

## **XM CYBER – END-USER SUBSCRIPTION TERMS (EULA)**

THESE END-USER SUBSCRIPTION TERMS (“**TERMS**” OR “**AGREEMENT**”) GOVERNS THE USE OF THE XM SOLUTION (AS DEFINED BELOW), INCLUDING SAAS, CLOUD-DELIVERED SECURITY SERVICES, AND THE XM SOLUTION. THIS IS A LEGAL AGREEMENT BETWEEN (A) YOU (REFERRED TO HEREIN AS “**CUSTOMER**”, “**YOU**” OR “**YOUR**”) AND (B) XM CYBER LTD. OR XM CYBER, INC, OR ANY OTHER AFFILIATE, AS DESCRIBED IN THE ORDERING DOCUMENT RELATED TO THESE TERMS ( “**XM**” OR “**COMPANY**”). PLEASE READ CAREFULLY THESE TERMS BEFORE INSTALLING, REGISTERING, ACCESSING, OR OTHERWISE USING THE XM SOLUTION PROVIDED TO YOU BY XM. THESE TERMS GOVERN YOUR USE OF THE XM SOLUTION REGARDLESS OF HOW THE XM SOLUTION WAS ACQUIRED, INCLUDING DIRECTLY VIA XM OR THROUGH AN AUTHORIZED PARTNER. BY INSTALLING, REGISTERING, ACCESSING, OR OTHERWISE USING THE XM SOLUTION, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY ALL THESE TERMS AND REPRESENT THAT YOU HAVE FULL RIGHT, POWER, AND AUTHORITY TO ENTER INTO THESE TERMS AND PERFORM HEREUNDER ALL OBLIGATIONS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK “ACCEPT” AND DO NOT INSTALL, REGISTER, ACCESS, OR OTHERWISE USE THE XM SOLUTION. FURTHERMORE, YOU HEREBY WAIVE ANY RIGHTS OR REQUIREMENTS UNDER ANY LAWS OR REGULATIONS IN ANY JURISDICTION WHICH REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS TO THE EXTENT PERMITTED UNDER APPLICABLE LAW. BOTH XM AND CUSTOMER MAY BE INDIVIDUALLY REFERRED TO AS A “**PARTY**” OR COLLECTIVELY AS “**PARTIES**”.

### **1. DEFINITIONS.**

- 1.1 “**Affiliate**” means any entity that Controls, is Controlled by, or is under common Control with either of the Parties. Control means having the power, directly or indirectly, to direct or cause the direction of the management and policies of the entity, whether through ownership of voting securities, by contract, or otherwise. Affiliates also include Schwarz Group Companies, including D. Schwarz Beteiligungs-KG, and all foreign and domestic entities in which the foregoing Control.
- 1.2 “**Cloud Provider**” – means a third-party entity that provides Cloud Services to XM and/or the Customer (such as STACKIT by Schwarz IT, Microsoft Azure, Amazon Web Services, etc.).
- 1.3 “**Cloud Services**” means the services provided by the Cloud Provider on the cloud, per the terms made known by the Cloud Provider as more fully outlined in this Agreement below.
- 1.4 “**Customer Data**” in these Terms, the term Customer Data shall mean the Customer Inputs and all of Customer’s and its User’s additional data, information, and materials that are uploaded by or for Customer or that are accessed by the Company in connection with Customer’s or its Users use of the XM Solution, as well as data originating from the Customer’s endpoints, network and assets, including without limitation its servers and computers. To the extent any Sensitive Information (as defined below) is processed or uploaded, Customer and XM will conclude a separate data processing agreement regarding the processing of Customer Data that contains Sensitive Information as required by applicable law.
- 1.5 “**Customer Inputs**” means information, data, text, content, videos, images, audio clips, photos, graphics, and/or other types of content, information, and/or data posted, provided, and/or uploaded by the Customer to the Cloud Services by Customer.
- 1.6 “**Documentation**” means text and/or graphical materials, whether in print or electronic form, that describe the features, functions, and use of the XM Solution (including the user manual) and which are generally made available by XM to its customers.

