



Contract Committee Review Request
MUST BE COMPLETED IN FULL

Date: 08/05/2024

Contract/Agreement Vendor: **SHI International Corp & Eric Hebert**
Name of Vendor & Contact Person
eric_hebert@shi.com
Vendor Email Address

Technology
Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

District
Reason/Audience to benefit
08/12/2024
BOE Date

\$ 0.00
Amount of agreement

Person Submitting Contract/Agreement for Review: al

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal &/or Director or Administrator: _____

Does this Contract/Agreement utilize technology? YES/NO Yes
If yes, Technology Admin: _____

Cabinet Team Member: CM

Funding Source: _____
Fund/Project OCAS Coding

☐ **Consent**

☒ **Action**

AMEND the Master Service Agreement between Broken Arrow Public Schools and SHI International for DarkTrace email filtering. The amendment will change the email filtering service from filtering at a physical location, to filtering through the cloud based service. There is no cost to the District. / A. Shehada

Summary

This agreement has been completed and is ready for review.

The following is a summary of the contract purchase, any titles, and details for the Board of Education to review. This summary is for informational purposes only and does not constitute a contract. The full contract is available for review at the Board of Education meeting. The contract is for the purchase of email filtering services from SHI International. The contract is for a period of one year, starting on 08/12/2024. The contract is for a cost of \$0.00. The contract is for the purchase of email filtering services from SHI International. The contract is for a period of one year, starting on 08/12/2024. The contract is for a cost of \$0.00.

DARKTRACE MASTER SERVICES AGREEMENT**IMPORTANT - READ CAREFULLY:**

This Darktrace Master Services Agreement ("Agreement") is between Darktrace Holdings Limited ("Darktrace"), and the Customer named on the Product Order Form. By selecting the 'accept' option, installing or otherwise accessing or using the Offering (as defined herein), Customer acknowledges that Customer has read, understands, and agrees to be bound by the terms and conditions of this Agreement. Where a reseller, service provider, consultant, contractor, or other permitted third-party downloads, installs or otherwise uses the Appliance on Customer's behalf, such party will be deemed to be Customer's agent and Customer will be deemed to have accepted all of the terms and conditions of this Agreement as if Customer had directly downloaded, installed or used the Appliance.

If Customer does not agree with the terms and conditions of this Agreement, Customer is not authorized to install the Appliance or otherwise use the Offering for any purpose whatsoever.

Darktrace and Customer may be collectively referred to as the "Parties" or individually as a "Party".

BACKGROUND

- A. Darktrace is the supplier of the Offering (as defined below).
- B. Customer wishes to receive and use the Offering and Darktrace agrees to provide the same, on the terms and conditions of this Agreement.

DOCUMENTATION

This Agreement is made up of the following documents:

- (a) the Product Order Form;
- (b) this Agreement;
- (c) Appendix 1: Definitions;
- (d) Appendix 2: Support Services;
- (e) Appendix 3: Data Processing Addendum;
- (f) Appendix 4: Product Specific Terms;
- (g) Appendix 5: Business Associate Agreement; and
- (h) the applicable Documentation available in the Customer Portal.

Save as otherwise specified above, these appendices can be located at the following links: <https://darktrace.com/legal/master-services-agreement>

1. DEFINITIONS

Capitalized terms have the meanings attributed to them in Appendix 1.

2. EVALUATIONS AND BETA TESTING

- 2.1. This Clause 2 applies if Darktrace has agreed to provide the Offering (or any part thereof) on a proof of value or technical preview basis.
- 2.2. If Darktrace provides Customer with the Offering (or any part thereof) for evaluation purposes (an "Evaluation"), Darktrace grants Customer the right to use the Offering free of charge for evaluation purposes only for a maximum of four (4) weeks or such other duration as specified by Darktrace in writing at its sole discretion (the "Evaluation Period"). Except for the foregoing, Darktrace does not grant Customer any rights, implied or otherwise in or to the Offering. During any Evaluation Period, Customer (i) must keep the Appliance free from liens; (ii) will be responsible for any damage to the Appliance (reasonable wear and tear excepted); and (iii) will carry insurance coverage (all risks) in an amount equal to the full replacement value of the Appliance. On the expiry of the Evaluation Period, and unless the Parties agree to a subsequent purchase of all or part of the Offering for an applicable Subscription Period, Customer shall promptly return the Appliance to Darktrace securely and properly packaged, with carriage (and insurance at Customer's option) and this Agreement shall automatically terminate.
- 2.3. If Darktrace provides Customer with a new product or new version of the Offering for technical preview or beta testing purposes (a "Preview Product"), Customer may use the Preview Product free of charge for evaluation purposes, in a non-production test environment only, for a maximum of four (4) weeks or such other duration as specified by Darktrace in writing at its sole discretion (the "Test Period"). Customer will test the Preview Product in accordance with any conditions specified in the readme file for the software or any accompanying Documentation and will gather and report test data, feedback, comments, and suggestions to Darktrace. Customer's right to use the Preview Product will automatically terminate upon expiry of the Test Period. Darktrace does not warrant that it will release a commercial version of the Preview Product, or that a commercial version will contain the same or similar features as the Preview Product.
- 2.4. On completion of an Evaluation Period and / or Test Period, if the Customer wishes to continue using some or all of the Offering, the Customer and Darktrace shall agree a Product Order Form which shall include any applicable Fees for the Offering applicable to the relevant Subscription Period. If a Product Order Form is not agreed, the Customer's rights to the Evaluation and / or Preview Product shall automatically cease on completion of the Evaluation Period or Test Period.
- 2.5. Clause 9 and Clause 12.1 do not apply to Evaluations or Preview Products. The Offering provided for the purpose of an Evaluation and Preview Products are provided on an "as is" and "as available" basis, and, to the maximum extent permitted by applicable law: (i) Darktrace makes no warranties, conditions, representations or undertakings of any kind, whether express, implied, statutory or otherwise with relation to Evaluation Products or Preview Products; and (ii) subject to Clause 12.3, in no event shall Darktrace be liable to Customer or to those claiming through Customer for any direct, indirect, consequential, incidental or special damage or loss of any kind, or any loss of profits, loss of contracts, business interruptions, loss of or corruption of information or data however caused and whether arising under contract

or tort (including without limitation negligence), even if the Customer has been advised of the possibility of such damages.

- 2.6. Subject to Clause 12.3, Darktrace's liability (whether in contract, tort or otherwise), in respect of any Evaluation and/or Preview Product shall not exceed ten thousand pounds sterling (£10,000) in aggregate.

