

## Master Subscription Agreement

This Master Subscription Agreement (the **MSA**) governs your subscription to and use of the Services, Software and Support. It forms a legally binding agreement between the relevant Egress Software Technologies Group entity set out in Section 17.11 (**We, Us, Our**) and you, the organisation accepting it by either: (a) signing it; or (b) signing an Order Form that refers to it (in each case, **you, your**). It applies (i) to each order you place with Us (i.e. by submitting a signed Order Form to Us that We accept) and (ii) to the exclusion of terms you seek, or have sought, to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. On the date of a Renewal of any Subscription, the then-current Master Subscription Agreement will apply to that Renewal. If you subscribe through a reseller (a **Reseller**), you agree that this MSA will still apply to your use of the Services, Software and Support (except where otherwise specifically stated below).

If you are accepting this MSA on behalf of an organisation, you are agreeing to bind the organisation and any relevant Group companies to them and represent and warrant that you have the legal rights and the full power and authority to do so. "You" and "your" shall also refer to that organisation and its Group companies collectively.

You warrant that the information you have provided to Us is true, accurate and up-to-date. You will ensure that this is kept up-to-date whilst this MSA is in force.

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### 1. NO UNAUTHORISED ACCESS

1.1. If you are an employee, contractor, or other member of the workforce of, or a representative of, a direct competitor of Us or Our Group, you may not access the Services, Software and Support except with Our prior written consent. No access to the Services, Software and Support is permitted for any form of competitive or benchmarking purposes, to determine if they are within the scope of any patent, or for purposes of evaluating or monitoring any of their functionality, availability or performance (other than in respect of the service levels set out in Our Support documents).

### 2. TRIAL ACCESS

2.1. We may make one or more parts of the Services available to you on a trial basis free of charge until the earlier of: (a) the end of the agreed trial period; (b) the date that you purchase the relevant Service; or (c) termination by Us at Our discretion. The provisions of this MSA will also apply to the trial period. We may notify you of additional terms that apply to the trial of certain services and any such additional terms are incorporated into this MSA by reference.

2.2. ANY CONTENT THAT YOU ENTER INTO, OR SEND USING, A TRIALLED SERVICE WILL BE LOST UNLESS YOU DOWNLOAD, DECRYPT AND EXPORT IT PRIOR TO THE END OF THE FREE TRIAL PERIOD. NOTWITHSTANDING ANYTHING ELSEWHERE IN THIS MSA, TRIALLED SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OR REPRESENTATION OF ANY KIND AND WE WILL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO TRIALLED SERVICES DURING THE FREE TRIAL PERIOD. YOU WILL BE FULLY LIABLE UNDER THIS MSA FOR ANY DAMAGES ARISING OUT OF YOUR USE OF ANY TRIALLED SERVICES DURING THE FREE TRIAL PERIOD (INCLUDING

AS A RESULT OF YOUR BREACH OF THIS MSA OR ANY INDEMNITY OBLIGATION).

### 3. DEFINITIONS

3.1. **Confidential Information:** information identified or labelled by the disclosing party as confidential, or which ought to be considered confidential to the disclosing party, including non-public information about the disclosing party's: (a) business, finances, customers, suppliers, plans, opportunities, IPR, products, software and services; (b) software code (both object and source), road maps, product plans, non-public information about intellectual property rights (including patentable inventions at whatever stage of evaluation, application or grant) documentation, specifications, designs, configurations, performance data, databases, Trade Secrets, patentable ideas and innovations, applications and discussions; and (c) operations, processes, know-how and technical information. Any information or analysis derived from the above will also be Confidential Information.

3.2. **Content:** the files, data, text, audio, video, images and other materials that are transferred, stored, shared or hosted on or through the Services and Software by you, your Group, Users and Recipients, including any Personal Data in it. It does not include CRM Information, Smart Data or System Data.

3.3. **CRM Information:** the databases, logs and other collections of Personal Data about you and your Users that is provided to Us by you, your Users, or that We obtain in connection with: (a) the creation and administration of accounts; (b) how the Services, Software and Support are used, accessed and interacted with; (c) any permissions, consents or preferences; and (d) you being Our customer, and information that We obtain from third parties that may be linked to you or your organisation.

- 3.4. **DPL:** any laws and regulations relating to the Processing of Personal Data which are applicable to the delivery of the Services to you under the terms of this MSA.
- 3.5. **Fees:** the fees payable by you to Us in accordance with one or more Order Forms for: (a) the delivery, use of and access to the Services and Support, and (b) where relevant, any Professional Services that We agree to provide to you.
- 3.6. **Group:** a party to this MSA 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.
- 3.7. **Initial Subscription:** the period of time that a Subscription is permitted to access and use the Services, as defined on the relevant Order Form.
- 3.8. **IPR:** patents, utility models, rights to inventions, copyrights and neighbouring and related rights, rights in computer software, databases, object and source code, trademarks and service marks, business names, domain names, social media handles or identifiers, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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.
- 3.9. **On-Premise Software:** any part of the Software necessary to enable you to host all or part of the Services on your infrastructure.
- 3.10. **Order Form:** the document, labelled either 'Order' or 'Quote' sent out by Us or a Reseller to you containing details of the Services, Software, Support and Subscriptions you have purchased and which you: (a) sign (physically or electronically) and return to Us or a Reseller; and/or (b) provide an order document (such as a confirmation email, purchase order or other document) in relation to an order to confirm your purchase or otherwise indicate your acceptance.
- 3.11. **Personal Data:** is at its basic level any personal information that relates to an identifiable individual natural person. The scope of it may be broader based on local DPL applicable to the delivery of the Services to you.
- 3.12. **Personnel:** Our employees, temporary staff, contractors and Sub-Processors.
- 3.13. **Plug-Ins:** one or more proprietary software or Third-Party Software components or plug-ins provided by Us for installation onto your network or User devices in order to access and use the Services.
- 3.14. **Process:** any operation or set of operations which is performed on personal data or on sets of Personal Data, whether or not by automated means, as defined in the DPL.
- 3.15. **Professional Services:** services provided by Us to you in accordance with an agreed SOW (e.g. training, deployment, integration, testing, development).
- 3.16. **Recipient:** an individual who either: (a) receives a secure communication from you, a member of your Group or a User; or (b) is granted access to Content by any of the foregoing, in each case through use of the Services.
- 3.17. **Renewal:** has the meaning given in Section 9.2.
- 3.18. **Reseller:** has the meaning given at the top of this MSA.
- 3.19. **Services:** Our proprietary services and associated functionality which are delivered either as a fully-hosted, partially-hosted or on-premise model and which include the use of, or access to, the Software. This term does not include Professional Services.
- 3.20. **Smart Data:** the record of individual User email behaviour and associations formed from the machine learning and artificial intelligence led processing, collection and analysis of email metadata (e.g. date and time, sender and recipient email addresses, package classification and other unique and non-unique message identifiers) and other domain, location, 'trust' data and Third Party Data. This excludes CRM Information and System Data.
- 3.21. **Software:** the proprietary software and Third-Party Software that enables Us to deliver, develop, enhance and provide the Services, including the Plug-Ins, On-Premise Software and Third-Party Software.
- 3.22. **SOW:** a statement of work agreed by both of us which describes certain Professional Services to be provided by Us to you in accordance with its terms and the terms of this MSA (including Section 4.2).
- 3.23. **Standard Contractual Clauses:** the EU model clauses for data transfers as issued by the European Commission.
- 3.24. **Sub-Processors:** those Group companies and third-parties listed at [www.egress.com/subcontractors](http://www.egress.com/subcontractors) from time to time who are involved in the delivery of the Services and Support.
- 3.25. **Subscription Period:** the Initial Subscription together with any Renewal(s).
- 3.26. **Subscriptions:** the right to access and use the Services, Software and Support during the applicable Subscription Period.
- 3.27. **Support:** the support services We provide that are applicable to the Services as set out in the Order Form and Our Support Services document as available at [www.egress.com/legal](http://www.egress.com/legal) from time to time.
- 3.28. **System Data:** (a) usage statistics, system logs, performance and security data, feedback data, records of support requests, and aggregated data about how Our sites, Services, Software, Support 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 (b) data identified as malicious (e.g. malware infections, cyberattacks, unsuccessful security incidents, or other threats). This may contain limited CRM Information where it appears, for example, in log records but excludes Smart Data.
- 3.29. **Third Party Data:** data that is proprietary to third parties that We receive and which may be included within the data sets processed by Our Services to enable them to operate in the way described in relevant service documentation and to provide guidance to you and your Users.
- 3.30. **Trade Secret:** something which: (a) is secret in the sense that it is not generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question; (b) has commercial value because it is secret; and, (c) has been subject to reasonable steps by Us to keep it secret.
- 3.31. **Third-Party Software:** software that is proprietary to third parties that We licence and which may be included within the Services to provide additional functionality.
- 3.32. **UK:** England, Scotland, Wales and Northern Ireland, collectively or individually as the context and circumstance requires.
- 3.33. **User:** your and your Group's employees and contractors, and other non-employees acting on your behalf who are authorised by you to access and use the Services, Software and Support through a Subscription.