- 1.7 **“Intellectual Property Rights”** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, trade names, logos, know-how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered, divisions, applications, continuation, renewals, reissues and extensions of the foregoing (as applicable) now existing or at any time in the future generated, created, filed, issued, or acquired and all rights related to the preceding.
- 1.8 **“Object Code”** means computer programming code in the form not readily perceivable by humans and suitable for machine execution without the intervening steps of interpretation or compilation.
- 1.9 **“Updates”** means all updates, service patches, upgrades, enhancements, improvements, maintenance releases additions, and modifications made to the XM Solution from time to time, which may enhance or improve the existing functionality and technology, which are generally made available by XM to its customers at no additional costs. These Updates may contain error corrections, bug fixes, enhancements, patches, or other changes to the XM Solution. Updates may also include new features and functionalities.
- 1.10 **“Partner(s)”** means XM authorized channel partner(s), including without limitation any authorized reseller(s) and/or distributor(s).
- 1.11 **“Sensitive Data”** means any (i) categories of data enumerated in Article 9(1) of the European Union’s General Data Protection Regulation (Regulation 2016/679, aka the GDPR) or any successor law; (ii) credit, debit or other payment card data including those under the Payment Card Industry Data Security Standards (“PCI DSS”); (iii) any nonpublic personal information (NPI) or personal health information (PHI) data (as defined by applicable law including the Health Insurance Portability and Accountability Act and its implementing rules and regulations); or (iv) any other personally identifiable information or personal data, as defined by applicable privacy laws, relating to health/genetic or biometric information; religious beliefs or affiliations; political opinions or political party membership; labor or trade union membership; sexual preferences, practices or marital status; national, racial or ethnic origin; philosophical or moral beliefs; criminal record, investigations or proceedings or administrative proceedings; financial, banking or credit data; date of birth; social security number or other national id number, drivers’ license information; or any other “sensitive data” category specifically identified under any applicable privacy laws.
- 1.12 **“Software”** means the Object Code version of XM proprietary software offering and all Updates generally made commercially available by XM as of the Effective Date, which is licensed under this Agreement and any Order Form during the term of this Agreement.
- 1.13 **“Subscription”** means the scope and limitation on the subscription and license to use the XM Solution, including specific limitations on the number of permitted endpoints and network assets to be used by the Customer with the XM Solution set out in Customer’s specific purchase order(s).
- 1.14 **“Subscription Period”** means the contemplated license period(s) under which Customer may use the XM Solution for which it has paid Subscription fees.
- 1.15 **“Subscription Scope”** means the Subscription terms, Subscription Period, and any other usage scope and metrics, terms and restrictions on the scope of Subscription, all as outlined in the applicable purchase order(s).

- 1.16 **“User”** means Customer’s employees, contractors, consultants, or other individuals within Customer’s internal organization who are authorized by the Customer to use the XM Solution within the Subscription Scope and usage metrics according to the terms and conditions of these Terms.
- 1.17 **“XM Solution”** means XM’s proprietary Software that automatically simulates and remediates cyber-attack exposures. The Software and/or any applicable Documentation may be modified and updated by XM from time to time at its sole discretion.
- 1.18 **“Usage Data”** means any non-Customer-identifying information, data, reporting, suggestions, analyses, and/or intelligence relating to the operation, support, and/or Customer’s use (in an anonymized manner), of the XM Solution and/or the Services (such as metadata, aggregated data, analytics, security findings or discoveries, etc.).

## **2. GRANT OF LICENSE; RESTRICTIONS ON USE**

- 2.1 Subject to these Terms and solely during the Term hereof, the installation, activation, and use of the XM Solution (and as applicable, related integrations and XM Solution) shall be enabled on the Customer’s networks and assets, locally or remotely hosted on the cloud according to the Subscription Scope. Customer shall have the ability to choose its designated tenant location as part of the product installation process pending availability of the Cloud Provider regions.
- 2.2 Subject to Customer’s compliance with the Subscription Scope, these Terms, and payment of due Subscription Fees, Customer is granted during the Subscription Period, a non-exclusive, non-transferable, non-sublicensable license to use the XM Solution in machine-readable, Object Code form only, by its Users, solely for Customer’s internal business purposes and install it at all times either at the Customer’s premises or hosted on the cloud with the Cloud Provider, and not installed in any other Customer’s site, all per the terms and conditions outlined in these Terms. For the avoidance of doubt: (i) the Subscription is subject to the applicable Subscription Scope, and Customer shall not use any technical or other means within, or external to, the XM Solution to exceed or circumvent the Subscription Scope, and (ii) the XM Solution is only licensed (and not sold) hereunder. Any rights not expressly granted herein are hereby reserved by Company and its licensors, and, except for the Subscription, Customer is granted no other right or license in or to the XM Solution, whether by implied license, estoppel, exhaustion, operation of law, or otherwise. Unless the Purchase Order specifies otherwise, delivery of the XM Solution shall be by electronic download. The XM Solution will be deemed accepted once made available for electronic download.
- 2.3 XM may make available to the Customer certain Documentation for the Customer’s internal use and solely connected with the XM Solution. The Documentation shall be considered XM’s Confidential Information (as further defined). The Customer may print or copy the Documentation as needed for its internal business purposes provided that all copyright notices and the XM’s proprietary Marks are included in the XM Solution and/or the Documentation.
- 2.4 The XM Solution will include Updates XM provides to its customers as part of the XM Solution from time to time.
- 2.5 Except for copies made solely for backup purposes, the Customer may deploy or possess only the number of copies of the XM Solution according to these Terms and only in accordance with XM’s applicable user Documentation. The Customer will ensure that all use of the XM Solution by its Users is consistent with the preceding and adhered to.

## 2.6 Retention of Rights and Restrictions.

- 2.6.1 **Retention of Rights.** These Terms only give the Customer limited rights to use the XM Solution and other associated integrations explicitly outlined in these Terms, and XM (or its licensors, as applicable) reserves all other rights. The XM Solution and related integrations are licensed, not sold.

The terms of this Agreement shall also apply to Updates and upgrades made to the XM Solution and Documentation that are subsequently provided by Company to the Customer.