3. ORDER PROCESS

- 3.1. Throughout the Term, the Customer may request, and Darktrace may agree to provide the Offering, in accordance with an executed order for the Offering (each a "Product Order Form"). The Parties shall work together to discuss and agree the terms of each Product Order Form. For the avoidance of doubt, no Product Order Form shall be binding until fully executed by both Parties.
- 3.2. Each Product Order Form shall, once signed, be a separate contract incorporating the terms of this Agreement. Darktrace will not be required to provide the Offering unless a Product Order Form for the applicable Subscription Period duly signed by or on behalf of the Customer.
- 3.3. Any order forms (other than a Product Order Form) or other correspondence that the Parties may use for the fulfilment of ordering the Offering or otherwise for administering this Agreement will be for administrative convenience only and any terms and conditions included in such forms will have no effect and will not modify this Agreement (even if such forms state otherwise and including any terms provided by the Customer or any provided with any purchase order).

4. PROVISION OF APPLIANCES

- 4.1. Provision of Appliances. Unless otherwise agreed in writing between the Parties, title to the Appliance (and all components thereof) will remain with Darktrace at all times. The Appliance is provided solely as the medium for delivery and operation of the Software and must not be used for any other purpose. Use of the specified Appliance is included in the Fees. Upon termination or expiration of the applicable Subscription Period, Customer shall promptly return the physical components of the Appliance to Darktrace, securely and properly packaged, with carriage (and insurance at Customer's option) prepaid. Whilst the Appliance is in Customer's possession, Customer must (a) clearly designate the Appliance as Darktrace's property; (b) hold the Appliance on a fiduciary basis as Darktrace's bailee; (c) store and use the Appliance in a proper manner in conditions which adequately protect and preserve the Appliance; (d) insure the Appliance against all risks to its full replacement value; (e) not sell, charge, pledge, mortgage or otherwise dispose of the Appliance or any part of it; (f) not permit any lien to arise over the Appliance (or part thereof); and (g) keep the Appliance free from distress, execution and other legal process. Customer will be granted the right to access and use the Software on the Appliance during the Subscription Period specified in the relevant Product Order Form on the terms of Clause 5 below.
- 4.2. Delivery. Darktrace will use commercially reasonable efforts to ship the Appliance(s) on the delivery dates agreed in writing with the Customer (and otherwise as soon as reasonably practicable after agreeing a Product Order Form) (in partial or full shipments); provided, however, that Customer's sole and exclusive remedy for any delay in delivery or for failure to give notice of delay shall be for Darktrace to make such delivery as soon as practicable. Darktrace is not liable for the acts or omissions of any third-party courier or shipping provider. Darktrace may withhold or delay shipment of any order if Customer is late in payment or is otherwise in default under this Agreement. Darktrace will deliver the Appliance FCA (Incoterms 2010) to the agreed Sites. In the absence of specific written shipping instructions from Customer, Darktrace will ship by the method of its choice. Unless otherwise set out in an executed Product Order Form, Customer will pay and be exclusively liable for all costs associated with shipping and delivery including without limitation, freight, shipping, customs charges and expenses, cost of special packaging or handling and insurance premiums incurred by Darktrace in connection with the shipment of the Appliance(s) to Customer. Darktrace will identify itself in all documents related to the shipment of the Appliance(s) as the exporter of record from the applicable jurisdiction of export, and Customer (or its agent, as applicable) as the importer of record into the country of delivery.
- 4.3. Use of Appliances. Customer agrees that Appliances are for use with respect to the Customer's applicable bandwidth throughput, number of connected devices and connections per minute as set out in the applicable Documentation.

5. ACCESS TO THE OFFERING AND ACCESS AND USAGE RESTRICTIONS

- 5.1. Access to the Software. In consideration of the Fees paid by Customer to Darktrace, and subject to the terms and conditions of this Agreement and the Product Order Form, during the applicable Subscription Period Darktrace grants to Customer the right to: (i) install and use the Appliance on the Site(s) for Customer's and/or its permitted Affiliates' internal business purposes (provided that neither Customer nor its Affiliates may use the Offering (or any part thereof) as a commercial product or for the benefit of an unaffiliated third party); and (ii) make a commercially reasonable number of copies of the Documentation, provided however, that Customer must reproduce and include all of Darktrace's and its suppliers' copyright notices and proprietary legends on each such copy.
- 5.2. Own hardware and / or cloud services. Customer agrees that where set out in the applicable Documentation, the installation and running of Software will require the Customer and / or its Users to provide its own hardware and/or cloud services.
- 5.3. Access and Usage Restrictions. All Software is provided on a subscription access basis, not sold. The restrictions in this Agreement represent conditions of Customer's permission to access and use the Offering. Unless otherwise specified in the Product Order Form or the Documentation, the Software is pre-installed on the Hardware and Customer agrees to use the Software solely in conjunction with such Hardware and not separately or apart from the Hardware. Customer specifically agrees not to: (i) license, rent, sell, lease, distribute, grant access to or rights in, or otherwise transfer the Software or any part thereof or use the Offering, or allow the Offering to be used, for timesharing or service bureau purposes or otherwise use or allow others to use the Offering for the benefit of any third party (other than Customer's Affiliates); (ii) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code or underlying ideas or algorithms of the Software (other than the GPL Software) or any portion thereof, except as required to be permitted by applicable law; (iii) modify, port, translate, localize or create derivative works of the Software or the Documentation; (iv) use the Offering: (a) in violation of any law, statute, ordinance or regulation applicable to Customer including but not limited to the laws and regulations governing publicity or privacy, export/import control, federal, state and local laws and regulations governing the use of network scanners and related software

in all jurisdictions in which systems are scanned or scanning is controlled, or anti-discrimination; or (b) negligently, intentionally or willfully propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (v) remove or modify any acknowledgements, credits or legal notices contained on any Appliance or any part thereof; (vi) install or run on the Hardware any software applications other than the Software installed by Darktrace on such Hardware; (vii) collect any information from or through the Offering using any automated means (other than Darktrace approved APIs), including without limitation any script, spider, "screen scraping," or "database scraping" application or gain or attempt to gain non-permitted access by any means to any Darktrace computer system, network, or database; or (viii) file copyright or patent applications that include the Offering or any portion thereof.