- 3.34. **Your Instructions:** has the meaning given in Section 6.1.
- 3.35. In this MSA: (a) the terms *including*, *includes* or any similar expression shall be construed as illustrative and will not 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.

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#### 4. OUR RESPONSIBILITIES

- 4.1. Provision of the Services. We will: (a) provide you with access to the Services as described in this MSA and any applicable Order Forms with reasonable skill and care; (b) provide you with Premium Support (or enhanced 24/7 Support if you have purchased it) in accordance with the document available at [www.egress.com/legal](http://www.egress.com/legal) (a copy may be attached to an Order Form but will still be subject to change in accordance with this URL). We grant you a non-exclusive, revocable, non-transferable, non-sub-licensable right to permit Users to access and use the Services during a Subscription Period. If you are subscribing to an on-premise or partially hosted Service, We also grant you a non-exclusive, revocable, non-transferable, non-sub-licensable licence to download, install and use 1 copy of the On-Premise Software on your private infrastructure during your Subscription Period. Access and use to and of the Services are generally permitted for your business purposes only, however access and use of and to any reporting Software is for your internal business purposes only. Access and use for personal or private use, or for the benefit of any third party, is not permitted. Access rights in and to the Software and Services are licensed (not sold).
- 4.2. Provision of Professional Services. We will provide any Professional Services set out in a relevant Order Form in a professional and workmanlike manner, using reasonable skill and care in accordance with industry practice and any relevant SOW. Where it is necessary for Us or Our Group to visit your sites in order to perform Professional Services you shall at no cost to Us or Our Group: (a) provide reasonable access to any relevant sites at times to be agreed; (b) inform Us of health and safety, and security policies applicable at the sites; (c) ensure the sites are safe; (d) if required, prepare the sites and any equipment in accordance with Our instructions; and (e) make sure any equipment is in good working order and conforms to applicable standards and specifications. You will have 14 calendar days from the date of completion of any Professional Services to notify Us of any failure by Us to deliver the Professional Services in accordance with a relevant Order Form and any applicable SOW. Promptly after receipt of any such notice from you We will, as your sole and exclusive remedy and Our sole liability for such non-performance, reperform any non-conforming Professional Services at no additional cost to you. If you do not notify Us of any failure within that 14 calendar day period, you will be deemed to accept the outputs of the Professional Services. Except where We provide installation as part of agreed Professional Services, We will not be liable under this MSA for failures to correctly install any relevant Software on your infrastructure.
- 4.3. Our Personnel. We remain fully responsible for the acts, omissions and defaults of Our Personnel and Sub-Processors as if they were Our own and will restrict the involvement of such Personnel and Sub-Processors to

those that need to know in order to fulfil Our obligations under this MSA and Your Instructions.

- 4.4. Changes to the Services. The Services are generally provided on a software-as-a-service basis. We reserve the right (but are under no obligation) to make changes (including organisational, procedural, and functionality changes) without prior notice to any aspects of the Services that We host. If these changes result in a material degradation to the capacity, accessibility or available functionality of the Services you may, as your sole remedy and Our sole liability: (a) terminate just the affected Service(s) on 60 days' notice, provided that you give Us notice and We do not cure such material degradation within that period; and (b) refund to you Fees prepaid for periods of terminated Services which are yet to be provided. We reserve the right to: (i) discontinue offering a Service at the conclusion of a then current Subscription Period; and (ii) to at any time withdraw support in accordance with Our End of Support Policy available at [www.egress.com/legal](http://www.egress.com/legal) (as amended from time to time).
- 4.5. Existing free users. If the domain of an email address used by a free user as their Egress ID is owned or controlled by you, you may wish to add their account to yours.

