

This is a 38 month non-cancellable term with an annual payment structure. The customer agrees that all payments will be paid in a timely manner based on the payment schedule below

The total amount and payments due herein are separate from, and in addition to, any payments due in connection with any other Carahsoft transaction. Failure to pay any installment in a timely fashion will result in all remaining payments to become immediately due. Any fees paid will be nonrefundable. For U.S. Government Resellers, such Resellers agree to obtain End User Customer's acceptance of Zscaler's end user subscription agreement (EUSA) by either (1) obtaining End User Customer's signature on a hard copy of the EUSA; (2) ensuring the EUSA link at: <https://www.zscaler.com/legal/end-user-subscription-agreement-us-government-customers/> is included in the End User Customer's final binding purchase order to Reseller; or (3) attaching the EUSA as an exhibit to Reseller's final binding contract/order with End User Customer for the Zscaler Products. All subscriptions purchased herein are non-cancellable

This End User Subscription Agreement (the "Agreement") governs the purchase, access, and use of Products by the Customer listed on an Order (hereinafter "Customer" or "You" or "Your"). In order to use or receive the benefits of any Product, You must purchase the applicable Product through an Order. If Zscaler introduces new Products in the future, such Products will be governed by this Agreement, depending on their Product category (i.e. SaaS, Software, Hardware, etc.).

If You are receiving access to or use of Products for proof of concept, beta testing, interactive demo, or other similar evaluative purposes (the "Evaluation Products"), then You may only use the Evaluation Products for Your own internal evaluation purposes for a period of up to thirty (30) days (or a pre-set shorter period for interactive demos) from the date of first access to the Evaluation Products. You and Zscaler may, upon mutual written agreement, extend the Evaluation Period. At the end of the Evaluation Period, You must delete all Software and other components (including Documentation) related to the Evaluation Products, or You may be invoiced for the then-current list price for the Evaluation Products. If you are evaluating SaaS, You understand that Zscaler may disable access to the SaaS automatically at the end of the Evaluation Period, without notice to You. If You are participating in an interactive demo, You agree and understand that You will receive one instance of the SaaS which is shared with other prospective Zscaler customers and users.

IF YOU HAVE ARRIVED AT THIS PAGE DURING THE PROCESS OF INSTALLING, DOWNLOADING, ACCESSING, OR DEPLOYING A PRODUCT, YOU ACKNOWLEDGE AND AGREE THAT BY PROCEEDING WITH THE INSTALLATION, DOWNLOAD, ACCESS, DEPLOYMENT, OR USE OF THE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS IN THIS AGREEMENT. IF YOU DO NOT UNCONDITIONALLY AGREE TO THE FOREGOING, DISCONTINUE THE INSTALLATION, DOWNLOAD, ACCESS, DEPLOYMENT, OR USE. IF YOU PROCEED WITH INSTALLATION, DOWNLOAD, ACCESS, DEPLOYMENT, OR USE, YOU ARE

## REPRESENTING AND WARRANTING THAT YOU ARE AUTHORIZED TO BIND THE CUSTOMER.

This Agreement may be periodically updated and the current version will be posted at [www.zscaler.com/legal](http://www.zscaler.com/legal). Your continued use of the Products after a revised Agreement has been posted constitutes your acceptance of its terms.

### 1. DEFINITIONS.

**1.1 “Affiliate”** means any entity controlled, directly or indirectly, by, under common control with, or controlling a party, and specifically includes without limitation, subsidiaries, partnerships, joint ventures, and other entities or operations for which the Party has operational or management control. For the purposes of this definition, control means the power to direct, or cause the direction of, the management and policies of such entity whether by contract, law, or ownership of the majority of the voting shares or assets of another entity.

**1.2 “Aggregated Data”** means Customer Data that is (i) anonymized, and not identifiable to any person or entity, (ii) combined with the data of other customers or additional data sources, and (iii) presented in a manner from which Customer’s or Authorized Users’ identity may not be derived.

**1.3 “Authorized User”** means an employee, agent, contractor, or other third party authorized by Customer and/or its Affiliates to access, use, download, deploy, or install the Products.