- 5.4. **Usage Metrics.** The Customer agrees that it shall not access or use, or permit access to or use of, the Offering in excess of the applicable Usage Metric(s). If such excess use is made, the Customer agrees that it shall pay Darktrace's then-current standard fees for any such excess use. Where the Usage Metric is a per User basis (as specified on the applicable Product Order Form), Customer agrees that: (i) the maximum number of Users that it authorizes to access and use the Offering and the Documentation shall not exceed the number of User subscriptions it has purchased under that Product Order Form; and (ii) it will not allow any User subscription to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Offering and/or Documentation.
- 5.5. **Affiliate Use.** Darktrace acknowledges and agrees that the Offering may be used for the benefit of Customer Affiliates. Such Customer Affiliates will be entitled to utilize the Offering in the same way as Customer under the terms of this Agreement. To the extent that any such Customer Affiliate utilizes the Offering in accordance with this Clause 5.5 Customer (acting as agent of the relevant Customer Affiliate) will be entitled to enforce any term of this Agreement and recover all losses suffered by such Customer Affiliate pursuant to this Agreement as though Customer had suffered such loss itself, provided that in no event may Customer make multiple recoveries in respect of the same loss. In the event that any Affiliate of the Customer is or becomes a competitor of Darktrace (in Darktrace's reasonable opinion), Darktrace may immediately on written notice suspend or terminate provision of the Offering to such Affiliate.
- 5.6. **Outsource Provider.** In the event that Customer contracts with an Outsource Provider, Customer may permit such Outsource Provider to exercise all or any portion of the rights granted in Clause 5.1 above solely on Customer's or its Affiliates' behalf, provided that, (i) the Outsource Provider will only use or operate the Offering for Customer's benefit subject to terms and conditions that are consistent with the rights and limitations set out in this Agreement; and (ii) Customer will remain liable for the acts and omissions of the Outsource Provider under this Agreement.
- 5.7. **Third Party Software/ Open Source Software.** Customer acknowledges that the Software may contain or be accompanied by certain Third- Party Products including Open Source Software. Any Open Source Software provided to Customer as part of the Offering is copyrighted and is made available to Customer under the GPL/LGPL and other Open Source Software licenses. Copies of, or references to, those licenses may be set out in a Product Order Form, the Third-Party Product packaging or in a text file, installation file or folder accompanying the Software. If delivery of Open Source Software source code is required by the applicable license, Customer may obtain the complete corresponding Open Source Software source code for a period of three years after Darktrace's last shipment of the Software by sending a request to: Attn: Legal Department - Open Source Software Request, Darktrace Holdings Limited, Maurice Wilkes Building, Cowley Road, Cambridge CB4 0DS, United Kingdom. All other implied licenses are disclaimed, and all rights not expressly granted herein are reserved to Darktrace.

6. SERVICES

- 6.1. **Installation.** Darktrace will perform the Installation Service as soon as reasonably practicable after the Commencement Date.
- 6.2. **Support Services.** During the applicable Subscription Period, Darktrace will provide the Support Services. The Support Services are further described in Appendix 2, which details Darktrace's Standard Support Services and Support Service Options, and their respective eligibility requirements, service limitations and Customer responsibilities. The Customer warrants that it shall comply with all such Customer responsibilities (if any) as may be set out in Appendix 2.
- 6.3. **Call Home.** Darktrace's Call Home feature is critical for certain Support Services. Darktrace will limit its access solely to the extent relevant to Darktrace's provision of the Support Services, and such remote access will be subject to Customer's reasonable policies and procedures provided to Darktrace in writing in advance. The Call Home connection remains within Customer's complete control and can be initiated and terminated at any time by Customer.
- 6.4. **Disclaimer.** Unless expressly agreed between the Parties in writing, the Offering does not include the monitoring, interpretation or corrective action with respect to any Alerts. No advice, report, or information, whether oral or written, obtained by Customer from Darktrace or through or from the use of the Offering shall create any warranty not expressly stated in this Agreement. Customer understands that: (a) any outcome of the use of the Offering involving security assessment is limited to a point-in-time examination of Customer's security status; and (b) the Offering does not constitute any form of representation, warranty or guarantee that Customer's systems are secure from every form of attack, even if fully implemented. Customer understands and acknowledges that not all anomalies / intrusions may be reported or prevented.

7. FEES, PAYMENT AND TAXES

- 7.1. **Fees.** Fees are stated in the Product Order Form and apply to all components of the Offering selected during the applicable Subscription Period. No refunds will be made except as provided in Clause 9.4 and Clause 10.3 of this Agreement. Unless otherwise explicitly agreed in writing, Fees are: (i) exclusive of sales and use taxes assessed by any taxing authority in the jurisdiction(s) in which Customer is physically located and takes delivery of the Appliance or receives the Services; and (ii) exclusive of duties and shipping and handling fees, which unless otherwise agreed in writing will be the responsibility of Customer. Should Customer be required under any law or regulation of any governmental entity or authority outside of the United Kingdom to withhold or deduct any portion of the payments due to Darktrace, then Customer will increase the sum payable to Darktrace by the amount necessary to yield to Darktrace an amount equal to the sum Darktrace would have received had no withholdings or deductions been made.