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#### 5. YOUR RESPONSIBILITIES

- 5.1. Subscriptions. Subscriptions must be allocated to authorised Users. You must not authorise a number of Users in excess of the number of Subscriptions you have purchased. Subscriptions cannot be shared or used by more than one User, but a Subscription may be permanently reassigned to another User. You are responsible for the security and confidentiality of Subscriptions and any associated log-in details and are responsible for all acts and omissions of anyone who accesses the Services and Support through their use (regardless of whether they are authorised or undertaken by you) unless they are caused by Our breach of this MSA. You must notify Us promptly if you are aware of unauthorised use of a Subscription. If you wish to purchase additional Subscriptions, you may contact Us (or a Reseller). The associated Fees and Subscription Periods of these additional Subscriptions will be discussed with you at the time. You can only reduce the number of purchased Subscriptions by notifying Us or a Reseller before the 1<sup>st</sup> day of your next Renewal. Subscriptions cannot be reduced during a Subscription Period.
- 5.2. Acceptable Use Policy (AUP). You must comply, and ensure that your Group companies and Users comply, with Our AUP at [www.egress.com/acceptable-use-policy](http://www.egress.com/acceptable-use-policy) (as amended from time to time).
- 5.3. Your obligations. You will comply, and will ensure that your Group companies and Users comply, with the terms of this MSA and with all laws, rules and regulations applicable to you and their use of the Services, Software and Support. You are responsible for their acts and omissions which are attributable to you for all purposes, and must notify Us promptly if you become aware of any breach of this MSA. You are solely responsible for ensuring that your infrastructure and that of your Group (including hardware, software, networks, connectivity and Internet connections) is: (a) sufficient to operate and access the Services (including meeting any minimum requirements We may set out on [www.egress.com](http://www.egress.com) from time to time); and (b) compatible with the Software. You must, and must ensure that your Group: (a) use industry standard

protections to prevent unauthorised access to the Services through your and their use; (b) only use the Services in accordance with this MSA and any documentation or instructions referred to or which We provide; (c) provide Us with any reasonable co-operation and access We request; (d) carry out your responsibilities in a timely and efficient manner; (e) upgrade software, services, system and infrastructure: (i) promptly in line with Our or the relevant owner's guidelines or recommendations where such releases are made to protect against identified security risks, vulnerabilities, viruses, bugs or malicious code or activity; (ii) in any event, within 12 months of an upgrade, new release or new version being made available by Us or a relevant owner; and (iii) as otherwise required by Our End of Support Policy available at [www.egress.com/legal](http://www.egress.com/legal) (as amended from time to time); and (f) provide Us and Our Group with reasonable assistance in investigating the cause of any Service outages, security problems or suspected or known breaches of this MSA (or any document referred to in it) by you, your Group or Users at no charge to Us.

- 5.4. **Testing.** You shall not, and shall not allow any Users or other third-parties to, perform any technical security integrity review, penetration test, load test, denial-of-service simulation or vulnerability scan on the Software and/or Services without Our prior written consent. Additional charges may apply where consent is granted (e.g. for test environments and Professional Services).

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## 6. PROCESSING OF CONTENT

- 6.1. **Content.** You or your licensors own, and will continue to own, all right, title and interest in Content and you have sole responsibility for its legality, reliability, integrity, accuracy and quality. This MSA, your Support requests and any use of tools provided by the Services contain your instructions to Us and Our Group in relation to the Processing of Content for and on behalf of you, your Group and Users (**Your Instructions**). In using the Services, Content may be shared by you, your Group and Users with Recipients. We will not access, use, Process or disclose to any third party any Content except: (a) as necessary to maintain or provide the Services in accordance with Your Instructions; (b) in accordance with Section 11; or (c) as approved by you. You acknowledge that Our Technical Services engineers may require access to administrative functions of the Services during onboarding and configuration of the Services for you. This access will be revoked once the Services are deployed into production during the relevant Subscription Period. You understand that the technical processing and transmission of Content (and where relevant, Smart Data) is fundamentally necessary to the use of, and provision of, the Services and you therefore expressly acknowledge, on behalf of yourself, your Group companies and Users, the interception and storage of Content and Smart Data (where relevant) as necessary to provide the Services. You acknowledge that no matter where Content is stored, We do not control or limit the locations from which you, your Group, Users and Recipients may access it and it is your responsibility to ensure that neither you, nor any of your Users, access or use the Software, Services and/or Support in any country with data localization laws that would require your environment or Content to be hosted in that country. You will ensure that Your Instructions comply with all applicable laws, rules and regulations and that Our

Processing of Content in accordance with them will not cause Us or Our Group to violate any applicable law. We will immediately inform you if, in Our opinion, Your Instructions infringe any DPL however We are not obliged to perform a comprehensive legal examination in respect of Your Instructions. Additional instructions outside of the scope of this MSA will be subject to written agreement and payment of any additional Fees.

- 6.2. **Protective measures.** We have implemented and will maintain appropriate technical and organisational measures in relation to the Services taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of Processing, as well as the likelihood and severity of risk to the rights and freedoms of data subjects. This includes measures relating to the physical security of facilities used to deliver them, measures to control access rights to assets and relevant networks, and processes for testing these measures. In accordance with Our obligations under applicable law, We may undertake digital forensic investigations in relation to the use of the Services and Subscriptions that may result in a criminal prosecution or civil case. You are responsible for using, and ensuring that your Group and User use, the classification, access controls and other tools provided by the Services correctly and consistently in order to appropriately protect Content. Unless otherwise agreed in writing and delivered as Professional Services by Us under this MSA and an Order Form, you are responsible for any and all customer-side configuration of the Services as directed by Us (including following a Support request) for you, your Group and Users.
- 6.3. **DPA.** If We Process Personal Data about UK and/or EEA residents on your and/or your Group's behalf in the delivery of the Services the terms of Our data processing addendum available at [www.egress.com/legal](http://www.egress.com/legal) will apply and are incorporated by reference into this MSA. You must execute a copy of this document. If there is any conflict between the DPA and this MSA in respect of the parties' respective privacy and security obligations, the terms of the DPA shall control. For the purposes of the Standard Contractual Clauses attached to the DPA, when and as applicable, you and your applicable Group companies are each the data exporter.
- 6.4. **HIPAA.** If you are a Covered Entity or Business Associate and you include Protected Health Information in your Content (as each of those terms are defined in 45 CFR § 160.103 of HIPAA in the United States) the terms of Our Business Associate Agreement (**BAA**) available at [www.egress.com/legal](http://www.egress.com/legal) will apply and are incorporated by reference into this MSA. You must execute a copy of this document.
- 6.5. **Privacy Policy.** We will collect use, disclose and otherwise Process Personal Data in accordance with applicable laws and regulations, Our Privacy Policy at [www.egress.com/privacy-policy](http://www.egress.com/privacy-policy), if applicable Our DPA and, if We maintain it and it remains a valid programme, Egress Software Technologies, Inc.'s Privacy Shield self-certification (as each is amended from time to time).
- 6.6. **Use of Sub-Processors.** We may engage the Sub-Processors to fulfil Our obligations under this MSA. We set out the latest list of the Sub-Processors We engage at [www.egress.com/subcontractors](http://www.egress.com/subcontractors) (as amended from time to time).
- 6.7. **Electronic Communication.** We may send you, your Group and Users or otherwise display, information about the Services, Software and Support you purchase and updates, enhancements, and modifications to them (e.g. how you



use them; how you could do so more efficiently; faults; incidents; new features; updates; or, notices of when they will not be available).