**1.4 “Customer Data”** means all data or information submitted by or on behalf of Customer to the Products.

**1.5 “Deployment Services”** means the deployment services for the Products provided by Zscaler to Customer.

**1.6 “Documentation”** means the documentation and usage guidelines for the Products, as updated from time to time by Zscaler.

**1.7 “Fees”** means any fees paid or to be paid for Products under an Order.

**1.8 “Force Majeure Event”** means any circumstances which are unforeseeable, and beyond the reasonable control of the party affected, including but not limited to acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, Internet service provider or hosting facility failures or delays, hardware, software or power systems not provided by Zscaler, or acts undertaken by third parties, including without limitation denial of service attacks.

**1.9 “Hardware”** means the Zscaler-provided hardware used to connect to the SaaS.

**1.10 “Intellectual Property Rights”** means copyrights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the

copyrighted work), trademark rights (including, without limitation, trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the exclusive right to make, use and sell), trade secrets, moral rights, right of publicity, authors' rights, contract and licensing rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the law of the United States or any other state, country or jurisdiction.

**1.11 “Order”** means a written order form/sales proposal, purchase order, or similar ordering document for Products submitted to, and approved, by Zscaler and/or Partner.

**1.12 “Partner”** means the Zscaler-approved partner authorized by Zscaler to resell or otherwise provide Products to end user customers.

**1.13 “Products”** means, collectively, all Zscaler SaaS, Software, Hardware, Deployment Services, and Support Services, including all Upgrades.

**1.14 “SaaS”** means the subscription cloud-based service provided by Zscaler for the Subscription Term set forth in the Order.

**1.15 “SLAs”** means the Service Level Agreements provided by Zscaler for each applicable Product, as further described at <https://www.zscaler.com/legal/sla-support>.

**1.16 “Software”** means any Zscaler software, utility, tool or other computer or program code provided directly or indirectly to Customer in object (binary) code only, as well as any copies (whether complete or partial) made by or on Customer's behalf. The term “Software” also includes any updates, upgrades or other new features, functionality or enhancements to the Software made available directly or indirectly to Customer.

**1.17 “Subscription Term”** means the Initial Subscription Term and all Renewal Subscription Terms (as defined in Section 7.2) together.

**1.18 “Support Services”** means the support services provided by Zscaler with respect to each applicable Product, including Support Services provided through a Technical Account Manager (“TAM”), as further described at <https://www.zscaler.com/legal/sla-support>.

**1.19 “Upgrades”** means all cloudwide modifications, enhancements and corrections to the Products made by Zscaler, including corrections of failures to conform to or to operate in accordance with the Documentation; temporary and permanent error corrections delivered as part of the Support Services; and all additions, updates, new versions and releases, and new features, and changes made by Zscaler in response to legal, technological or other developments. For clarity, “Upgrades” does not include any additional features or enhancements made available to customers by Zscaler for an additional cost.

**1.20 “Zscaler Materials”** means all Zscaler proprietary materials, Intellectual Property Rights for all Products and Documentation, Zscaler's processes and methods, and/or materials

distributed by Zscaler during any presentations, proof of concepts, or demonstrations of the Products.

**2. ORDERS.** Customer and/or Customer Affiliates may purchase Products through an Order. All Orders shall be governed by the terms and conditions in this Agreement and the Documentation regarding Customer's and its Affiliate's access and use of the Products. For clarity, Zscaler will not be obligated to provide any Products to Customer or its Affiliate(s) until Zscaler receives a valid Order for such Products. Customer and any Customer Affiliate agrees that its purchase of any Products is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Zscaler with respect to any future functionality or features.

**3. PAYMENT.** Unless otherwise agreed to in writing by the parties, Fees and payment terms shall be agreed and documented between Customer and/or its Affiliate(s) and the Partner.

#### **4. SUBSCRIPTION RIGHTS; INTELLECTUAL PROPERTY RIGHTS; RESTRICTIONS; AND GUIDELINES.**

**4.1 Subscription Rights.** Subject to the terms and conditions in this Agreement, Zscaler grants Customer and its Affiliates a limited, non-transferable, non-assignable (except as set forth in this Agreement), non-exclusive right to access and use the Products during the Subscription Term for the quantity of purchased Products set forth in the Order.