- 7.2. **Invoices and Payment.** Unless otherwise stated in the Product Order Form, Customer will be invoiced the Fees from the Commencement Date and on each anniversary thereof throughout the Term. Any other charges, such as out of pocket expenses will be invoiced monthly in arrears. Invoicing will occur via email. Unless otherwise agreed in the Product Order Form, Customer agrees to pay all undisputed amounts within thirty (30) days of Customer's receipt of the applicable invoice by direct bank or wire transfer in accordance with the instructions on the invoice and shall be liable for any bank charges assessed on Customer by Customer's bank. Darktrace may suspend or cancel performance of open orders or access to the Offering if Customer fails to make payments when due, reserving all other rights and remedies as may be provided by law. Darktrace may impose late charges on overdue payments at a rate equal to two percent (2%) per annum above the official dealing rate of the Bank of England, calculated from the date payment was due until the date payment is made, and Customer agrees to pay all reasonable expenses incurred in collection, including legal fees.
- 7.3. **Lapsed Fees.** If Customer has lapsed in the payment of Fees due hereunder, Darktrace may suspend access to the Offering and prior to reactivating, Customer will be responsible for paying all Fees associated with the Offering from the date of suspension through to the then-current date.
- 7.4. **Fee increases.** Darktrace reserves the right to increase the Fees payable by the Customer on thirty (30) days' written notice in the sole event Cloud Provider increases the charges or fees payable by Darktrace to such Cloud Provider for services necessary for or related to the Offering. Any such increase will be proportionate to the increase charged by the Cloud Provider. Unless otherwise agreed in a Product Order Form, Darktrace may adjust the Fees once per year on not less than sixty (60) days' prior written notice, with any such adjustment taking affect from the next anniversary of the Commencement Date. In the event there is any change to the Customer's network or infrastructure after the Product Order Form is agreed, and such change results in or contributes to a cost to Darktrace, Darktrace shall be entitled to charge such cost to the Customer.
- 7.5. Clause 7 shall not apply where Customer has purchased the Offering through a Darktrace authorized reseller.
- 8. INTELLECTUAL PROPERTY; OWNERSHIP**
- 8.1. **Intellectual Property.** Except as expressly set forth herein: (i) this Agreement does not grant either Party any rights, implied or otherwise, to the other's Intellectual Property; and (ii) Darktrace, its suppliers and licensors, retain all right, title and interest in and to the Offering, and the Documentation and all copies thereof, including all enhancements, error correction, new releases, updates, derivations, and modifications thereto (collectively, "**Darktrace Intellectual Property**"). Customer agrees to inform Darktrace promptly of any infringement or other improper action with respect to Darktrace Intellectual Property that comes to Customer's attention.
- 9. WARRANTIES**
- 9.1. **Software Warranty.** Darktrace warrants to Customer that, during the applicable Subscription Period, the Offering will perform materially in accordance with the applicable Documentation.
- 9.2. **Services Warranty.** Darktrace warrants to Customer that all Services will be performed with all reasonable care, skill and diligence in accordance with generally recognized commercial practices and standards.
- 9.3. **Exceptions.** The warranties contained in Clauses 9.1 and 9.2 will not apply if: (i) Customer's use of the Offering is not in accordance with this Agreement; (ii) Customer fails to follow Darktrace's installation, operation or maintenance instructions or procedures in the Documentation; (iii) the Software has been modified, repaired or improperly installed other than by Darktrace or any contractor or subcontractor of Darktrace; (iv) Customer (or its agent) has failed to implement, or to allow Darktrace or its agents to implement, any corrections or modifications to the Software made available to Customer by Darktrace; or (v) Customer (or its agent) has combined the Software with other software, services, or products that are not provided by Darktrace or not otherwise specified in the Documentation, and, but for such combination, the breach of warranty would have been avoided.
- 9.4. **Remedies.** If during the warranty period contained in Clause 9.1 : (i) Darktrace is notified promptly in writing upon discovery of an error in the Offering, including a detailed description of such alleged error; and (ii) Darktrace's inspections and tests determine that the Offering contains an error and it is not subject to any of the exceptions set out in Clause 9.3, then, Darktrace's entire liability and Customer's sole remedy for such breach of warranty shall be for Darktrace to (at Darktrace's option and sole expense) correct, repair or replace the Offering within a reasonable time or provide or authorize a refund of the unused portion of the Fees Customer has paid for the Offering. Customer agrees to provide prompt notice of any failure under Clause 9.2 and Darktrace will re-perform any Service that fails to meet the warranted standard.
- 9.5. **Disclaimer.** Except for the express warranties set out in this Agreement, and to the fullest extent permitted by law, neither Darktrace nor any of its third party licensors or suppliers make any warranties, conditions, undertakings or representations of any kind, either express or implied, statutory or otherwise in relation to any subject matter of this Agreement, including without limitation any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement or, arising from course of performance, dealing, usage or trade. Darktrace does not warrant that the operation of the Offering will be error-free or uninterrupted or that it will meet the Customer's requirements.

10. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT INDEMNITY

- 10.1. **Darktrace Indemnity.** Darktrace will indemnify Customer, Customer's Affiliates, and their respective officers, directors, and employees (and any successors and assigns of the foregoing) (collectively, the "Customer Indemnitees") against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that the Software provided or made available by Darktrace under this Agreement, or its receipt, possession or use by any Customer Indemnitee, infringes a European or U.S. patent, any copyright, or misappropriates any third party trade secrets. The indemnification obligations of Darktrace will be subject to Customer: (i) notifying Darktrace in writing within twenty (20) days of receiving notice of any threat or claim of such action; (ii) giving Darktrace exclusive control and authority over the defense or settlement of such action (provided that: (A) any settlement will not entail an admission of fault or guilt by any Customer Indemnitee; and (B) the settlement includes, as an unconditional term, the claimant's or the plaintiff's release of Customer Indemnitees from all liability in respect of the claim); (iii) not entering into any settlement or compromise of any such action without Darktrace's prior written consent; and (iv) providing reasonable assistance requested by Darktrace at Darktrace's expense. Customer will be obliged to mitigate its losses insofar as is reasonable in the circumstances.
- 10.2. **Exclusions.** The obligations set out in Clause 10.1 do not apply to the extent that a third party claim is caused by, or results from: (a) Customer's combination or use of the Software that is the subject of the claim with other software, services, or products that are not provided or authorized by Darktrace in writing, if the claim would have been avoided by the non-combined or independent use of the Software that is the subject of the claim; (b) modification of the Software that is the subject of the claim by anyone other than Darktrace or any contractor or subcontractor of Darktrace, if the third party claim would have been avoided by use of the unmodified Software that is the subject of the claim; (c) Customer's continued allegedly infringing activity after being notified thereof and being provided with modifications that would have avoided the alleged infringement (which in implementing such modifications, Darktrace will use commercially reasonable efforts to have substantially preserve the utility and functionality of the Software that is the subject of the claim); (d) Customer's use of the Software that is the subject of the claim in a manner not in accordance with this Agreement or the Documentation; or (e) use of other than Darktrace's most current release of the Software that is the subject of the claim if the third party claim would have been avoided by use of the most current release or revision release or revision.
- 10.3. **Remedies.** If Darktrace reasonably believes the Software infringes a third party's Intellectual Property Rights, then Darktrace will, at its option and at no additional cost to Customer: (a) procure for Customer the right to continue to use the Software; (b) replace the Software; or (c) modify the Software to avoid the alleged infringement. Darktrace will not be liable for any costs or expenses incurred without its prior written authorization. If none of the options in the previous sentence are commercially reasonable, Darktrace may terminate the Customer's access to the allegedly infringing Software and refund a pro rata refund of the Fees paid by Customer from the date a third-party claim arose for the allegedly infringing Software to the then-current date, whereupon this Agreement will automatically terminate.
- 10.4. This Clause 10 is a complete statement of the Customer's remedies for third party claims for infringement as described in Clause 10.1.