- 2.6.2 **License Restrictions.** Customer agrees to limit the use of the XM Solution to the licensing usage scope and restrictions (if any) as actually ordered by the Customer. As a condition to use the XM Solution (and except as expressly permitted by the Subscription) the Customer agrees that it will not, nor will it allow any third party including Users to do any of the following regarding the XM Solution, including any part thereof: (i) work around any technical protections; (ii) modify, translate, reverse engineer, decompile, disassemble the XM Solution, integrations, or components and any part thereof, or create any derivative work based thereon; (iii) exceed the Subscription Scope; (iv) test the XM Solution or use the XM Solution in connection with any benchmark tests or any other tests or comparisons of which the results are to be published in any form or media; (v) rent, lease, lend, assign, sublicense, transfer, publish or make available the XM Solution (including any related cyber threat simulation reports and output) to the public or any third party; (vi) use the XM Solution to operate a service bureau or subscription service or for commercial software hosting XM Solution; (vii) disclose or attempt to disclose the XM Solution and/or related integrations or components, or their sources by any means of dissemination; (viii) represent that Customer possess any proprietary interest in the XM Solution; (ix) directly or indirectly, take any action to contest XM's (or its licensors) intellectual property rights in or in connection to the XM Solution or related integrations or XM Solution or infringe them in any way; (x) use the XM Solution or any output thereof to compete with XM or (xi) will not remove, alter or obscure proprietary notices and the Marks that appear on or in the XM Solution and Documentation, and will reproduce them on or in any copies or (xii) use the XM Solution to circumvent the security of another person's network/information, develop malware, unauthorized surreptitious surveillance, data modification, data exfiltration, data ransom or data destruction; or (xiii) Use the XM Solution in violation of applicable laws.

- 2.7 **Marks and Use of XM's Name.** These Terms do not grant the Customer any rights to XM's trademarks logos, trade names or service marks ("**Marks**"). The Customer will not remove or modify any XM Solution Marks or notice of XM's proprietary rights within the XM Solution and/or its Documentation.

- 2.8 **Use of Customer's name.** The Company may identify Customer as its customer when referring to lists of customers. Company may use Customer's name and logo on any of Company's website and marketing brochures and other materials. Neither Party may disclose the terms of this Agreement to any third party, except as required by law.

**2.9 XM Solution Minimum Requirements.** The Customer agrees that the proper use of the XM Solution may require compatible hardware, internet access, and certain software, as further described in the Documentation provided by XM.

**2.10 Compliance with these Terms and the Subscription Scope.** The Customer must notify XM without undue delay about (i) any unauthorized or misuse of the XM Solution or (ii) any security incident Customer realizes in connection with the XM Solution. XM shall have the right to monitor and audit the XM Solution to verify Customer compliance with these Terms, including the Subscription Scope.

**2.11 Compliance with Laws.** Customer represents it is compliant and causes anyone on its behalf to comply with all applicable laws, rules, regulations, and guidelines relating to the use of the XM Solution under these Terms or any part thereof.

**2.12 Anti-Bribery Policy.** Without derogating from the generality of Section 2.11 (*Compliance with Laws*), the Customer represents it is compliant and causes anyone on its behalf to comply with (i) XM's Anti-Bribery Policy, incorporated to these Terms by reference and can be found at [\[Anti-Bribery Policy\]](#) or any similar internal policy adopted by the Customer.

### 3. CUSTOMER DATA

3.1. Other than as set forth in Section 9 (*Intellectual Property; Confidential Information*) below, all Customer Data together with all reports of cyber-threat analysis produced through the use of the XM Solution pursuant hereto ("**Reports**"), is and will remain at all times the property of Customer.

3.2. During the Term of this Agreement, Customer is authorizing XM Cyber, to install and connect the XM Solution directly or indirectly (via Cloud Providers) to any of the Customer's network and assets, including without limitation Customer Data, for (i) billing, activation, provision, maintenance, upgrades, updates, deactivation and/or use of the XM Solution and/or related products and/or services and (ii) use Customer Data, for the sole purpose and as necessary to carry out the Subscription and XM Solution contemplated under these Terms, including enabling any Third-Party Integration enabled by Customer under these Terms.

3.3. The Customer grants XM an irrevocable, perpetual, non-transferable, non-sublicensable, non-exclusive, royalty-free right to use, have used, any depersonalized anonymous or statistical data, which does not identify Customer or its Users, and any derivative, or data which is derived or deducted by XM from Customer's and its Users' use of the XM Solution pursuant hereto, for XM's analytics, research, development, internal uses and to generate general insights, reports and publications for cyber threats, and/or XM's industry, products and performance.

3.4. The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use Customer Data. Customer acknowledges and agrees that it bears sole responsibility for adequately controlling, processing, storing, and backing up its Customer Data, as applicable.

3.5. The XM Solution is not intended to, and will not, operate as a data storage or archiving product or service, and Customer agrees not to rely on the XM Solution for the storage of any Customer Data whatsoever. Customer is solely responsible and liable for the maintenance and backup of

all Customer Data. Upon termination of this Agreement, Company reserves the right to delete all Customer Data within 60 days following termination.