- 6.8. Sharing. To operate Our Group effectively We use shared systems, resources and Sub-Processors. CRM Information, System Data and Smart Data may be transferred, shared and processed between and by these parties which may involve it being transferred, stored or processed outside the country where you, a Group company or User is located. We will ensure that any such transfer is subject to appropriate legal and technical safeguards in accordance with DPL and any other applicable laws and regulations.
- 6.9. Sub-Processor Transfers. Use by you, your Group and Users of certain functionality within parts of Our Secure Workspace Service may involve the transfer of Personal Data outside of the country you, that Group company or User are or is located in (e.g. if you or your Users choose to use Microsoft Office Online where available within the Service this will be subject to the terms of your agreement with Microsoft). More details on that Processing can be found [here](#).

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## 7. SUBSCRIPTION FEES AND PAYMENT

- 7.1. Fees and payment terms. You will pay all Fees set out on Order Forms. Payment terms are 30 days from invoice date (without set-off, counterclaim, deduction or withholding). Fees are non-cancellable and Fees paid are non-refundable. If you pay by direct debit you agree to tell Us promptly if your bank details change. Fees are based on purchased Subscriptions and not usage or deployment. All pricing information is confidential and you agree not to disclose any part of it to any third-party.
- 7.2. Payment Information. You must provide Us with relevant and up-to-date payment information (e.g. a valid purchase order or other acceptable document). You are responsible for notifying Us of changes to your payment information. Fees are invoiced in full in advance. Renewal Fees will be invoiced in full before the date of renewal. Fees for additional Users will be invoiced where discovered during an audit or report, or otherwise ordered by you.
- 7.3. Disputed Invoices. You must notify Us within 14 calendar days of receipt of an invoice if you dispute it, telling Us why. If only part of it is disputed, you must pay the undisputed amount. We will work with you to resolve your dispute and will not exercise Our rights under Sections 7.4 or 9.3 if your dispute is reasonable and you are co-operating and acting in good faith to resolve it.
- 7.4. Overdue Fees. If any invoiced amount is overdue then We will notify you and, without prejudice to Our rights or remedies, may: (a) suspend access to the Services and Support; and (b) charge late payment interest on the unpaid Fees from their due date until payment is received in full at the rate of the lesser of 1.5% per month or the greatest rate permitted by applicable law. If We take action to pursue collection of unpaid Fees you will pay the associated costs. In the event of late payment, We may also make shorter payment terms a condition of any Renewals.
- 7.5. Taxes. Fees are payable in the currency of the invoice and are exclusive of taxes, withholdings, levies or duties of any nature (including local, state, federal, VAT, sales tax, customs duties, foreign taxes or similar) that are assessed from time to time (**taxes**). We may charge taxes that We are obliged to collect from you. We will not collect, and

you will not pay, taxes for which you give Us a properly completed and lawful exemption certificate. If taxes are payable you will pay them (or reimburse Us if We have paid them) except taxes based on Our net income, employment or real estate. If all or any part of any payment owed to Us under this MSA is withheld, based on a claim that such withholding is required pursuant to the tax laws or any country or its political subdivisions, such payment shall be increased by the amount necessary to result in a net payment to Us of the amounts otherwise payable under this MSA.

- 7.6. Future Functionality. You agree that your purchase is not dependent on the delivery of any future functionality or features, or on any oral or public comments made by Us regarding such future functionality or features.

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## 8. REPRESENTATION AND WARRANTIES

- 8.1. Mutual. Each party: (a) represents that it has validly entered into this MSA and has the necessary power to do so; (b) warrants that it will comply with all binding laws, rules and regulations applicable to its activity under this MSA.
- 8.2. Your warranties. You warrant that you will: (a) at all times own all rights, or have all necessary rights, in the Content to permit you to grant Us, Our Group and Sub-Processors the rights and permissions in this MSA; (b) obtain and maintain all necessary authority, licences, consents, policies and permissions to perform your obligations under this MSA and/or to use and access the Services; and (c) at all times be authorised to give instructions for and on behalf of yourself, your Group companies and Users.
- 8.3. Our warranties. We warrant that the Services will perform materially in accordance with the applicable documentation then available at [www.egress.com/datasheets](http://www.egress.com/datasheets). If We breach this warranty and fail to remedy the defect within 30 days of your notice to Us describing the alleged failure, your exclusive remedy will be to terminate the affected Service in accordance with Sections 9.4, 9.5(f) and/or 9.6(f) below.
- 8.4. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS MSA, THE SERVICES, SOFTWARE AND SUPPORT ARE MADE AVAILABLE "AS IS" AND WE HEREBY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW ALL GUARANTEES, CONDITIONS, WARRANTIES AND REPRESENTATIONS, IMPLIED, STATUTORY OR OTHERWISE CONCERNING THEM OR ANY DOCUMENTATION OR OTHER MATERIALS PROVIDED BY US (INCLUDING THOSE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT).

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## 9. TERM, SUSPENSION AND TERMINATION

- 9.1. Term of this MSA. This MSA comes into force on the date you first accept it by whatever means and continues until all Subscriptions expire or have been terminated.
- 9.2. Term of Subscriptions. The Initial Subscription of each Subscription is as specified on the relevant Order Form and starts on the date: (a) We tell you a relevant account is active; (b) you download the On-Premise Software; or (c) 5 calendar days after you (or a Reseller on your behalf) sign(s) or otherwise indicate(s) acceptance of a relevant Order Form (whichever is earliest). Unless otherwise

stated in an Order Form, Subscriptions automatically renew for a further 12-month period (a **Renewal**) unless either party has given the other not less than 60 calendar days' notice prior to its expiry to cancel it on expiry. We may increase Fees applicable to any Renewal by up to 5% unless We provide you, either directly or through a Reseller, with notice at least 90 days' prior a relevant renewal date of a different increase (the limit on increases shall not apply to any increase caused by an increase in the number of Subscriptions purchased). Any promotional pricing that was offered during an Initial Subscription will not apply to any Renewal unless We agree in writing and any such Renewals will be in accordance with Our current list price. Notices given by Us under this Section may be accomplished by email or electronically submitted invoice or notice.

9.3. Suspension. We can suspend access to an account, the Services and/or Support if We: (a) have the right to do so under Section 7.4 or otherwise to terminate this MSA; (b) determine that use of any of them by you, your Group or a User poses a security risk, could impact them or their use by a third-party, or could subject Us or Our Group to liability, or is otherwise fraudulent; (c) are required to do so by a legal, governmental or regulatory authority; or (d) need to in an emergency or to respond to fraudulent activity. Suspension will not prejudice or waive Our ability to later terminate. During suspension under (a) and (b) above you will remain responsible for payment of Fees but will not be entitled to receive any service credits. As to any suspension, We will give you as much advance notice of such suspension as We generally give Our other customers (including via posting on Our website at [www.egress.com](http://www.egress.com)), or, if advance notice is not reasonably practicable, prompt notice following such suspension. Once the reasons necessitating suspension have resolved, We will restore your access to the applicable account(s), Services, and/or Support.