**4.2 Access and Use of Products.** Customer agrees to only access and use the Products in accordance with this Agreement and the applicable Documentation, including any relevant Product usage guidelines. Customer and Zscaler agree to work together in good faith to promptly resolve any unauthorized access or use of the Products by Customer.

#### **4.3 Ownership and Intellectual Property Rights.**

**4.3.1 Zscaler.** All rights and title in and to the Products, Zscaler Materials, and Documentation, including all Intellectual Property Rights inherent therein, belong exclusively to Zscaler and its licensors. No rights are granted to Customer other than as expressly set forth in this Agreement.

**4.3.2 Customer.** All rights and title in and to the Customer Data, including all Intellectual Property Rights inherent therein, belong exclusively to Customer. No rights are granted to Zscaler other than as expressly set forth in this Agreement.

**4.4 Restrictions.** Customer and its Authorized Users (i) shall not (a) modify, copy, display, republish or create derivative works based on the Products or Zscaler Materials; (b) reverse engineer the Products; (c) access or use the Products to build a competitive product or service, or copy any ideas, features, functions or graphics of the Products; (d) use the Products in any way prohibited by applicable law or that would cause either party to violate applicable law including but not limited to: (1) sending spam or other duplicative or unsolicited messages; (2) using the Products to send infringing, obscene, threatening, libelous, or other unlawful material; (3) using the Products to access blocked services; or (4) uploading to the Products or using the Products to

send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (e) use the Products to run automated queries to external websites (as the website may blacklist Zscaler IPs for all of its customers); (f) interfere with or disrupt the integrity or performance of the Products or the data contained therein; (g) attempt to gain unauthorized access to the Products or its related systems or networks; (h) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Products; (i) perform penetration or load testing on the Products or Zscaler's cloud without the prior written consent of Zscaler and agreeing to certain conditions and requirements for such penetration or load testing; or (j) without the express prior written consent of Zscaler, conduct any public benchmarking or comparative study or analysis involving the Products; and (ii) agree to (a) use the Products solely for its internal business purposes; (b) only permit access to the Products by Authorized Users; and (c) not access or use the Products from a prohibited location in violation of U.S. trade and economic sanctions, including without limitation, Cuba; Iran; North Korea; Syria; the so-called Donetsk People's Republic; the Luhansk People's Republic; or Crimea Regions of Ukraine; or any other country/region that becomes prohibited.

**4.5 Customer Guidelines and Responsibilities.** Customer agrees and understands that: (i) it is responsible for all activity of Authorized Users and for Authorized Users' compliance with this Agreement; (ii) it shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data; (b) prevent unauthorized access to, or use of, the Products, and notify Zscaler promptly of any such unauthorized access or use; and (c) comply with all applicable laws and/or regulations in using the Products; (iii) the Products shall not include Customer's connection to the Internet or any equipment or third party licenses necessary for Customer to use the Products, which shall be Customer's sole responsibility; (iv) in order for Zscaler to provide the SaaS, Customer is responsible for forwarding its web traffic or internal traffic to Zscaler via valid forwarding mechanisms that allow for automatic fail over (i.e. PAC, IPSEC, GRE tunnels, and/or Zscaler App); (v) it is responsible for supplying Zscaler with any technical data and other information and authorizations that Zscaler may reasonably request to allow Zscaler to provide the Products to Customer; and (vi) Zscaler shall have the right to: (a) use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer relating to the Products without restriction and without obligation to Customer (collectively "Feedback"); (b) utilize information collected regarding Customer's use of the Products for the purposes of (1) maintaining, improving and/or analyzing the SaaS, including providing advanced analytics and reporting to Customer, (2) complying with all legal or contractual requirements, and/or (3) making malicious or unwanted content anonymously available to its licensors for the purpose of further developing and enhancing the Products; and (c) develop and commercialize benchmarks and measures based on Aggregated Data. The foregoing shall in no way limit Zscaler's confidentiality and security obligations set forth in this Agreement. Zscaler acknowledges that all Feedback is provided "As-Is" without warranty of any type.