- 3.6. The Company may, directly or indirectly, collect and use Usage Data for the purpose of enhancing, operating, and supporting the Services and the XM Solution, provided the Usage Data does not include any Customer personal information. Furthermore, the Company will not share the Usage Data with any third party and shall process it solely in accordance with the Company's privacy policy and the terms of this Agreement.
- 3.7. **Company Materials.** Company (and/or its licensors, as applicable) is, and shall be, the sole and exclusive owner of all right, title and interest (including without limitation all Intellectual Property Rights) in and to the (a) XM Solution and the XM Solution content; (b) Company's Confidential Information; (d) Any Customer Inputs, Feedbacks (as defined in Section 9.2 below), suggestions, or ideas for or about the XM Solution or the Services; (e) Usage Data; and (f) Any and all improvements, derivative works, and/or modifications of/to any of the foregoing, regardless of inventorship or authorship.

#### 4. **SUBSCRIPTION FEES**

- 4.1. **Subscription Fees.** The Subscription fees, the transacted currency, and payment terms shall be agreed upon between XM (or its Partners) and the Customer under an applicable purchase order. The Customer shall pay the Subscription fees, according to the relevant purchase order(s), together with any applicable VAT or sales taxes. All Subscription fees shall be non-cancelable, and the sums paid shall be non-refundable except as specifically described under these Terms in Sections 8.5 or 10.3.
- 4.2. **Taxes and Charges.** All amounts payable by Customer are exclusive of any taxes, fees, duties, shipping, or other charges. The Customer will be responsible for all taxes (other than XM's income taxes), fees, duties, shipping, or additional charges concerning the license and use of XM Solution.

#### 5. **SUPPORT AND MAINTENANCE**

- 5.1. Subject to Customer compliance with these Terms and as long as it pays all due Subscription fees, XM shall provide to the Customer standard support to the XM Solution for no additional charge as part of the Subscription fee in accordance with the support terms set forth in XM's Technical Support Program effective as of that date ("[XM Support Program](#)"). In the event Customer wishes to purchase premium support from XM, it may do so in any given purchase order at such additional price to be agreed between the Parties within the applicable order.
- 5.2. Availability. The hosting of the XM Solution (and related processing) will be provided by a third party Cloud Provider selected by Company, and accordingly the availability of the XM Solution shall be in accordance with the Cloud Provider's then-current uptime commitments; provided, however, that XM guarantees a monthly uptime service level of 99.9%, except for routine system maintenance as defined in the Technical Support Program and unforeseen circumstances including any Force Majeure event, which are exempt from this guaranteed uptime. In the event of falling below the guaranteed service level, the Customer will be eligible for the remediation efforts set forth in the XM Support Program.

#### 6. **PROFESSIONAL SERVICES**

- 6.1. Unless agreed in writing otherwise, the provided XM Solution and the XM Support Program do not include any installation, integration, customization, or other supplementary services (“**Professional Services**”).
- 6.2. If Customer desires to receive any Professional Services, such Professional Services may be ordered by the Customer individually under any applicable purchase order and applicable Statement of Work at a cost per XM’s price list.

## 7. **Third-Party Service Integrations, Plug-In(s), and Components.**

- 7.1. **Third-Party Software.** The XM Solution is provided together with third-party software(s) (“**Third-Party Software**”), and all warranties supplied to XM’s Solution include all embedded Third-Party Software. XM will use its best efforts to contain the applicable notices and disclaimers relating to Third-Party Software programs in the Documentation provided with such Third-Party Software.
- 7.2. **Third-Party Service Integration(s) and Data Exchange.** The Customer may enable, at its discretion, optional third-party plug-ins, modules, or integrations intended to enhance or complement the functionalities or usability of the XM Solution (“**Third-Party Integrations**”). Upon enablement of any Third-Party Integration(s) by Customer in conjunction with the XM Solution, and as long as such Third-Party Integration(s) remain enabled and/or active, Customer confirms the following (i) Customer has a valid license and/or other authorization to use the applicable Third-Party Integration, and Customer is and shall continue to comply therewith during the Subscription Period; and (ii) certain Customer Data, and other information generated and/or obtained under these Terms, will be exchanged and used to enable the integration with the XM Solution; (iii) Customer has the authority and obtained consent from the Third-Party Integration operator(s) (if and to the extent necessary) to enable the integration hereunder. To avoid any doubt, the Customer shall be responsible for any breach of this Section and/or the terms and conditions governing the use of the Third-Party Integrations as described hereunder; Third-Party Integrations are no part of the XM Solution provided from XM to Customer; therefore XM does not grant Customer any warranty or support and maintenance for Third-Party Integrations or data received from Third-Party Integrations used by Customer in connection with the XM Solution; Section 11 “*Limitation of Liability*” shall not be affected.

## 8. **WARRANTY**

- 8.1. **Mutual Warranties.** Each party warrants that it: (a) has the legal power to enter into this Agreement and to perform its obligations hereunder; and (b) complies with all applicable laws in its performance hereunder.
- 8.2. **Customer Warranties.** Customer warrants that (i) it has all legal rights to all Customer Data , including the right to provide the Company access to the Customer Data in accordance with the terms of this Agreement and to upload the Customer Data to the XM Solution; (ii) it is solely responsible for the development, content, operation, maintenance, and use of Customer Data; (iii) the Customer Data will not violate any applicable law and infringe any rights, including any privacy rights or proprietary rights, of any third parties; (iv) it will ensure that the Customer Data available within the XM Solution will not include Sensitive Data and shall inform its personnel not to disclose Sensitive Data through its use of the XM Solution and Services, unless the Parties have executed XM’s applicable data protection agreement.
- 8.3. **Limited Warranty.** XM warrants that it has the necessary authority to execute, deliver and perform its obligations under these Terms. Executing these Terms will not violate any

pre-existing commitments and/or agreements. XM warrants that the XM Solution shall work, for the Customer's benefit alone, per the Documentation if operated accordingly.