9.4. Termination. A party to this MSA may terminate it or a part of it: (a) immediately by notice to the other if the other is in material breach of this MSA (or a relevant part of it) which is not remediable; (b) through 30 days written notice to the other of a material breach if that breach remains unremedied at the expiry of that period; (c) immediately if the other is subject to a petition in bankruptcy or other processing relating to insolvency, receivership, liquidation or assignment for the benefit of creditors (or any similar or analogous action or steps in any jurisdiction relevant to a party's activities under this MSA); or (d) as provided in this MSA. We may terminate this MSA in whole or in part immediately if We are required to do so by a legal, governmental or regulatory authority or to comply with any legal or regulatory obligation. Either party may terminate this MSA in its entirety with immediate effect if no Subscriptions are in effect. We may terminate this MSA and/or relevant Order Forms if you have failed to make a payment to Us or to a Reseller after a reminder to do so.

9.5. Effect of termination in the entirety of this MSA or expiry. Upon termination or expiry of this MSA: (a) all Order Forms then in effect shall immediately terminate; (b) all licences and rights granted shall immediately cease; (c) We will stop permitting access to the Services, and you will stop trying to access or use them; (d) each party 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); (e) either We or you (whoever is most appropriate) will delete any and all copies of Software

from your infrastructure and devices. If you do so, you will confirm to Us in writing that you have successfully done so. Where We do it, you hereby grant Us all necessary physical or remote access to your sites, infrastructure and devices to do so; (f) any unpaid Fees (whether one-off, recurring or contracted for but unpaid) shall become immediately due and payable. Only if you are terminating for Our material breach will any Fees paid in advance be refunded to you pro-rata to the extent they relate to a period after the effective date of termination. In no event will termination or expiry of this MSA howsoever caused relieve you of your obligation to pay to Us all Fees payable under this MSA for the period prior to the effective date of termination or expiry.

9.6. Effect of termination in part of this MSA or a Service. Upon termination or expiry in part of this MSA or a Service: (a) relevant Order Forms then in effect shall immediately terminate; (b) all licences and rights granted in relation to the terminated parts of this MSA or Services shall immediately cease; (c) We will stop permitting access to the relevant Services, and you will stop trying to access or use them; (d) each party 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 or where required for continuing Services); (e) either We or you (whoever is most appropriate) will delete any and all copies of Software from your infrastructure and devices relevant to the terminated Services. If you do so, you will confirm to Us in writing that you have successfully done so. Where We do it, you hereby grant Us all necessary physical or remote access to your sites, infrastructure and devices to do so; (f) any unpaid Fees for terminated Services (whether one-off, recurring or contracted for but unpaid) shall become immediately due and payable. Only if you are terminating a Service for Our material breach will any Fees paid in advance will be refunded to you pro-rata to the extent they relate to a period after the effective date of termination. In no event will termination or expiry of this MSA in part howsoever caused relieve you of your obligation to pay to Us all Fees payable under this MSA for terminated Services for the period prior to the effective date of termination or expiry.

9.7. Access to Content on termination or expiry. If you have not saved decrypted versions of your Content prior to termination or expiry, you will have 30 calendar days from termination or expiry to request a copy of your Content (or a method for decrypting locally stored Content if you use On-Premise Software). We reserve the right to charge for any assistance We provide in accessing Content prior to or following termination or expiry at Our then current rates. Following expiry of this 30 day period We will securely destroy or dispose of any Content in your accounts to the fullest extent technically possible in the circumstances and will have no obligation to store it and no liability to you, your Group or any User for its destruction or disposal.

9.8. Retention. The Services provide controls that may be used to retrieve, block access to or delete Content, and so Content may be subject to user defined retention or access periods. CRM Information, Content, System Data and Smart Data will be retained and deleted by Us in accordance with Our retention policy in force from time to time at [www.egress.com/legal](http://www.egress.com/legal).

9.9. Survival. Any rights, remedies, obligations or liabilities accrued prior to termination or expiry will not be affected, in particular 3, 4.2, 4.4, 7.1, 7.4, 7.5, 8 – 14 (inclusive), 16

and 17 (inclusive) shall survive termination or expiry of this MSA for whatever reason.

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## 10. CONFIDENTIALITY

- 10.1. Confidentiality. Both parties understand that it is likely that access to each other's Confidential Information will be required in order to perform their respective obligations under this MSA. Each party will keep the other's Confidential Information in confidence using the same degree of care that it uses to protect its own confidential information (but not less than reasonable care) and: (a) not use or exploit it in any way except for the purposes set out in this MSA; (b) only disclose it to those of its and its Group company's directors, personnel, representatives, agents, advisors and sub-processors who need to know it for the purposes of this MSA. Where such disclosure is to be made, the relevant party will be responsible for ensuring that suitable confidentiality obligations are in place with the receiving party; (c) unless disclosable under this Section or Section 11 not make it available to any third party; and (d) on request, return or destroy all copies of the other's Confidential Information that are in its possession or control.
- 10.2. Exclusions. Information is not Confidential Information if it is: (a) known to the receiving party without restriction before disclosure; (b) publicly available through no fault of the receiving party; (c) disclosed to the receiving party by a third-party not under a duty of confidence; (d) independently developed by the receiving party without use of, reference to, or reliance on it; or (e) is disclosed with the disclosing party's prior written consent.
- 10.3. Application. You expressly acknowledge and agree that the terms of this Section 10 will not apply to any processing by the Services of Confidential Information within Content. Any such processing by Us of such information on behalf of you, your Group and Users will be subject to Section 6.

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## 11. LAW ENFORCEMENT REQUESTS

- 11.1. Disclosure Requests. If We receive a valid and binding request or order of a governmental body (e.g. a court order, law enforcement demand or other local equivalent) relating to: (a) Confidential Information that belongs to you or a member of your Group, or Content that you or a member of your Group is the Controller of, We will attempt to re-direct the requestor to seek disclosure directly from you (and may provide your basic contact information to enable them to do this). If, notwithstanding those efforts, We are compelled to disclose the Confidential Information or Content then, provided We are allowed to do so, We will provide notice to you so that you may seek a protective order or other remedy; (b) CRM Information, System Data or Smart Data, We reserve Our rights to comply with Our own legal and regulatory obligations. You can find out more information at [www.egress.com/legal](http://www.egress.com/legal).

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## 12. IP AND PROPRIETARY RIGHTS

- 12.1. Rights in Data. Except as set out in this MSA, We and Our Group have no rights in or to your Content. We and Our

Group own all rights, title and interest (including IPRs) in and to CRM Information, System Data and Smart Data.