#### **4.6 Zscaler Guidelines and Responsibilities.**

**4.6.1** Zscaler shall process, use, and/or access Customer Data only for the purpose of providing the Products to Customer. Zscaler may process and store Customer Data in the European Economic Area (the "EEA"), the United States and in other countries and territories; however,

Customer may choose during the deployment process to store its Customer Logs in either (1) the United States or (2) the European Union and Switzerland. To facilitate its global operations, Zscaler may transfer and access Customer Data from around the world, including from other countries in which Zscaler has operations. Any such transfers will be done in compliance with applicable laws and regulations. Zscaler reserves the right to manage bandwidth or route traffic across the Internet in a commercially optimal way, provided such actions do not compromise Zscaler's obligations under this Agreement.

**4.6.2** Zscaler maintains reasonable and appropriate physical, organizational, administrative, and technical safeguards designed to protect Customer Data from loss, misuses, unauthorized access, disclosure, alteration, and destruction ("**Security Measures**"). Zscaler is certified under ISO 27001 and System and Organization Controls (SOC) 2, Type II standards and is audited annually by a third party to ensure its ongoing compliance with these certifications. Zscaler regularly tests, assesses and evaluates the effectiveness of the Security Measures. Upon written request, Zscaler agrees to provide Customer with a copy of its most recent ISO 27001 certificate and/or SOC 2, Type II report. Zscaler will not materially decrease the Security Measures during the Subscription Term. Zscaler will take appropriate steps to ensure compliance with the Security Measures by its employees, contractors and subcontractors/sub-processors to the extent applicable to their scope of performance.

**4.6.3** Zscaler reserves the right to suspend Customer's access to or download of Products in the event Customer's use of the Products represents an imminent threat to Zscaler's network, or if directed by a court or competent authority. In such cases, Zscaler will (i) suspend such Products only to the extent reasonably necessary to prevent any harm to Zscaler's network (for example, blocking offending source IP addresses); (ii) use its reasonable efforts to promptly contact Customer and give Customer the opportunity to promptly change the configuration of its server(s) accordingly and/or work with Customer to promptly resolve the issues causing the suspension of such Products; and (iii) reinstate any suspended Products immediately after any issue is abated.

## **5. WARRANTIES.**

**5.1 Mutual Warranty.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

**5.2 SaaS and Software Warranty.** Zscaler warrants that the SaaS and/or Software will (i) substantially conform to the Documentation; and (ii) be provided in accordance with the SLAs. If Customer believes the warranty stated in this Section has been breached, Customer must notify Zscaler of the breach no later than thirty (30) days following the date the warranty was allegedly breached, and Zscaler will promptly correct the non-conformity at its own expense if a breach of this warranty occurred.

**5.3 Hardware Warranty.** Zscaler warrants that the Hardware will perform substantially in accordance with the applicable Documentation. If Customer believes the warranty stated in this Section has been breached, Customer must notify Zscaler of the breach no later than thirty

(30) days following the date the warranty was allegedly breached, and Zscaler will promptly correct the non-conformity at its own expense if a breach of this warranty occurred.

**5.4 Deployment Services Warranty.** Zscaler shall provide the Deployment Services and warrants that the Deployment Services will be performed in a professional manner in accordance with industry standards for like services. If Customer believes the warranty stated in this Section has been breached, Customer must notify Zscaler of the breach no later than thirty (30) days following the date the Deployment Services was provided, and Zscaler will promptly correct or re-perform the Deployment Services at its own expense if a breach of this warranty occurred.

**5.5 Support Services and TAM Warranty.** Zscaler shall provide the Support Services and warrants that the Support Services, including Support Services provided by a TAM, will be performed in a professional manner in accordance with industry standards for like services, but does not guarantee that every question or problem will be resolved. Zscaler's obligation to provide Support Services, through a TAM or otherwise, does not include services requested as a result of causes or errors which are not attributable to Zscaler or its authorized agents. If, upon investigating the cause of the incident, Zscaler determines that there is a defect in the Product, Zscaler will provide a remedy in the form of a workaround, or another version of the Product that includes a bug fix for the defect. Customer agrees to provide reasonable support information necessary to understand and resolve the incident, which may include log files, configuration files and/or error messages.