11. CUSTOMER DATA; CUSTOMER UNDERTAKINGS AND INDEMNITY

- 11.1. **Customer Dependencies.** The Customer shall perform or procure the performance of the Customer Dependencies in a manner which ensures Darktrace is not delayed from performing its obligations in accordance with this Agreement. During the Subscription Period, Customer will be liable for the cost of any changes that may be required to the Offering due to the Customer making a material change to their network. To the extent that the Customer's delay or failure to comply with a Customer Dependency does or may cause Darktrace to miss any timeframe for the performance of an obligation, Darktrace shall be entitled to an extension of time equivalent to the delay caused by the failure of the Customer Dependency.
- 11.2. **Hosting.** Where specified in an applicable Product Order Form Darktrace shall maintain Customer Data in the Hosted Location for the duration of the Subscription Period. Notwithstanding the aforementioned, Darktrace may change the Hosted Location from time to time without notice, provided that the new Hosted Location is within the same geographic region as the original Hosted Location.
- 11.3. **Customer Data; License Grant.** Customer will own all rights, titles and interests in and to the Customer Data and the contents of any Alerts. In respect of any Customer Data stored on the Appliance, Customer grants to Darktrace a limited and non-exclusive license to access and use the Customer Data only to the extent necessary for Darktrace to perform the Services. Customer agrees Darktrace may utilize the details of any Alerts evaluations occurring in Customer's network and any connected data source on an anonymized basis and excluding any Customer Confidential Information and / or Personal Data, to develop and improve the Darktrace technology.
- 11.4. **Customer Security Obligations.** In using the Offering or authorizing its Outsource Provider and third parties to use it on Customer's behalf, Customer (and not Darktrace) will be responsible for establishing, monitoring, and implementing security practices to control the physical access to and use of the Offering and all Customer Data therein, including Personal Data.
- 11.5. **Data disclaimer; indemnity.** Customer is solely responsible for its use of the Offering, the activities of its users and for the accuracy, integrity, legality, reliability and appropriateness of all Customer Data. Customer expressly recognizes that Darktrace does not create nor endorse any Customer Data processed by or used in conjunction with the Offering. Customer further acknowledges that Darktrace and its Affiliates do not provide or undertake backup or maintenance services for Customer Data and Customer undertakes that it shall be solely responsible for backup of all Customer Data. Customer acknowledges that it is fully and solely responsible for its own Customer Data and all contents within the Customer Data, and will, at Customer's own expense, indemnify, defend and hold Darktrace, its Affiliates, and their respective officers, directors, and employees, ("Darktrace Indemnitees") harmless from and against all liabilities, damages, and costs, including settlement costs and reasonable attorneys' fees, incurred by reason of Darktrace's compliance with the instructions of Customer with respect to the ownership, custody, processing or disposition of the Customer Data by Darktrace, as applicable.

12. LIMITATION OF LIABILITY

- 12.1. Limitation of liability. Subject to the remainder of this Clause 12, each Party's maximum liability to the other Party for any and all claims, loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising out of or in connection with this Agreement (including all Product Order Forms) shall not exceed, in the aggregate during each year of the relevant Subscription Period (where a 'year' commences on the Commencement Date and each anniversary thereof), the total amount of all fees paid or payable to Darktrace for the Offering during such year, except that in respect of (i) Clause 11.5 ("Data disclaimer; Indemnity") and (ii) the Data Processing Addendum, each Party's liability to the other for any and all such breaches shall not exceed, in the aggregate during each Subscription Period, the greater of (a) three times (3x) the total fees paid or payable to Darktrace for the Offering during each year of the relevant Subscription Period or (b) two hundred and fifty thousand pounds sterling (£250,000). For the avoidance of doubt, any liability arising under one Product Order Form shall be taken into account in assessing a party's liability arising under any other Product Order Form.
- 12.2. Exclusion of consequential damages. Subject to Clause 12.3 below, neither party shall be liable to the other for any indirect or consequential loss; or any loss of profits; loss of revenue or business; loss of goodwill or reputation; loss of or corruption or damage to data; loss of management time, howsoever arising and whether or not such party had been advised of the possibility of such loss, corruption or damage.
- 12.3. Exclusions from Limitation of Liability. Nothing in this Agreement will exclude or limit either Party's liability for: (i) death or personal injury due to negligence; (ii) fraud; (iii) breach of Clause 14 ("Confidentiality") (iv) breach of Clause 5 ("Access to the Offering and Access and Usage Restrictions"), or (v) any other matter in respect of which liability cannot lawfully be limited or excluded.

13. TERM; TERMINATION

- 13.1. Term. This Agreement is effective from the Effective Date and will remain in force until the sooner of: (i) expiry of the Evaluation Period or Test Period in accordance with Clause 2.1 above; or (ii) the end of the relevant Subscription Period specified in the applicable Product Order Form. In the event of extension or renewal of a Subscription Period, such extension or renewal shall be considered a new and separate Term. Notwithstanding any Product Order Form being specified as 'linked' or associated with another Product Order Form, each Product Order Form has its own Subscription Period and expiry or termination of one Product Order Form does not automatically affect any other Product Order Form.
- 13.2. Expiration of the Subscription Period. Notwithstanding any provision of this Clause 13, Customer's right to use, and Customer's access to, the Offering will automatically terminate on expiry of the applicable Subscription Period unless and until the Parties renew or extend the applicable Subscription Period.
- 13.3. Termination for Breach. Either Party may terminate this Agreement if: (i) the other Party is in material breach of the Agreement and fails to cure such breach within thirty (30) days after receipt of written notice requiring it to make such rectification or such breach is not capable of rectification; or (ii) the other Party ceases its business operations or becomes subject to insolvency proceedings and which proceedings are not dismissed within thirty (30) days (unless a Party is prevented from terminating due to the provisions of applicable law).
- 13.4. Termination or Suspension by Darktrace. Without prejudice to any other right or remedy available to Darktrace, Darktrace may without prior notice restrict, suspend or terminate Customer's access to or use of the Offering without liability:
- 13.4.1. if a court or other government regulatory authority issues an order prohibiting Darktrace from furnishing the Offering to Customer. Customer's obligation to pay Fees during any period of suspension under this Clause 13.4.1 will also be suspended. In the event the Offering is suspended pursuant to this Clause 13.4.1 then provided it is lawful to do so, Darktrace will inform Customer of the reasons for the suspension and will work with Customer to resolve such issues and re-instate the Offering.
- 13.4.2. if Darktrace has a reasonable suspicion that Customer is using the Offering: (i) in breach of Clause 5.1 or Clause 5.2; or (ii) in a manner that is otherwise unlawful, and in each case, Customer does not cure the condition identified in a written notice provided by Darktrace within five (5) business days.
- 13.5. Effect of Termination. Upon termination or expiration of this Agreement:
- 13.5.1. the Subscription Period and all rights and licenses granted by one Party to the other under this Agreement, and any Services provided by Darktrace to Customer, will cease immediately;
- 13.5.2. Customer shall ensure all Customer Data is removed from the Appliance and return the Appliance to Darktrace in accordance with Clause 4.1. Darktrace will not be responsible for maintaining or protecting any configuration settings or data found on the returned Appliance or component part of the Appliance and it is Customer's sole responsibility to delete any such information prior to return;
- 13.5.3. for a period of thirty (30) days following the termination, Darktrace shall maintain Customer Data and grant Customer access to the cloud Services, solely to download and delete any Customer Data. Thereafter, Darktrace will delete or destroy all copies of Customer Data without liability or additional notice, unless legally prohibited from doing so. Customer Data cannot be recovered once deleted or destroyed; and
- 13.5.4. all undisputed Fees owing to Darktrace at the date on which termination or expiry takes effect will become immediately due and payable.
- 13.6. Survival. The following provisions will survive any termination of this Agreement: Clause 7 ("Fees, Payments and Taxes"); Clause 8 ("Intellectual Property; Ownership"); Clause 9.5 ("Disclaimer"); Clause 10 ("Intellectual Property Rights Infringement Indemnity"); Clause 11.5 ("Data Disclaimer; Indemnity"); Clause 12 ("Limitation of Liability"); Clause 13.5 ("Effect of Termination"); Clause 13.6 ("Survival"); Clause 14 ("Confidentiality"); Clause 15 ("Data Protection") (solely to the extent any personal data continues to be processed after