- 12.2. Reservation of Rights. We, Our Group or licensors own all rights (including current and future developed IPRs), title, interest in and to the Services, Software and Support (including documentation, outputs, developments, deliverables, code, changes, updates and new versions of them, and in any learning enhancements to the artificial intelligence and machine learning themselves that are generated by its and their outputs and analysis of any data, including the Smart Data), in each case whether such are developed or created, revised or modified in response to your requests, suggestions, or ideas, even if performed as Professional Services paid for by you. Except as set out in this MSA We do not, and will not be deemed to, grant you, your Group or a User any rights in or licences to any of the foregoing set out in this Section 12.2.
- 12.3. Licence to Us. On behalf of yourself, your Group and Users, you grant Us, Our Group and Sub-Processors a fully-paid up, non-exclusive, royalty-free, sub-licensable licence to process, copy, cache, store, display and reproduce Content for the purposes of providing the Services in accordance with Your Instructions.
- 12.4. Ideas. You, for and on behalf of yourself, your Group and Users grant Us a fully-paid up, royalty free, worldwide, perpetual, irrevocable, transferable, sub-licensable (including through multiple tiers) right to use, modify, distribute and incorporate into the Software and Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by you, your Group or any Users related to the operation or functionality of the Services, Software and/or Support (or any part of them). If you give us feedback relating to Third-Party Software then you similarly grant Us the right to permit the relevant licensor to use, modify, distribute and incorporate into its products, software and services your feedback on the terms set out above.
- 12.5. Patents. We set out details of patents that protect certain IPRs within the Services and Software. Details of these can be found at [www.egress.com/about/patents](http://www.egress.com/about/patents).
- 12.6. Trademarks. Egress® and the power button logo (**Egress Marks**) are trademarks of Us and Our Group. You agree not to display or use the Egress Marks in any manner without Our express prior written permission.
- 12.7. Publicity. We may use your name and logo in client and customer listings and marketing material (including on Our website) and you grant Us any necessary licence to do so.
- 12.8. Third Party Software. The Services may contain Third-Party Software. Use of this shall be subject to the terms of this MSA. Any Third-Party Software embedded in the Software and/or Services may only be used in conjunction with that Software or Service and may not be used separately.

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## 13. INDEMNITY

- 13.1. Indemnification by Us. We will defend you against any third-party claim that the Services, Software or Support infringe any third-party IPR and will indemnify you for amounts awarded against you in judgment or paid in settlement of such a claim. You must provide prompt notice of a claim and co-operate with Our defence or settlement of it. You must not make any admission or statement in relation to it or attempt to settle it. We will have sole authority to defend and/or settle it. You must mitigate any losses or costs that you do, or may otherwise,

incur. In defence or settlement of such a claim We may at Our expense and discretion: (a) obtain the right for you to continue using the infringing or allegedly infringing material; (b) replace or modify the Services, Software or Support so it or they no longer infringe; or (c) terminate this MSA through notice to you and refund any Fees paid in advance for the unused remainder of your current Subscription Period. You will co-operate with Us in relation to the option We take. We will not be liable to you under this Section to the extent that an alleged infringement is based on: a modification of the Services, Software or Support other than by Us; the combination of any of them with a third-party product, or data or software not expressly authorized by Us; your breach of this MSA; or, an issue that could have been resolved if you had updated or upgraded to a later version of the Services, Software or Support as set out in this MSA. This Section sets out your sole and exclusive right and remedy (and Our entire obligation and liability) for claims that the Services, Software, and/or Support infringes, misappropriates, or otherwise violates IPRs or other proprietary rights of a third-party.

- 13.2. Indemnification by You. Subject to Our obligation to indemnify you, you will defend, indemnify and hold harmless Us, Our Group and Sub-Processors against any losses, damages, liabilities, fines, penalties, suits and costs and expenses (including reasonable legal fees) arising from any demand or claim or regulatory action arising from or related to: (a) an allegation that your Content or other information provided by you: (i) infringes any IPR; (ii) violates applicable law; or (iii) breaches this MSA; (b) that you do not have a lawful basis or other right under applicable DPL to transfer your Content to Us and Our Group or to permit Us, Our Group and Sub-Processors to process it in accordance with this MSA; and (c) otherwise relating to your access to or use of the Services, Software and/or Support. We will give you prompt notice of any such claim that We are aware of and will co-operate with your defence or settlement of it at your cost (provided that you may not settle any claim against Us and/or Our Group unless it unconditionally releases Us and Our Group from liability).

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## 14. LIABILITY

- 14.1. Disclaimer of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS MSA, TO THE FULLEST EXTENT PERMITTED BY LAW, NO PARTY WILL, UNDER ANY CIRCUMSTANCES BE LIABLE TO THE OTHER PARTY, ITS GROUP OR USERS FOR ANY (A) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES; OR, (B) CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING DIRECTLY OR INDIRECTLY OUT OF OR RELATED TO THIS MSA, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF REVENUE, WASTED EXPENDITURE, LOSS OF ANTICIPATED SAVINGS, LOSS OR CORRUPTION OF DATA, LOSS OF GOODWILL AND DAMAGE TO IMAGE OR REPUTATION, EVEN IF THAT PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE PRECEDING EXCLUSION OF DAMAGES WILL NOT APPLY TO A PARTY'S BREACH OF CONFIDENTIALITY, BREACH OF THE LICENSE GRANT IN SECTION 4.1 BY YOU, OR A PARTY'S INDEMNITY OBLIGATIONS (BUT SOLELY TO THE EXTENT SUCH AMOUNTS ARE PAID TO A THIRD PARTY UNDER SUCH

INDEMNITY). IN NO CIRCUMSTANCES SHALL ANY OF OUR LICENSORS BE LIABLE TO YOU UNDER THIS MSA.