- 8.4. **DISCLAIMERS.** XM ONLY GUARANTEES THE PERFORMANCE OF THE XM SOLUTION ACCORDING TO THE EXPRESS WARRANTIES STATED IN SECTION 8.3 ABOVE. XM DOES NOT WARRANT THAT THE XM SOLUTION IS ERROR-FREE OR BUG-FREE OR THAT THE XM SOLUTION WILL RUN UNINTERRUPTED, OR THAT ALL ERRORS CAN OR WILL BE CORRECTED, OR THAT THE XM SOLUTION WILL OPERATE IN HARDWARE AND SOFTWARE COMBINATIONS OTHER THAN AS EXPRESSLY REQUIRED BY XM IN THE DOCUMENTATION OR THAT THE XM SOLUTION WILL MEET ANY CUSTOMER REQUIREMENTS NOT EXPLICITLY AGREED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY WARRANTED ABOVE, XM PROVIDES THE XM SOLUTION AND ALL ASSOCIATED MATERIALS "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THE CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY OBLIGATIONS OF XM CONCERNING THE WARRANTY SET FORTH ABOVE SHALL BE CONTINGENT UPON (I) THE CUSTOMER'S ADHERENCE TO GUIDELINES PROVIDED BY XM AS WELL AS BY THE CLOUD PROVIDER, WHERE RELEVANT; (II) THE CUSTOMER'S CONTINUED USE OF THE XM SOLUTION IN AN APPROPRIATE WORKING ENVIRONMENT AS DESCRIBED IN THE DOCUMENTATION; (III) CUSTOMER'S ADHERENCE TO OTHER TECHNOLOGY-USAGE GUIDELINES OUTLINED IN THE DOCUMENTATION OR COMMUNICATED BY XM TO CUSTOMER FROM TIME TO TIME. FOR THE AVOIDANCE OF DOUBT, IN THE EVENT CUSTOMER OR ANY CUSTOMER USER, USES THE XM SOLUTIONS IN A NON-CONFORMING WORKING ENVIRONMENT, XM SHALL HAVE NO LIABILITY WHATSOEVER TO THE FUNCTIONALITY (OR LACK THEREOF) OF THE XM SOLUTION.

- 8.5. **Exclusive Remedies.** For any breach of the warranties in Section 8.3 (*Limited Warranty*), the Customer's exclusive remedy, and XM's entire and sole liability under this Agreement, shall be to repair or replace the XM Solution so that it operates as warranted in Section 8.3 and according to the XM Support Program; provided that (i) Customer has fully paid all applicable and due fees, (ii) Customer is not in breach of this Agreement, and (iii) Customer, promptly upon discovery, has reported in writing to XM of the claimed failure. If XM cannot repair, workaround, or replace any critical or high error (Severity 1 and Severity 2) found in the XM Solution, within thirty (30) days of receiving such notice, XM shall refund the Customer on a pro-rata basis the Subscription Fee paid for the actual period that the Customer was unable to use the XM Solution due to the warranties' breach. XM may deny any obligation or liability under this Section 8 (*Warranty; Disclaimers*) if the XM Solution has been improperly installed or used in a manner other than as specified in the Documentation; or (iii) if the Customer violated the restrictions set forth under Section 2 (*Grant of License; Restrictions on Use*) hereto. Unless otherwise prior agreed between the Parties, the warranty shall also not apply if the XM Solution is used on unauthorized Cloud Service or not in compliance with the XM Solution's intended use.

## 9. Intellectual Property; Confidential Information

- 9.1. **Intellectual Property.** XM and its Affiliates, suppliers, and licensors own and retain all rights, title, and interest in and to (i) the XM Solution, and any related XM Solution Documentation and all worldwide Intellectual Property Rights in each of the foregoing (including all copies, components thereof and all upgrades, modifications, enhancements, and derivative works

thereof); and (ii) all copyrights, patent rights, trade secret rights, trademark and other proprietary rights relating to the XM Solution and Documentation. Customer acknowledges and agrees that it shall have no rights concerning any of the above other than the limited license rights expressly granted in this Agreement. Customer shall not copy the Software and/or its Documentation or any other written materials regarding the Software unless expressly permitted under Section 2 (*Grant of License; Restrictions on Use*) or any other express written agreement between the Parties. The XM Solution and related software are protected by applicable intellectual property laws, treaties, and international copyright law. XM expressly reserves all rights in the XM Solution, Software, and the Services, and all rights in and related thereto will remain vested exclusively with XM. The XM Solution is licensed on a subscription basis and not “sold” to the Customer. The Customer will not do anything to impair XM's proprietary rights in the XM Solution or Services or seek to acquire or register any rights in XM's proprietary Marks, copyrights, or information.

