIPAA in the United States of America), execution of these Terms includes your acceptance of the HIPAA Business Associate Agreement ("BAA"), the full text of which is available at www.egress.com/legal and which is automatically incorporated in these Terms by reference. You may opt out of the BAA by sending us written notice confirmation of your legal name, and the order confirmation and Group companies that your opt out relates to.
- 7.12 **Transfer of Personal Data from the EEA:** Where your use of Our Platform includes the processing of personal data (as described in the GDPR) about EEA residents, the terms of the data processing addendum at www.egress.com/legal ("EUDPA") shall apply to such processing and transfer, and its terms are hereby incorporated by reference. For the purposes of the EUDPA, you'll be the data exporter, and we'll be the data importer. Your acceptance of these Terms shall also be treated as your acceptance of the EUDPA.
- 8 PROPRIETARY RIGHTS**
- 8.1 Except as set out in these Terms, We and Our Group have no rights in or to your Content. We and Our Group own all right, title and interest in and to Account Information and System Data (and all related IPR).
- 8.2 **Platform:** We (or Our Group or licensors) own all rights, title, interest in and to Our Platform, the Services (including documentation, outputs, developments, deliverables, code, changes, updates and new versions of, or resulting from, the same). Except as set out in these Terms, We don't, and won't be deemed to, grant you any rights in or licences to them.
- 8.3 **Improvements:** If you provide Us or Our Group with an idea or suggestion as to how We could improve Our Platform or Services, We'll be entitled to use it without restriction. You hereby irrevocably assign to Us all rights, title and interest in such ideas and suggestions (including any created in the future) and agree to give assistance and execute documents needed to confirm Our rights.
- 9 FEES AND PAYMENT**
- This section 9 applies only if you purchase the access rights and Services set out in these Terms directly from Us. If you

- purchase them through a reseller, the pricing and invoicing terms will be agreed to between you and the reseller directly and this section will not apply.
- 9.1 **Fees and payment terms:** The total fees on the Order Confirmation will be invoiced in full on or following its date. Fees for a Renewed Subscription will be invoiced in full no earlier than 30 days before the date of renewal. Fees for additional Users will be invoiced where discovered during an audit or requested by you. All fees are non-refundable and Order Documents are non-cancellable. Payment terms are 30 days from invoice date (without set-off, counterclaim, deduction or withholding). If you pay by direct debit you agree to tell Us promptly if your bank details change. We may increase the fees on 30 calendar days' notice to you. Increases are effective from the start of the next Subscription Period.
- 9.2 **Disputed Invoices:** You must notify Us within 14 calendar days of receipt of an invoice if you dispute it, setting out why. If only part of it is disputed, you must pay the undisputed amount. We'll work together in good faith to resolve your dispute.
- 9.3 **Late payment:** If an undisputed amount isn't paid by the due date then We'll notify you and, without prejudice to Our rights or remedies, We may: (a) suspend access to Our Platform and Services; and (b) charge a late payment fee on any unpaid sum at the rate of 1% per month or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date such amount is paid. If We take action to pursue collection of unpaid sums, you'll pay the costs and fees (including attorneys' fees) associated with such collection.
- 9.4 **Taxes:** Fees are payable in the currency of the invoice. They're exclusive of any taxes, withholdings, levies or duties of any nature (including local, state, federal, VAT, sales tax, customs duties, foreign taxes or similar) that may be assessed at any time. We may charge any taxes that We're legally obliged or authorized to collect from you. We'll not collect, and you'll not pay, any taxes for which you give Us a properly completed and lawful exemption certificate. If any taxes or charges are payable, other than taxes based on Our net income, you'll pay them or reimburse Us if We've had to pay them.
- 10 OUR OBLIGATIONS**
- 10.1 **ISO-Certification or equivalent:** At the date of these Terms We're certified under ISO-27001. We agree to maintain an information security program for Our Platform that complies with this or another standard that is materially similar.
- 10.2 **Changes to sub-processors:** At least 30 days before We engage a new sub-processor We'll update Our website. If you object in good faith for bona fide concerns around your compliance or data security before they're engaged, We'll work with you in good faith to consider how Our Platform or Services may be delivered to you without using them. If we can't agree a suitable, mutually acceptable change within 30 calendar days of your objection, you may terminate any affected part of Our Platform or Services through the provision of not less than 30 days' prior written notice. If you don't object, you'll be deemed to accept the change.
- 10.3 **Platform:** We'll provide Our Platform and Services as described in the Order Confirmation with reasonable skill and care and in accordance with these Terms and any documentation available at www.egress.com.
- 10.4 The Order Confirmation sets out the access and Services, User Subscriptions, Initial Subscription, where Content will be hosted and any further terms agreed by us.