- 14.2. No Control over transmission. YOU ACCEPT THAT WE HAVE NO CONTROL OVER THE CONTENT TRANSMITTED TO OR FROM THE SERVICES AND THAT WE DO NOT ORDINARILY EXAMINE THE USE TO WHICH YOU, YOUR GROUP, USERS OR OUR OTHER CUSTOMERS PUT THE SERVICES OR THE NATURE OF THE CONTENT THEY ARE SENDING OR RECEIVING WHILST USING THE SERVICES. WE THEREFORE HEREBY EXCLUDE ALL LIABILITY OF ANY KIND ARISING FROM THE TRANSMISSION OR RECEPTION OF CONTENT OR OTHER INFORMATION OF WHATEVER NATURE THROUGH THE SERVICES TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW. WE ARE NOT RESPONSIBLE FOR DELAYS, DELIVERY FAILURES OR OTHER LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES WHICH ARE NOT OWNED BY US OR UNDER OUR DIRECT CONTROL (INCLUDING THE INTERNET) AND YOU ACKNOWLEDGE THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND ISSUES INHERENT TO THE USE OF SUCH COMMUNICATION FACILITIES.
- 14.3. Cap on Liability. EXCEPT FOR EACH PARTY'S INDEMNITY OBLIGATIONS, AND YOUR PAYMENT OBLIGATIONS HEREUNDER, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS MSA (INCLUDING TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY YOU TO US DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION). UNDER NO CIRCUMSTANCES WILL OUR TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO OUR INDEMNITY OBLIGATIONS EXCEED THREE TIMES THE TOTAL AMOUNT PAID BY YOU TO US DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).
- 14.4. Independent Allocations of Risk. EACH PROVISION OF THIS MSA THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY US TO YOU AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS MSA. THE LIMITATIONS IN THIS SECTION 14 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS MSA.
- 14.5. Sole responsibility. You and your Group have sole responsibility for the results and conclusions obtained from use of the Services and Support. We will 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, or any failure by you to take action at Our direction.
- 14.6. Failure to upgrade. We will not be liable for any liability, cost, claim or action that arises as a direct result of your failure to comply with your obligations under Section 5.3(e).
- 14.7. Exclusions: Some jurisdictions may not allow the exclusions or limitations set out above and so they may not



apply to our relationship with you. In such circumstances, Our liability for such damages will be limited to the greatest extent permitted by applicable law in that jurisdiction. In particular, nothing in this Section 14 acts to exclude or limit liability that cannot be excluded or limited by applicable law (including in the United Kingdom, death or personal injury caused by Our or Our Group's negligence, or fraud or fraudulent misrepresentation).

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## 15. USAGE RIGHTS AND REPORTING

- 15.1. Restrictions. We may review your use of Subscriptions, the Services, Software and Support (e.g. to check total Users and use of Subscriptions). You will co-operate with any such review. We may do this once per quarter and it may be done remotely if We host the Services for you. If you host the relevant part of the Services or Software, you will confirm no less than quarterly in writing the number of Subscriptions deployed. If a review or your statement reveals that you have exceeded the number of Subscriptions purchased then We (or a Reseller) may invoice you for, and you will pay, the Fees for the additional Subscriptions (calculated on Our price list in force at the time and back-dated to the beginning of the relevant quarter). These additional Fees will be payable going forwards unless otherwise agreed in writing. You understand that any restrictions may be contractual (meaning they may not be technically enforced by the Services) and therefore you agree to strictly review your, your Group's and Users' use of Subscriptions and the Services and to enforce any restrictions.
- 15.2. Statistical Reports. We may: (a) compile statistical reports from System Data, Smart Data and other information relating to the performance, operation and use of the Services; and (b) use System Data and Smart Data from the Services for security and operations management, creation of statistical analyses, and for research and development purposes. We may make these reports and information publicly available provided that they will not incorporate Content or personal or Confidential Information in a form that could serve to identify you or any User. We retain all IPR in this data, these reports and information.

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## 16. DISPUTE RESOLUTION

- 16.1. Both parties shall attempt in good faith to resolve any dispute arising out of or relating to this MSA by negotiation between personnel who have authority to settle it. Notwithstanding the foregoing, both parties will be entitled to enforce their respective IPRs, to protect Confidential Information and to seek equitable relief at any time. Nothing in this MSA will prevent either party from seeking equitable or injunctive relief at any time.
- 16.2. If a dispute has not been resolved within 30 calendar days of the first written request by either party to resolve it, then the parties may pursue any other available remedies.

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## 17. GENERAL

- 17.1. Waiver. Failure or delay in exercising a right or remedy in this MSA or by law will not waive it and will not prevent or restrict further exercise of it.

17.2. Severance. If part of this MSA is found by a court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other terms will remain in force. Any invalid, unenforceable or illegal term will be interpreted to give effect to the parties' commercial intention. If that is not possible, it will be severed but the rest shall remain in full force.

17.3. Force Majeure. Neither party will be liable for any delay in performance or failure to perform our respective obligations under this MSA due to a cause or event outside our reasonable control except that you will not be able to claim relief under this Section in respect of your payment obligations.

17.4. Special Conditions. In the event that any special conditions are set out on an Order Form, this MSA shall be deemed adjusted accordingly in respect of the Subscriptions ordered on that Order Form only.

17.5. Entire Agreement. This MSA (together with the documents referred to in it), including each Order Form you and We enter into, constitutes the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to their subject matter. The terms of any separate non-disclosure agreement shall not apply to Our processing of Content through delivery of the Services. Each party acknowledges and agrees that in entering into it, it does not 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 this MSA, other than as expressly set out in it. This Section does not limit or exclude liability for fraud or fraudulent misrepresentation.

17.6. Assignment. You may only assign this MSA in its entirety to a successor in interest in the event of a sale or merger of your business provided that you provide Us with written notice of the same not less than 30 days prior to the date of the proposed assignment. Other than that, you may not and cannot assign, novate, transfer, charge, sub-contract or deal with this MSA in whole or in part without Our prior written consent. This MSA will be binding on and inure to the benefit of each of us and our respective permitted successors and assigns. We reserve the right to transfer Our obligations, rights and permissions under this MSA to any organisation to which We may transfer Our business or assets (including if We, or a relevant part of Us or Our assets, are proposed to be purchased or acquired by a third-party).

17.7. Export and Sanctions Compliance. You are solely responsible for compliance with all import, reimport, export, re-export, sanctions, anti-boycott laws and other regulations that apply to your, your Group's and Users' use of the Services, Software and Support (including the transfer and processing of Content, the provision of it to Users and recipients, and the region in which any of those occur). We shall not be liable to you for failure to perform under this MSA in the event the United States Bureau of Industry and Security (**BIS**) or any other regulatory agency of any government with jurisdiction over Us, you or the Services shall designate you. You warrant and represent that: (i) you will not use, or permit any of your Group, your Users or other party to use, the Services, Software or Support for the transfer or sharing of dual use items, munitions, or other items subject to export controls and sanctions; (ii) you and your Group are not (and neither is any party that directly or indirectly owns or controls you or a member of your Group) 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 member state, or other applicable government authority); (iii) you will not transfer, and will not permit any other party to transfer, the Services or Software (or any right of access or use), or use them in or for the benefit of, or to transfer Content to, an embargoed country or prohibited or restricted party, or restricted end users or uses; and (iv) you will not re-export to China, Russia or Venezuela, or re-transfer to a military end user or for military end use (including by a state owned enterprise), any items on the USML or Wassenaar Munitions List or items classified under ECCNs in A018 or in a 600 series, or any item that supports or contributes to the operation, installation, refurbishing, development or production of these items. If you subscribe through a Reseller or through an app store, you agree to register with Us before use of the Services, Software and Support and agree to allow Us to terminate this MSA and your use of any of the foregoing if you breach any part of this Section. All payments to Us must be in funds and through banking channels not blocked or frozen by any authority. We are not responsible for any name or end use screening on your, your Group or a User's behalf.