- 9.2. Feedback.** If the Customer provides XM with any suggestions, comments, or other feedback relating to the Services, or if XM, independently or via its third-party service provider, generates any knowledge in connection with the provision of the Services and any related services or the use thereof (collectively “**Feedback**”), whether such Feedback is provided or generated (as applicable) before, on or after the Effective Date, such Feedback is and shall become the property of XM and/or its Affiliates. XM shall only use such Feedback in an anonymous depersonalized way that does not identify Customer or the Customer Data in any manner. To the extent that the foregoing assignment is ineffective for whatever reason, you agree to grant and hereby grant to XM a nonexclusive, perpetual, irrevocable, royalty-free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform and otherwise exploit such Feedback without restriction.
- 9.3. Confidential Information.** Before or during the Term of these Terms, the Parties may, directly or indirectly, disclose to each other, or have access to, certain Confidential Information (as defined below) of the other Party, whether in writing, oral form, or in any different manner. “Confidential Information” means all information, data, and know-how of a private, non-public or confidential nature, in whatever form, that relates to the business, financial condition, technology, and/or products of the disclosing party, its Affiliates, customers, suppliers, or potential customers or suppliers, provided or disclosed to the receiving party or which becomes known to the receiving party, or is viewed by the receiving party during a visit to the disclosing party’s facilities, whether or not marked or otherwise designated as “confidential,” “proprietary” or with any other legend indicating its proprietary nature. By way of illustration and not limitation, Confidential Information of XM includes all forms and types of financial, business, scientific, technical, or engineering information and know-how, including but not limited to concerning the XM Solution. Confidential Information of Customer includes but is not limited to all Customer Data and Reports.
- 9.4.** Confidential Information shall not include information or any matter that the receiving party can demonstrate by written and dated evidence: (a) was already known to the receiving party from a source other than the disclosing party before the disclosure; (b) was independently developed by the receiving party without the use of, or reference to, the Confidential Information; (c) has become a part of the public knowledge, through no fault of, or breach of these Terms by the receiving party; (d) was lawfully received by the receiving party from another person or entity having no confidentiality obligation to the disclosing party or its Affiliates; or (e) is explicitly approved in writing by the disclosing party for release by the receiving party. The receiving party

shall treat all Confidential Information of the disclosing party as strictly confidential, and except as expressly contemplated hereunder it shall: (a) not, directly or indirectly use or otherwise exploit Confidential Information for any other purpose other than for performing hereunder; (b) refrain, either by itself or through any third party, from analyzing or attempting to analyze the Confidential Information or any part of it, including by way of disassembly, decompiling or reverse engineering any samples, prototypes, software or other tangible objects, in order to determine the composition, design or specifications thereof; (c) not modify, create derivative works based, or emulate the functionality of any samples, prototypes, software or other tangible objects constituting Confidential Information; (d) protect and safeguard the Confidential Information against any unauthorized use, disclosure, transfer or publication with at least the same degree of care as it uses for its own confidential or proprietary information, but in no event using less than a reasonable degree of care; (e) restrict disclosure of the Confidential Information to those directors, officers, employees, consultants, professional advisors, or representatives of itself or of its Affiliates (“**Representatives**”) who clearly have a need-to-know such Confidential Information, and for no purpose other than for performing hereunder; (f) advise such Representatives of their obligations to comply with the terms and conditions of these Terms, and receiving party shall be liable for any failure of its Representatives to comply with any terms of these Terms; and (g) notify the disclosing party immediately upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of these Terms. If the receiving party becomes legally compelled to disclose any confidential information. In that case, it will provide the disclosing party with prompt notice thereof so that the disclosing party may seek a protective order or other appropriate remedies against the disclosure. In any event, it will limit the disclosure to the greatest extent possible under the circumstances. The receiving party acknowledges that a breach of this Sections 9.3 and 9.4 (*Confidential Information*) will cause irreparable damage to the disclosing party that cannot be calculated or that cannot be adequately compensated for by money damages and, accordingly, the disclosing party shall be entitled to seek injunctive relief under these Terms, as well as such further relief as may be granted by a court of competent jurisdiction.

- 9.5. **Exclusions.** The duties described in Sections 9.3 and 9.4 will not apply to any information that: (a) is or becomes publicly available through no fault of the receiving party; (b) is rightfully known by the receiving party prior to disclosure by the disclosing party; (c) is rightfully obtained by the receiving party without restriction from a third party not known by the receiving party to be subject to restrictions on disclosure; or (d) is disclosed by the receiving party with the prior written approval of the disclosing party; or (e) was independently developed without any use or reference to any Confidential Information of the disclosing party as evidenced by the Receiving Party’s written records; or (f) is required by law, in which case the receiving party will immediately notify in writing the disclosing party (if legally permitted) so that the latter may seek to obtain a protective order affording confidential treatment to such Confidential Information or such other appropriate remedy which may be available under applicable law. Receiving party may disclose Confidential Information if and only to the extent it is required to be disclosed by law or regulatory or court order, so long as, if permitted under applicable law, receiving party provides advance notice to the Disclosing Party as promptly as possible and reasonably cooperates with the disclosing party’s efforts to limit or obtain a protective order or other relief regarding such disclosure at disclosing party’s expense.