10.5 **Changes to Platform:** You acknowledge that Our Platform is a 'platform-as-a-service' and that We reserve the right to change the details of it such as organisational, procedural and functionality changes over time without prior notice (including to the descriptions). If these changes result in a material degradation to performance, accessibility or available functionality, you may write to Us and/or raise a dispute under section 16.

10.6 **Professional Services:** At your request We may provide professional Services set out in an Order Confirmation. We'll provide such Services in a professional and workmanlike manner, consistent with industry standards. If Our performance doesn't conform with the relevant Order Confirmation, you must notify Us within 14 calendar days of delivery of the professional Service. We'll re-perform the non-conforming professional Service(s) at Our cost. After that period, any such re-performance of professional Services will be chargeable and subject to a new Order Document. This section 10.6 is your sole remedy, and our sole obligation, for breach of the obligations and assurances in this section.

11 WARRANTIES

11.1 WITHOUT LIMITING OUR EXPRESS OBLIGATIONS UNDER THESE TERMS, THE PLATFORM, SOFTWARE AND SERVICES ARE MADE AVAILABLE "AS IS" AND WE HEREBY DISCLAIM ALL GUARANTEES, CONDITIONS, WARRANTIES AND REPRESENTATIONS, IMPLIED, STATUTORY OR OTHERWISE CONCERNING THE PLATFORM, ANY SOFTWARE, SERVICES, DOCUMENTATION OR OTHER MATERIALS PROVIDED BY US (INCLUDING THOSE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT). WE DO NOT WARRANT OR REPRESENT THAT ACCESS TO THE PLATFORM OR PROVISION OF SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, FREE FROM HARMFUL COMPONENTS OR THAT THEY WILL MEET YOUR NEEDS.

12 INDEMNITY

12.1 **Indemnity:** We'll defend you against any third-party claim that Our Platform infringes any United States copyright or registered patent or trademark and will indemnify you for any amounts awarded against you in judgment or paid in settlement of such a claim. You must provide prompt notice of any such claim and co-operate with Our defense or settlement of it. You must not make any admission or statement in relation to it or attempt to settle it. We'll have sole authority to defend and/or settle it.

12.2 **Additional Terms:** In defense or settlement of a claim under section 12.1, We may, at Our expense and discretion: (a) obtain the right for you to continue using Our Platform and Services; (b) replace or modify them so they no longer infringe; or (c) terminate these Terms and refund any fees paid in advance for the unused remainder of the current Subscription Period. You'll co-operate with Us in relation to the option We take. We'll not be liable to you under section 12.1 to the extent that an alleged infringement is based on a modification of Our Platform or Service other than by Us; the combination of either of them with any third-party product, data or software; your breach of these Terms; or use after We notify you of any alleged or actual infringement.

12.3 **Entire liability:** Section 12 is your sole and exclusive right and remedy (and Our entire obligation and liability) for all matters relating to IPRs in Our Platform and Services.

12.4 **Your indemnity to Us:** You'll defend, indemnify and hold harmless Us and Our Group against any losses, damages,

liabilities, fines, penalties and costs and expenses (including reasonable attorneys' fees) arising from any third-party demand or claim that: (a) your Content or other information provided by you, or your use of Our Platform or Services: (i) infringes any IPR; (ii) violates applicable law; or (iii) breaches these Terms; or (b) you don't have a lawful basis to transfer your Content to Us or to permit Us, Our Group and authorized sub-contractors to process it in accordance with these Terms. We'll notify you of any such claim.

13 LIABILITY

13.1 EXCEPT FOR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, OR FOR INDEMNIFICATION OBLIGATIONS, NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF DATA, OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. IN NO EVENT SHALL OUR CUMULATIVE LIABILITY UNDER THIS AGREEMENT DURING EACH YEAR EXCEED THE AMOUNTS PAID AND PAYABLE BY YOU TO US IN THAT YEAR.

13.2 You've sole responsibility for the results and conclusions obtained from use of Our Platform and Services. We'll have no liability for damage caused by errors or omissions in information, instructions or scripts provided to Us by you, or any actions taken by Us at your direction.