termination); and Clause 16 ("General Provisions").

14. CONFIDENTIALITY

- 14.1. Each party will treat the other party's Confidential Information as confidential. Confidential Information of one Party (the "Disclosing Party") may only be used by the other Party (the "Receiving Party") for the purpose of fulfilling obligations or exercising rights under this Agreement and may only be shared with employees or contractors of the Receiving Party who have a need to know such information to support such purpose ("Representatives"). Each Party will procure that any of its Representatives to whom Confidential Information is disclosed are bound by contractual obligations equivalent to those in this Clause 14.1. Notwithstanding the foregoing, the Receiving Party shall remain liable for the acts or omissions of its Representatives. Confidential Information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for five (5) years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: (i) was known or becomes known to the Receiving Party on a non-confidential basis from a third party, provided that: (a) the Receiving Party has no knowledge that the third party is subject to a confidentiality agreement with the Disclosing Party in respect of the information; and (b) such information is not of a type or character that a reasonable person would have regarded as confidential; (ii) is independently developed by the Receiving Party without violating the Disclosing Party's rights; (iii) is or becomes publicly known other than through disclosure by the Receiving Party or one of its Representatives in breach of this Agreement; or (iv) was lawfully in the possession of the Receiving Party before the information was disclosed by the Disclosing Party. A party may disclose Confidential Information to the extent disclosure is required by law or a governmental agency provided that, to the extent it is lawful to do so, the Receiving Party notifies the Disclosing Party of the request giving it reasonable opportunity to respond, and cooperate with the Disclosing Party's reasonable, lawful efforts to resist, limit or delay disclosure at the Disclosing Party's expense, and except for making such required disclosure, such information will otherwise continue to be Confidential Information. On termination or expiry of the Agreement, each Party will promptly return or destroy all Confidential Information of the other Party.

15. DATA PROTECTION

- 15.1. The Parties shall comply with their respective obligations as set out in the Data Processing Addendum, which is hereby incorporated into and forms a part of this Agreement.

16. GENERAL PROVISIONS

16.1. Entire Agreement; Integration.

- 16.1.1. This Agreement, the appendices and any documents referenced herein, represent the entire agreement between the Parties on the subject matter hereof and supersedes all prior discussions, agreements and understandings of every kind and nature between the Parties and excludes, without limitation, any terms appearing on a Customer purchase order, invoice or other Customer paperwork or any other terms (in each case whether by way of conduct or otherwise). No modification of this Agreement will be effective unless in writing and signed by both Parties. Each Party acknowledges and agrees that, in connection with the Agreement, it has not been induced to enter into the Agreement in reliance upon, and does not have any remedy in respect of, any representation or other promise of any nature other than as expressly set out in this Agreement. Each Party signing this Agreement acknowledges that it has had the opportunity to review this Agreement with legal counsel of its choice and there will be no presumption that ambiguities will be construed or interpreted against the drafter.
- 16.1.2. Unless otherwise specifically agreed to in a writing signed by each of the Parties, in the event of any conflict or inconsistency between this Agreement, an appendix hereto, any Product Order Form issued hereunder, and or any document incorporated by reference, the order of precedence of the documents from highest to lowest is the Data Processing Addendum, the Product Order Form, this Agreement, any appendix hereto and the documents incorporated by reference (other than the Data Processing Addendum).

- 16.2. Severability. The illegality or unenforceability of any provision of this Agreement will not affect the validity and enforceability of any legal and enforceable provisions hereof.
- 16.3. Force Majeure. Other than in respect of Customer's payment obligations, neither Party will be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by the other Party by reason of such failure or delay, which is, indirectly or directly, caused by an event beyond such Party's reasonable control, including but not limited to riots, natural catastrophes, terrorist acts, pandemics, epidemics, governmental intervention, refusal of licenses by any government or other government agency, or other acts of god (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been avoided by the non-performing Party through commercially reasonable precautions and cannot be overcome by the non-performing Party through commercially reasonable substitute services, alternate sources, workarounds or other means. During the continuation of a Force Majeure Event, the non-performing Party will use commercially reasonable efforts to overcome the Force Majeure Event and, to the extent it is able, continue to perform its obligations under the Agreement.
- 16.4. Notices. Any notice will be delivered by hand, recorded delivery, registered post or email with satisfactory proof of such delivery to be retained by the sender. All notices will only become effective on the actual date that the notice is received. Any notices required to be given in writing to Darktrace or any questions concerning this Agreement should be addressed to: Attn: Legal Department, Darktrace Holdings Limited, Maurice Wilkes Building, Cowley Road, Cambridge CB4 0DS, United Kingdom. Email notices to notices@darktrace.com.
- 16.5. Rights of Third Parties. The provisions of this Agreement concerning restrictions on usage of the Offering and protection of Intellectual Property Rights are for the benefit of and may be enforced by each of Darktrace, any Darktrace Affiliate and the Darktrace Indemnitees.