- 9.6. **Return of Information.** Promptly following termination of this Agreement or the end of the Term (whichever comes first), each party shall return all Confidential Information of the other party to such party or, at such party's election, undertake all commercially and technically reasonable efforts to destroy all of the other party's Confidential Information that is in intangible format and certify as to such return or destruction. Notwithstanding anything to the contrary contained in this clause, the receiving Party may retain that portion of the Confidential Information that may be required to be retained to comply with the applicable laws, provided that such retained information shall not be disclosed or used in violation of this Agreement and shall remain subject to the duties of confidentiality under this Agreement, until such time it is returned or destroyed in accordance with this Agreement or applicable law.

## 10. INTELLECTUAL PROPERTY INFRINGEMENT; INDEMNIFICATION

- 10.1. **Infringement Indemnification.** XM shall indemnify and hold Customer harmless at XM's sole cost and expense, for any claim, suit, expenses, damages, or proceeding brought against Customer which alleges that the XM Solution, as delivered and used under these Terms, infringes any third-party patent, copyright, or other Intellectual Property Rights ("**Claim**"). XM will pay the amount of any final judgment or settlement of such Claim awarded against Customer, provided that Customer gives XM written notice promptly upon becoming aware of such Claim or threat of Claim and allows XM to assume complete control of the defense and settlement of such Claim. Any settlement intended to bind Customer shall not be final without Customer's written consent, which consent shall not be unreasonably withheld. The Customer undertakes to provide XM with complete information and reasonable assistance in its defense or settlement.

10.2. **Limitations on Indemnity Obligations.**

In no event shall Customer enter into any settlement or agree to any disposition that contains an admission of liability or wrongdoing on the part of XM or otherwise prejudices the rights of XM without the prior explicit written consent of XM. XM shall have no obligation or liability under this Section 10 (indemnification) for any claim of infringement that is based on or results from: (i) modification of the XM Solution not performed by XM; (ii) use by Customer of a superseded or altered release of the XM Solution or Documentation if such infringement would have been avoided by the use of a current unaltered release of the XM Solution or Documentation that XM made available without any additional cost to Customer; (iii) the use of the XM Solution with any software and/or hardware not supplied or approved by XM, (iv) customizations and/or adjustments and/or other changes made in whole or in part in accordance with Customer's instructions or specifications and such claim would not have occurred but for such specifications or instructions provided by Customer (v) the combination, operation or use of the XM Solution with any other software or hardware not provided by XM if the infringement would not have arisen but for such combination or other actions; or (vi) unauthorized use of the XM Solution, including without limitation, where Customer's use of the Software is not strictly per the terms of this Agreement or its Documentation.

- 10.3. **Remedies.** If an injunction is obtained against Customer's use of the XM Solution due to a third party Claim, XM may, at its option and expense, either: (i) obtain for Customer the right to continue to use the XM Solution; (ii) replace the XM Solution with a product with substantially equivalent functionality, or (iii) modify the XM Solution so that it becomes non-infringing while maintaining substantially equivalent functionality. If XM does not succeed in doing so within a

reasonable period of time, or it is not commercially practical, both Parties are allowed to terminate the affected Subscription with immediate effect. In that case, XM shall refund Customer the prepaid Subscription Fees calculated on a prorated basis from the date the Customer has notified in writing XM, that the XM Solution became unavailable for the Customer's use.

## 11. **LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL OR EQUITABLE BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR ANTICIPATED OR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION) ARISING IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE XM SOLUTION, THE SERVICES, SUPPORT SERVICES, OR PROFESSIONAL SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. XM'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE FEES PAID TO XM IN CONNECTION WITH THE XM SOLUTION DURING THE 12 MONTHS PERIOD BEFORE THE CAUSE OF ACTION. THE PRECEDING LIMITATIONS OF THIS SECTION 11 (*LIMITATION OF LIABILITY*) WILL NOT APPLY TO LIABILITY CAUSED BY EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9, EITHER PARTY'S INDEMNITY OBLIGATIONS IN SECTION 10 ABOVE, EITHER PARTY'S GROSS NEGLIGENCE, FRAUDULENT ACTIVITY, OR CUSTOMER'S BREACH OF ANY RESTRICTIONS, OBLIGATIONS, AND REPRESENTATIONS UNDER SECTIONS 2 (GRANT OF LICENSE; RESTRICTIONS ON USE) HEREUNDER. ALL CLAIMS MUST BE BROUGHT WITHIN ONE (1) YEAR OF INITIAL USE OF THE SERVICE, REGARDLESS OF THEIR NATURE.

## 12. **TERM AND TERMINATION.**

12.1. **Term.** These Terms shall enter into effect as of the Subscription commencement date and end upon the Subscription end date, both specified in the applicable purchase order ("**Term**"). At the end of the Term, the Customer may renew its subscription for the XM Solution for additional subscription periods by issuing a new purchase order to XM or any of its Partners and paying the related Subscription fee due for such renewal period.