- 17.8. **Anti-Bribery and Corruption.** You confirm that you and your Group have not been offered or otherwise received any illegal or improper bribe, payment, gift or other item, thing or experience of value from any of Our Personnel. If you identify any such thing you must notify Us promptly at [legal@egress.com](mailto:legal@egress.com). You will maintain all necessary policies and procedures in relation to compliance with anti-bribery and corruption legislation as required by applicable law.
- 17.9. **No Partnership.** The parties are each an independent contractor. Nothing in this MSA is intended to or shall operate to create a partnership, joint venture, agency or employment between them or authorize either of them to act as agent for or to bind the other.
- 17.10. **Third-Party Rights.** There are no third-party beneficiaries under this MSA except that third-party licensors of Third-Party Software may enforce the provisions of Section 12 to the extent necessary to protect their respective IPR.

17.11. **Governing Law, Notices and Jurisdiction.** The Egress entity you are contracting with, how you should serve notices, and the law and jurisdiction that apply to this MSA (and any disputes or claims, including non-contractual disputes and claims) are as set out below this Section 17 (except that We will be able to bring action against you in any jurisdiction relevant to Our claim). We both specifically disclaim application of the United Nations Convention on the International Sale of Goods.

17.12. **Notices.** Notices must be in writing and will be effective: (a) when sent, if We send a message to you at the email address then associated with your administration account. Email cannot be used for the service of notices relating to legal proceedings; (b) at the time at which it would have been delivered in the normal course of post, if sent by Us to the address on your Order Form or to Us by you at the address below by overnight delivery, pre-paid first-class post or recorded delivery post; (c) immediately if delivered by hand (unless delivery is not during working hours, in which case they will be effective at 9am on the next working day). All notices to Us must be copied to [legal@egress.com](mailto:legal@egress.com). Any party may change its address to another single address through 10 days' prior written notice. Rejection or refusal to accept or inability to deliver because of a changed address of which no notice has been received will constitute receipt.

17.13. **Non-solicitation.** For 12 months after termination or expiry of this MSA you shall not directly or indirectly, solicit or entice away (or attempt to do so) from Us or Our Group companies any person employed or engaged by Us or them in provision of the Software, Services, Support or management of this MSA. If you breach this Section you shall on demand pay to Us a sum equal to 1 year's basic salary for that person. You and We confirm that these liquidated damages are reasonable and proportionate to protect Our legitimate interests in conducting Our business.

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Where you are domiciled	Egress entity entering into this MSA and any Order Forms, and address for service of legal notices	Governing law	Courts with exclusive jurisdiction
The USA	Egress Software Technologies, Inc. (a Massachusetts corporation, ID number 001158155) Suite 2, Level 3, 268 Summer Street, Boston, MA 02210, US <b>Copy to:</b> <a href="mailto:legal@egress.com">legal@egress.com</a>	State of Delaware See also below Section 18.2	Boston, Massachusetts. See also below Section 18.4
Canada	Egress Software Technologies Inc (an Ontario Corporation, number 885902-7) Suite A304, 11685 Yonge Street, Richmond Hill, L4E 0K7, Ontario, Canada <b>Copy to:</b> <a href="mailto:legal@egress.com">legal@egress.com</a>	State of Ontario	State of Ontario
Netherlands, Belgium or Luxemburg	Egress Software Technologies Limited (registered number: 06393598, registered as a foreign legal entity on the Dutch Chamber of Commerce) CCI: 74110462 Oval Tower, De Entrée 99-197, 1101 HE Amsterdam, The Netherlands <b>Copy to:</b> <a href="mailto:legal@egress.com">legal@egress.com</a>	Dutch Law	See below Section 19
Rest of the World	Egress Software Technologies Limited (registered number: 06393598) 12th Floor, The White Collar Factory, 1 Old Street Yard, London, EC1Y 8AF, UK <b>Copy to:</b> <a href="mailto:legal@egress.com">legal@egress.com</a>	England and Wales	England and Wales

## 18. UNITED STATES SPECIFIC PROVISIONS

- 18.1. Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use in accordance with the following: The Services consist of "commercial items," as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this MSA, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this MSA specifically granting those rights.
- 18.2. UCC. The parties specifically disclaim application of Article 2 of the Uniform Commercial Code as codified.
- 18.3. Governing law. We both agree to the governing law provision set out above in Section 17 without regard to choice or conflicts of law rules.
- 18.4. Waiver of Jury Trial. We both hereby waive our respective rights to a jury trial of any claim or cause of action relating to or arising out of this MSA. This waiver is intended to encompass any and all disputes that may be filed in any court and that relate to the subject matter of this MSA (including contract, tort, breach of duty and all other common law and statutory claims). We both represent and warrant that we have consulted with legal counsel concerning this Section 18.4 and that we each provide this waiver knowingly and voluntarily.

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## 19. NETHERLANDS SPECIFIC PROVISIONS

- 19.1. Courts with exclusive jurisdiction. All disputes arising out of, or in connection with, this MSA and its subject matter or formation (including non-contractual disputes or claims) will be exclusively brought to the Amsterdam District Court following proceedings before the Chamber for International Commercial Matters (the **NCC District Court**). In addition, an action where an interim or protective measure is sought or another decision for which the court in summary proceedings is designated by

law, may also be brought to the NCC's District Court in summary proceedings. Any appeal shall be exclusively brought to the Amsterdam Court of Appeal before the NCC Court of Appeal Chamber and all proceedings will be in English.

- 19.2. If the NCC District Court or the NCC Court of Appeal are incompetent for any reason (and without limiting the provisions of Section 19.1), each party irrevocably agrees that the courts of Amsterdam, the Netherlands shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this MSA or its subject matter or formation (including non-contractual disputes or claims).

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## 20. BELGIUM SPECIFIC PROVISIONS

- 20.1. Section 8.3 shall read as follows: We warrant that the Services will perform materially in accordance with the applicable documentation then available at [www.egress.com/datasheets](http://www.egress.com/datasheets). If We breach this warranty and fail to remedy the defect within 30 days of your notice to Us describing the alleged failure, your exclusive remedy will be to terminate the affected Service in accordance with Sections 9.4, 9.5(f) and/or 9.6(f) below, excluding the right to specific performance under Article 1134 of the Belgian Civil Code (without prejudice to applicable mandatory laws).

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## 21. UK SPECIFIC PROVISIONS

- 21.1. Modern Slavery. You hereby affirm your compliance with the Modern Slavery Act 2015 and associated guidance. You confirm (a) that you have read, are familiar with and shall not perform an act or omission which is in contravention with, the letter or spirit of the Act; and (b) you carry out regular, meaningful and comprehensive due diligence procedures and have internal policies in place to address any suspected human rights abuse in your business and Group where applicable.

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