14 CONFIDENTIALITY

14.1 We both understand that we're likely to be given access to Confidential Information from each other in order to perform our obligations under these Terms. We both agree that 'Confidential Information' includes information that is marked as confidential, proprietary or which a reasonable person would understand to be confidential given the nature and circumstances of its disclosure (including with respect to Our Confidential Information, details of Our Platform, Services, Software and associated documentation, any source or object code, IPR, and business processes, plans, road maps, performance tests or similar). It won't include information that: (a) is or becomes publicly known other than through fault of the party receiving it; (b) was in the other's lawful possession without restriction on disclosure before it was disclosed; (c) is lawfully disclosed to the party receiving it by a third party without restriction on disclosure; (d) is independently developed by the party receiving it (where that can be shown by written evidence); or (e) is required to be disclosed by law, a court of competent jurisdiction or a governmental, regulatory or administrative body.

14.2 Each of us will: (a) keep the other's Confidential Information in confidence and: (i) not use or exploit it in any way except for the purposes of providing or receiving Our Platform and Services; (ii) only disclose it to those of our or our respective Group's respective Personnel, representatives, agents, advisors and sub-contractors who need to know it for the purposes of providing or receiving Our Platform or Services, or otherwise in relation to these Terms. Where such disclosure is to be made, the relevant party will be responsible for ensuring that suitable confidentiality obligations are in place with the recipient; (iii) unless disclosable under this section or section 14.1(e) not make it available to any third party; and (b) take all reasonable steps to ensure that the other's Confidential Information isn't disclosed or distributed in violation of these Terms, with at

least the same protections it applies to its own Confidential Information.

15 OUR AUDIT RIGHTS

15.1 **Audits:** We can audit your use of Our Platform and Services (including to establish names and total number of Users). We can do this once per quarter and it may be done remotely.

15.2 **Remedies:** If an audit reveals that: (a) your accounts are being misused (including by individuals who aren't Users) then, without prejudice to Our rights, accounts may be disabled and/or the individuals blocked; (b) you've permitted more Users than set out on the Order Confirmation or subsequently purchased, then without prejudice to Our rights, We (or the reseller) may invoice you for, and you'll pay, the fees for the additional Users (calculated from Our standard price list in force at the time and back-dated to the beginning of the relevant quarter). Additional fees will be payable going forwards unless otherwise agreed in writing.

16 DISPUTE RESOLUTION

16.1 Both of us shall attempt in good faith to resolve any dispute arising out of or relating to these Terms by negotiation between personnel who have authority to settle the dispute. Notwithstanding the foregoing, both of us will be entitled to enforce our respective IPRs, to protect our Confidential Information and to seek equitable relief at any time.

16.2 If a dispute hasn't been resolved within 30 calendar days of the first written request by either of us to resolve it, then either of us may pursue any available remedies.

16.3 Nothing in this section or Terms will prevent either of us from seeking equitable or injunctive relief.

17 GENERAL

17.1 **No waiver:** Failure or delay in exercising a right or remedy in these Terms or by law won't waive it and won't prevent or restrict further exercise of it. Single or partial exercising of a right or remedy won't prevent or restrict the further exercise of it. Waivers are only effective in writing.

17.2 **Severance:** If part of these Terms is found by a court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other terms will remain in force. An invalid, unenforceable or illegal term will be interpreted to give effect to our commercial intention. If that's not possible, it will be severed from these Terms without impact on the remainder.

17.3 **Remedies:** Except as expressly provided in these Terms, the rights and remedies provided are in addition to, and not exclusive of those provided by applicable law.

17.4 **Force Majeure:** Neither of us will be liable for any delay in performance or failure to perform our respective obligations under these Terms due to a cause or event outside our reasonable control (including acts of God, civil or military authority, war, accidents, third party computer, network, utilities or communications failures, failures in the Internet, epidemics, pandemics, terrorism, flood, storms, natural disasters or catastrophes, strikes or other work stoppages or any other similar causes).

17.5 **Entire Agreement:** These Terms (together with the Order Documents, Policies, EUDPA and BAA and documents referred to in them) constitute the whole agreement between us and supersede any previous arrangement, understanding or agreement between us relating to their subject matter. We both acknowledge and agree that in entering into them we don't rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person relating to the subject matter of these Terms, other than as expressly set out in them. This section doesn't limit or exclude liability for fraud or fraudulent misrepresentation.

17.6 **Assignment:** You may assign these Terms in whole or in part to a successor in interest in the event of a sale or merger of your business. Other than that, you may not assign, novate, transfer, charge, sub-contract or deal with these Terms in whole or in part without Our prior written consent. These Terms will be binding on and inure to the benefit of each of us and our respective permitted successors and assigns.