12.2. **Termination.** This Agreement and all licenses granted hereunder will automatically terminate upon the earlier of either: (i) at the end of the thirty (30) day period following written notice of any material breach delivered by either Party to the other Party provided that any such breach remains uncured at the end of such notice period; (ii) immediately in case of Customer's breach of Section 2 (*Grant of License; Restrictions on Use*), or Customer's failure to timely pay its due fees and/or breach of Section 4 (*Fees*) or (iii) automatically the end of the Subscription Period if not renewed.

12.3. **Survival Following Termination.** Section 2.6.2 (*License Restrictions*), 8 (*Warranty; Disclaimers*), 9 (*Intellectual Property; Confidential Information*), 10 (*Intellectual Property Infringement; Indemnification*), 11 (*Limitation of Liability*), 12 (*Term and Termination*), and 14 (*General*) will survive any termination or expiration of this Agreement.

## 13. **DESTRUCTION OF MATERIALS AND DOCUMENTATION UPON TERMINATION OR EXPIRATION OF SUBSCRIPTION.** Upon termination or expiration of these Terms Customer must cease using the

XM Solution and Documentation and within thirty (30) days after termination or expiration destroy or return (at XM's discretion) the XM Solution, Documentation, and any copies thereof (in all forms, partial and complete, in and on all types of media and computer memory, and whether modified or merged into other materials). Either Party shall return to the other Party and purge its systems from any Confidential Information it holds or has access to and certify of the same in writing. The foregoing obligation to destroy or return copies does not apply to the extent a party needs to keep such copies for internal purposes and/or to the extent such copies are required for regulatory purposes.

## 14. GENERAL

14.1. **Monitoring; Auditing.** The Customer understands and consents that the XM Solution is designed to track the number of licenses used. The Customer grants XM the right to monitor its usage and verify compliance with this Agreement. If any audit reveals that additional fees are owed to XM, then such fees will be paid immediately. Furthermore, if Customer uses the XM Solution other than as licensed under this Agreement (or under any purchase order), Customer agrees to pay XM the then-current fees and any related service fees for such unpermitted use. Further rights of XM due to misuse or exceeded usage of the XM Solution by the Customer remain unaffected.

2.1 **Governing Law.** This Agreement's validity, interpretation, and performance shall be controlled and interpreted under the laws of the State of Israel (without regard to any conflicts of law principles). The Parties hereby consent to the competent courts' exclusive jurisdiction in Tel-Aviv, Israel to settle any dispute or claim arising from or in connection with this Agreement or its subject matter. The Parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

14.2. **Headings.** The paragraph headings in these Terms have been inserted merely for convenience, and it shall not affect the Parties' rights and obligations or the meaning of the language in these Terms.

14.3. **Assignment.** Customer may not assign, transfer or delegate these Terms or any of its rights or obligations hereunder. Any such unauthorized assignment by Customer shall be null and void. XM shall have the right to assign these Terms and/or to assign its rights and delegate its duties, obligations, or commitments, either in whole or in part, to any of its Affiliates or to any successor company in connection with a sale or transfer of all or substantially all of its assets, stock, or business by sale, merger, consolidation, or similar transaction. Subject to the preceding limitation, these Terms will inure to benefit and be binding upon the Parties, their successors, and assigns.

14.4. **Electronic Signature.** This Agreement may also be entered into in digital form through an electronic signature.

14.5. **Severability.** If any provision or part of these Terms is held to be invalid or unenforceable by any court of competent jurisdiction, it shall be amended to the extent required to render it valid, legal, and enforceable, or deleted if no such amendment is feasible. Such amendment or deletion shall not affect the enforceability of the other provisions hereof.

14.6. **Waiver.** No waiver of any breach of these Terms will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving Party. The failure of either Party to enforce any rights granted hereunder or to act

against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or following actions in the event of future breaches.

- 14.7. **Relationship.** This Agreement is designed for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. The parties expressly agree that they are independent contractors and do not intend for this Agreement to be interpreted as an agency, joint venture, or partnership relationship between the parties.
- 14.8. **Entire Agreement; Precedence; Interpretation.** This Agreement, including any referenced written addenda, and exhibits, constitute the entire agreement between the Parties and supersedes all previous agreements or representations, written or oral, concerning its subject matter. All other written or oral arrangements, general terms and conditions of a Customer, understandings, and agreements are excluded. In the event of any conflict between the provisions of this Agreement any other contract or terms of sale/terms of use, including without limitation general terms and conditions attached to any Customer purchase order or any other document, the terms of this Agreement will govern at all times with respect to the XM Solution and Services being provided hereunder. Each Party acknowledges and agrees that any interpretation of this Agreement may not be construed against a Party by virtue of that Party having drafted the provisions. If there is a conflict among this Agreement, purchase order, SOW, or any additional or different terms and conditions on Customer's documentation including but not limited to any general terms and conditions or other document communicated by the Customer (eg. General terms attached to a customer purchase order), the terms of this Agreement shall prevail, supersede and govern at all times.
- 14.9. **Modifications.** These Terms may not be modified or amended except in writing and signed by a duly authorized representative of each Party.

**XM CYBER LTD.****By** \_\_\_\_\_**Name** \_\_\_\_\_**Title:** \_\_\_\_\_**Date:** \_\_\_\_\_**CUSTOMER:****By** \_\_\_\_\_**Name** \_\_\_\_\_**Title:** \_\_\_\_\_**Date:** \_\_\_\_\_