Except for the foregoing sentence, or as otherwise expressly set out in the Agreement, this Agreement does not create any rights for any person who is not a party to it whether under the Contracts (Rights of Third Party) Act or otherwise, and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained herein.

- 16.6. **Audit.** During the Subscription Period, Customer will permit Darktrace, or an independent certified accountant appointed by Darktrace access, on written notice, to Customer's premises and Customer's books of account and records at any time during normal business hours for the purpose of inspecting, auditing, verifying and / or monitoring the manner and performance of Customer's obligations under this Agreement. Darktrace shall not exercise this right more than twice in each calendar year.
- 16.7. **Independent Contractors.** The Parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, or agency relationship between the Parties.
- 16.8. **Assignment.** This Agreement may not be assigned by either Party without the written consent of the other Party. Notwithstanding the foregoing, consent of the other Party will not be required for a transfer to an Affiliate of a Party or if a Party undertakes an initial public offering, a sale of all or substantially all of its shares or assigns all or substantially all of its business and assets to another entity that is not a direct competitor of the non-assigning Party. Any attempt to assign this Agreement in violation of the foregoing will be null and void. This Agreement binds the Parties, their respective Affiliates, successors and permitted assigns.
- 16.9. **Governing Law.** Any dispute or claim relating in any way to this Agreement will be governed by the Governing Law, and adjudicated in the Governing Courts, as defined in the table below, and each Party consents to the exclusive jurisdiction and venue thereof; save that each party may enforce its or its Affiliates' intellectual property rights in any court of competent jurisdiction, including but not limited to equitable relief and (ii) Darktrace or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Product Order Form is located. Where arbitration applies it shall be conducted in English, under the Rules of Arbitration of the International Chamber of Commerce (the "ICC") by three arbitrators in accordance with Art 12 of said Rules. The award shall be final and binding on the Parties. Except to the extent entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence. Customer and Darktrace agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

Customer location (as stated in the Product Order Form)	Governing Law	Governing Courts
United Kingdom	The laws of England & Wales	The courts of England & Wales
United States of America	The laws of the state of California	The state or Federal courts in San Francisco, California
None of the above	The laws of England & Wales	Arbitration at the ICC in London

- 16.10. **Export Restrictions.** The Offering is for Customer's use and not for further commercialization. Customer acknowledges that the Offering may be classified and controlled as encryption items under the United Kingdom's Export Regulations and other national regulations. Each Party will comply with all applicable laws regarding export-controlled items, and will not export, re-export or import, directly or indirectly, any export-controlled items, or any direct product of them, nor undertake any transaction hereunder in violation of any applicable export laws.
- 16.11. **ITAR.** Customer understands that employees of Darktrace and/or its suppliers may have access to native data to perform the Support Services herein and represents that none of this data requires protection from access by foreign persons because it contains technical information regarding defense articles or defence services within the meaning of the United States International Traffic in Arms Regulations (22 CFR § 120) or technical data within the meaning of the United States Export Administration Regulations (15 CFR §§ 730 - 774). If any of this data does contain any such information, Customer will either lock down access to any such data and/or identify any folders containing such data as export-controlled information and acknowledges that special service rates may apply thereto.
- 16.12. **Government End-User Notice (applicable to United States government customers only).** The Offering is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto. If the user of the Appliance is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Appliance, including technical data or manuals, is governed by the terms, conditions and covenants contained in this Agreement and the Darktrace standard commercial right of access and use, as contained herein.
- 16.13. **HIPAA Compliance (applicable to United States healthcare industry customers only).** In order to comply with the Parties' obligations under Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), to the extent applicable to Customer, Customer and Darktrace agree that such protected health information shall be processed in accordance with the Darktrace Business Associate Agreement. Customer hereby acknowledges that Customer has reviewed and agrees to the Darktrace Business Associate Agreement, which is incorporated into the terms of this Agreement, and which can be found at <https://darktrace.com/legal/master-services-agreement> as Appendix 5: Business Associate Agreement. For the purposes of this clause, Customer is a "covered entity" as defined pursuant to the HIPAA regulations and transmits to Darktrace protected health information which is regulated pursuant to HIPAA during the course of its use of the Offering.
- 16.14. **Waiver.** Each Party agrees that the failure of the other Party at any time to require performance by such Party of any of the provisions herein will not operate as a waiver of the rights of such Party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

- 16.15. Headings. All headings used herein are for convenience of reference only and will not in any way affect the interpretation of this Agreement.
- 16.16. Equitable Remedies. The Parties agree that with respect to a breach by a Party of Clauses 5, 8 or 14, monetary damages may not be an adequate or sufficient remedy for a breach of this Agreement. Therefore, in addition to any applicable monetary damages, a Party will also be entitled to apply for injunctive relief and other equitable relief to prevent breaches of the Agreement, without proof of actual damage.
- 16.17. Counterparts. This Agreement and each Product Order Form may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. Transmission of the executed counterpart of this Agreement and any Product Order Form by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart.

Appendix 1 – Definitions**1. DEFINITIONS:**

- 1.1. **Defined Terms.** Terms defined in this Appendix 1 will have the meanings given below. Defined terms may be used in the singular or plural depending on the context.

"Affiliate" means any corporation or other business entity that directly or indirectly controls, is controlled by or is under common control with a Party. Control means direct or indirect ownership of or other beneficial interest in fifty percent (50%) or more of the voting stock, other vesting interest, or income of a corporation or other business entity;

"Alerts" means alerts of suspected malicious activity on a Customer's environment generated by the Offering;

"Appliance(s)" means the Software, or Software combined with Hardware, as more fully described on the Product Order Form;

"Call Home" means the secure and encrypted channel that connects the Appliance to Darktrace central management;

"Cloud Provider" means Microsoft Azure, Amazon Web Services or Google Cloud Platform, as specified on the Product Order Form;

"Commencement Date" means the date specified in a Product Order Form on which Darktrace shall commence providing the Product(s).