17.7 **Trade Compliance:** In connection with these Terms, you're solely responsible for compliance with all import, re-import, export, re-export, sanctions, anti-boycott laws and other regulations that apply to your use of Our Platform and Services (including the transfer and processing of your Content, the provision of it to Users and recipients, and the region in which any of those occur). This may include obtaining licences or permits, payment of customs duties, clearance charges, taxes, brokers' fees and other similar amounts in connection with the import or export of your Content. You warrant and represent that: (i) you'll not use, or permit any other party to use, Our Platform or Services for the transfer or sharing of dual use items in the European Union (**EU**); (ii) you're not (and neither is any party that directly or indirectly owns or controls you) subject to sanctions or designated on any list of prohibited or restricted parties (including any maintained by the UN Security Council, the US, the UK, the EU or any EU member state, or other applicable government authority); and (iii) you'll not transfer Our Platform or Software (or any right of access or use) to any embargoed country or prohibited or restricted party.

17.8 **No Partnership or Agency:** We are each an independent contractor. Nothing in these Terms is intended to or shall operate to create a partnership between us or authorize either of us to act as agent for or to bind the other.

17.9 **Third Party Rights:** Subject to sections 1.3 and 3.6, these Terms don't create any third-party beneficiary rights in any individual or entity (other than each of us).

17.10 **Notice: To you:** We may provide notice to you under these Terms by: (i) posting a notice on Our website; or (ii) sending a message to you at the email address then associated with your account; or (iii) by sending a notice to the address on your Order Document by hand, overnight delivery, pre-paid first-class mail or registered mail. **To Us:** To give Us notice you must send it to Our registered office. **Notices:** will be effective if (a) delivered by hand immediately (unless delivery isn't during working hours, in which case they'll be effective at 9am on the next working day); (b) put on Our website, on posting; (c) sent by email, when sent; (c) sent by overnight delivery, on the delivery date; or (d) sent by mail at the time at which it would have been delivered in the normal course of mail.

17.11 **Governing law:** These Terms and any disputes hereunder will be governed by the laws of the State of Delaware, without regard to its conflict of law principles. We both acknowledge and agree that any litigation concerning these Terms shall be submitted to and resolved by the state or federal courts in and for Boston, Massachusetts, and the parties consent to the exclusive jurisdiction and venue of such courts.

17.12 **Waiver of Jury Trial (US):** Where applicable, each of us hereby waives its respective rights to a jury trial of any claim or cause of action relating to or arising out of these Terms. This waiver is intended to encompass any and all disputes that may be filed in any court and that relate to these Terms' subject matter (including contract, tort, breach of duty and all other common law and statutory claims). Each of us represents and warrants that we have consulted with legal

counsel concerning this clause and that it provides this waiver knowingly and voluntarily.

17.13 **Modifications to these Terms:** We may modify these Terms (including any Policies or documentation) at any time by posting a revised version on Our website or otherwise notifying you. All modified terms will become effective upon posting, or as otherwise stated in the notice. By continuing to use Our Platform and Services after that date, you agree to be bound by the modified terms. It is your responsibility to check Our website regularly for modifications. The date these terms were last modified is stated on the front sheet.

18 AMAZON WEB SERVICE SPECIFIC TERMS

This section only applies where you choose to host Our Platform and Content on Amazon Web Services (**AWS**) and is in addition to sections 5, 6 and 7.

18.1 **Data Privacy:** You may specify the region(s) in which your Content will be stored. You consent to the storage of your Content in, and transfer of your Content into, the region(s) you select. Content may be moved from the region(s) selected by you where necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, We'll give you notice of any legal requirement or order referred to in this section.

18.2 **Service Attributes:** To provide services and investigate fraud, abuse or violations, AWS may process usage data (including resource identifiers, metadata tags, security and access roles, rules, usage policies, permissions, usage statistics and analytics) where relevant Personnel are located.

19 MICROSOFT SPECIFIC TERMS

This section applies to Account Information and System Data hosted on Our Group's systems. It will also apply where you choose to host Our Platform and Content on Microsoft Azure and is in addition to sections 5, 6 and 7.

19.1 **Use:** (a) Content will be used by Microsoft only to provide the services you request from Us and which We sub-contract to it. (b) Account Information and System Data will be used only to provide the service We request.

19.2 **Disclosure of Content:** Microsoft will not disclose Content outside of it or its controlled subsidiaries and affiliates except: (a) as directed by you; (b) as required to provide the services or (c) by law. It will not be disclosed to law enforcement unless required by law. If law enforcement demands release, attempts will be made to redirect them to request that data directly from you. If compelled to disclose by law enforcement, you'll be promptly notified and provided with a copy of the demand (unless this is not legally permitted). Upon receipt of any other third-party request for disclosure, you'll be promptly notified (unless this is not legally permitted). Any such third party requested will be rejected unless it must be complied with by law. If the request is valid, attempts will be made to redirect the requesting party to request the data directly from you. Third parties will not be granted (a) direct, indirect, blanket or unfettered access to data; (b) platform encryption keys used to secure data or to provide the ability to break such encryption; or (c) access to data if We or Microsoft are aware that the data is to be used for purposes other than those stated in the third party's request. In support of the above, your basic contact information may be disclosed to the third party.

19.3 **Disclosure of Account Information and System Data:** Microsoft will not disclose Account Information or System Data outside of it or its controlled subsidiaries and affiliates except: (a) as directed by Us; (b) as required to provide the

services or (c) by law. It will not be disclosed to law enforcement unless required by law.

20 DEFINITIONS AND INTERPRETATION

20.1 In these Terms the following definitions apply: (a) **Account Information** Personal Data about you and your Users that is provided to Us by you, or that We obtain in connection with: (i) the creation and administration of your accounts (e.g. name, username, address, employer, phone number, email address, billing and transaction information, password, personal contact information, the date the account was opened/closed, information provided when contacting Us, and the access, Platform and Services We provide); (ii) your use of Our Platform and Services (e.g. how you use, access and interact with them); (iii) any permissions, consents or preferences that are given to Us; and (iv) you being Our customer, and information that We obtain from third parties that may be linked to you, your employer or organisation; (b) **Content** the files, data, text, audio, video and images that are transferred, stored, shared or hosted on or through Our Platform or Services by you, Users and third parties, including any Personal Data in it. It does not include Account Information or System Data; (c) **Controller** has the meaning given in the GDPR; (d) **Data Claims** any cause of action arising out of or relating to Our breach of any of Our obligations in sections 5, 6, 7, 18 or 19; (e) **GDPR** the EU General Data Protection Regulation 2016/679; (f) **Group** a party to these Terms together with its holding company, or any subsidiary of either the party or its holding company, or any other company under common control with it from time to time; (g) **Initial Subscription** the period defined as such on the Order Document; (h) **IPR** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; (i) **Order Confirmation** the Order Document sent out by Us to you providing confirmation of Our Platform, Services and User Subscriptions purchased by you; (j) **Personal Data** has the meaning given in the GDPR; (k) **Personnel** employees, contractors and temporary workers; (l) **Platform** Our and Our Group's proprietary 'platform-as-a-service' solution and associated functionality and services; (m) **Policies** Our Privacy Policies, Acceptable Use Policy and other policies in force from time to time; (n) **Processor** has the meaning given in the GDPR; (o) **Services** professional services and Support that We provide to you under these Terms; (p) **Software** one or more proprietary or third party software components or plug-ins provided by Us for installation on your infrastructure; (q) **Subscription Period** either the Initial Subscription, or Renewed Subscription (as applicable); (r) **Support** the support services We provide for Our Platform as set out in the Order Confirmation; (s) **System Data** (i) usage statistics, system logs, performance and security data, records of support requests, and aggregated data about how Our sites, Platform, Services and apps are used (e.g. performance counters, access logs, metrics and associated metadata, unique identifiers for devices, technical information about the

devices used, the network, operating system and browsers); and (ii) data identified as malicious (e.g. malware infections, cyberattacks, unsuccessful security incidents, or other threats). This may contain limited Account Information where it appears in log records; (t) **Users** your employees and contractors (and those of your Group if specified on the Order Confirmation) who are authorized by you to access and use Our Platform and Services; (u) **User Subscription** the right for 1 User to access Our Platform; and (v) **Year** a period of 12 months starting on the date of your Order Confirmation or that We tell you your account is active (whichever is earlier). (and each anniversary of the same thereafter).

20.2 In these Terms: (a) the terms *including*, *includes* or any similar expression shall be construed as illustrative and won't limit the scope of words that follow them; (b) references to *writing* or *written* includes email (except that email can't be used for serving notices connected to legal proceedings); and (c) an obligation not to do something includes an obligation not to allow that thing to be done.

Egress Software Technologies Inc.

Egress Software Technologies is the leading provider of information security services designed to secure shared data from start to finish using a single platform: Egress Switch.

The Switch platform is made up of highly integrated and flexible service lines. These award-winning services include email and document classification, the only email and file encryption product to be CPA certified by NCSC, secure managed file transfer, secure online collaboration and secure archive.

www.egress.com

✉ info@egress.com

📞 1-800-732-0746

🐦 @EgressSwitch