"Confidential Information" means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, suppliers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, Intellectual Property, materials, designs, improvements, formulae, discoveries, inventions, networks, concepts, ideas, technical information and know-how of a Party, and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), and information that ought reasonably be considered to be confidential, but in all circumstances excludes any Personal Data;

"Customer Data" means all data and information provided by Customer to, or accessible by, Darktrace under this Agreement in connection with the performance of the Services (which may include information about network traffic on Customer's network (metrics), log/metadata collection, as well as the raw packet capture data from Customer's network) and which may include personal data;

"Customer Dependency" means an obligation on the Customer in relation to access to and / or use of the Offering (or any part of it) which is necessary to facilitate Darktrace to integrate, configure, access or otherwise provide services in relation to the Offering;

"Data Processing Addendum" means the document titled Data Processing Addendum as provided by Darktrace from time to time and available at <https://darktrace.com/legal/data-processing-addendum>, which sets out the Parties' responsibilities in respect of any personal data processed pursuant to the Offering;

"Documentation" means user manuals for the Offering (or any part thereof) consisting of the applicable installation guides, datasheets, service descriptions, technical specifications and online help files provided by Darktrace or available on Darktrace's online portal, as may be updated by Darktrace from time to time excluding any: documents that are non-technical or of a marketing nature; blogs; videos; community posts; FAQs; or threat analyses, that may be made available from time to time;

"Effective Date" means the date of last signature of this Agreement;

"Fees" means all applicable fees as set out in the Product Order Form;

"GPL Software" means third party software provided by Darktrace on the Hardware to support use of the Software that is licensed directly to Customer and the relevant Customer Affiliates by the relevant rights holder on the terms of the version included or provided with it of the GNU General Public License, GNU Lesser General Public License or other comparable license.

"Hardware" means any hardware device (including embedded firmware) shipped and installed as part the provision of any Service(s);

"Hosted Location" means the location specified as such in the applicable Product Order Form or as otherwise agreed between the Parties in writing;

"Installation Service" means the standard installation and test procedures performed by Darktrace to confirm completion of the installation of the Appliance on the Site;

"Intellectual Property" means patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights (including rights of extraction) and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licenses and consents in respect of any of the rights and forms of protection mentioned in this definition (and **"Intellectual Property Rights"** will be construed accordingly);

"Offering" means collectively the Appliance(s), Hardware, Software, Services and the Documentation (and any combination thereof) ordered pursuant to a Product Order Form;

"Open Source Software" means third party software that Darktrace distributes with the Software pursuant to a license that requires, as a condition of use, modification or distribution of such software, that the software or other software combined and/or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; (iii) redistributable at no

charge; or (iv) redistributable but subject to other limitations;

"Outsource Provider" means any third-party service provider(s) such as an outsourcer, hosting, managed service, or collocation service provider or other information technology service provider for the performance of information technology functions appointed or engaged by or on behalf of the Customer;

"Product Order Form" has the meaning given to it in Clause 3.1;

"Services" means the Support Services, Installation Service and / or training or professional services in each case as specified in the Product Order Form;

"Support Services" means collectively the Standard Support Services and Support Service Options (if applicable) as per Appendix 2 (Support Services), as updated and amended from time to time;

"Support Service Options" means the optional support services, if any, as specified in the Product Order Form and further described in the applicable Documentation;

"Site(s)" means the Customer's or its Outsource Provider's business location or datacenter as described in a Product Order Form;

"Software" means the Darktrace and the Third-Party Software (in object code form) delivered to Customer as part of the Offering or on a standalone basis, together with all enhancements, error corrections, and/or updates which are generally made available by Darktrace as part of the Offering. The GPL Software does not form part of the Software and is licensed to Customer and the Customer Affiliates directly on the terms of the applicable licenses, provided that the GPL Software will nevertheless be deemed to form part of the Software for the purposes of the Support Services, such that Darktrace will support it as if it were part of the Software;

"Standard Support Services" means the standard support services to be provided by Darktrace as set out in Appendix 2 (Support Services);

"Subscription Period" means the period during which Darktrace shall make available the Offering, or part of the Offering, which commences on the Commencement Date and ceases at the end of the applicable Subscription Period;

"Third Party Software" means: (i) any software or other technology that is licensed to Darktrace from one or more third parties for the purpose of making the Offering available commercially; and (ii) Open Source Software.

"Third Party Products" means Third Party Software and / or components provided by any third party; and

"Usage Metric" means the permitted usage of the Offering, as set out in a Product Order Form.

1.2. Construction. In this Agreement (except where the context otherwise requires):

- 1.2.1. any reference to a clause or schedule is to the relevant clause or schedule of or to this Agreement and any reference to a paragraph is to the relevant paragraph of the clause or schedule in which it appears;
- 1.2.2. the clause headings are included for convenience only and will not affect the interpretation of this Agreement;
- 1.2.3. use of the singular will include the plural and vice versa;
- 1.2.4. any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organizations, governments, foundations and trust (in each case whether or not having separate legal personality);
- 1.2.5. any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms; and
- 1.2.6. any reference to any other document is a reference to that other document as amended, varied or supplemented (in each case, other than in breach of the provisions of this Agreement) at any time.

APPENDIX 2 - SUPPORT SERVICES

Please see <https://darktrace.com/legal/master-services-agreement>

APPENDIX 3 – DATA PROCESSING ADDENDUM

Please see <https://darktrace.com/legal/master-services-agreement>

APPENDIX 4 – PRODUCT SPECIFIC TERMS

Please see <https://darktrace.com/legal/master-services-agreement>

APPENDIX 5 – BUSINESS ASSOCIATE AGREEMENT

Please see <https://darktrace.com/legal/master-services-agreement>

Partner Name: SHI International Corp
 End User Name: Broken Arrow Public Schools
 Address: 210 N. Main Street Broken Arrow, OK 74012
 Attn: SHI
 Email: agbowser@baschools.org

Product Order Form Ref: 121147-202308-14-950027 Amendment Date: 2024/07/25

Darktrace and Partner entered into the above referenced Product Order Form with an Effective Date of 2024/07/01. For good and valuable consideration, the receipt of which is acknowledged, the parties hereby agree to amend the Product Order Form as provided below.

	Current Provision	Amended Provision
1		Darktrace shall add to the Offering the subscription of one (1) Darktrace Deployment Usage Fees/Cloud Master with the capacity of 20,000 CPM for the remainder of the Subscription Period.

Terms and Conditions		
1	Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Partner Agreement between the parties or the Darktrace Master Customer Agreement which governs the use of the Offering by the End User (either, the "Agreement").	
2	Except as expressly modified hereby, all other terms of the above referenced Product Order Form and Agreement will remain in full force and effect without modification. Please acknowledge these modifications by signing this Product Order Form Amendment ("Amendment") below and returning to us an executed copy.	
3	This Amendment may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. Transmission of the executed counterpart of this Amendment by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Amendment.	

Accepted by Partner

By: 
 Name: Chandler Gorda
 Date: 08/08/2024

Accepted by Darktrace

By: 
 Name: Ryan Marston
 Date: Aug 9, 2024

SHI
Darkface

Broken Arrow Public Schools



Authorized Signature

Printed Name

Steve Allen

Title

President of the Board of Education

Date

8.12.2024