**5.6 Warranty Remedies.** Without limiting any Service Credits incurred in the event Zscaler does not meet the SLAs, the remedies stated in Sections 5.2 through 5.5 above are the sole remedies, and Zscaler's sole obligation, with respect to Products that fail to comply with the foregoing warranties.

**5.7 Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, ALL PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER. ZSCALER EXPRESSLY DISCLAIMS, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NONINFRINGEMENT, OR THAT THE PRODUCTS WILL BE ERROR-FREE.

## **6. CONFIDENTIAL INFORMATION.**

**6.1 Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Orders hereunder), the Customer Data, the Products, the Zscaler Materials, Zscaler's security information and reports, and each party's respective business and marketing plans, technology and technical information, product

designs, and business processes. The obligations in this Section shall not apply to any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality; (iii) was independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party; or (iv) is lawfully received from a third party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality.

**6.2 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Either party may disclose Confidential Information on a need-to-know basis to (i) its personnel, auditors, and Affiliates who are subject to the same confidentiality obligations, and (ii) its attorneys and accountants who are either subject to professional obligations of confidentiality or have agreed to be bound by confidentiality obligations at least as protective as those set out herein.

**6.3 Protection.** Receiving Party will use at least the same level of care to prevent unauthorized use of the Confidential Information as it uses for its own confidential and proprietary information of like kind, but in no event less than a reasonable standard of care.

**6.4 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure, to the extent legally permitted, and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**6.5 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) or the Disclosing Party reasonably believes that the Receiving Party may disclose or use any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, or if the Receiving Party is compelled to disclose (or is likely to become compelled to disclose) any Confidential Information of the Disclosing Party pursuant to Section 6.4, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts or seek a protective order regarding such acts.

## **7. TERM AND TERMINATION.**

**7.1 Agreement Term.** This Agreement shall continue in effect for the Subscription Term.

**7.2 Order Term.** The initial term of Customer's subscription to the Products will begin on the start date set forth in an Order and will continue for the period of time stated in the Order ("**Initial Subscription Term**"). Prior to the end of the Initial Subscription Term, the length and pricing for a renewal term will be agreed to ("**Renewal Subscription Term**"); otherwise, Customer's subscription will terminate at the end of the Initial Subscription Term (or the then-applicable Renewal Subscription Term).



**7.3 Termination for Material Breach.** Either party may terminate this Agreement and any Order: (i) if the other party is in material breach of any of the terms and conditions of this Agreement and does not cure such material breach within thirty (30) days of receiving notice; or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**7.4 Effect of Termination.** The following provisions shall survive the termination of this Agreement and all Orders: Section 3 (Payment), Section 4 (Subscription Rights; Intellectual Property Rights; Restrictions; and Guidelines), Section 5.7 (Disclaimer of Warranties), Section 6 (Confidential Information), Section 7.4 (Effect of Termination), Section 8 (Indemnity), Section 9 (Limitation of Liability), Section 10 (Data Protection and Privacy), Section 11 (Export Control, Anti-Corruption, and Commercial Item Software), and Section 12 (General Provisions).

## **8. INDEMNITY.**

**8.1 Zscaler Indemnity.** Zscaler will, subject to Section 9 (Limitation of Liability), indemnify Customer from and against any claim against Customer by reason of Customer's use of the Products as permitted hereunder, brought by a third party alleging that the Products or Zscaler Materials infringe or misappropriate that third party's valid United States, European Union, or United Kingdom patent, copyright, trademark or trade secret. Zscaler shall, at its expense, defend such claim and pay damages finally awarded against Customer in connection therewith, including the reasonable fees and expenses of the attorneys engaged by Zscaler for such defense. If the Products, or parts thereof, become, or in Zscaler's opinion may become, the subject of an infringement claim, Zscaler may, at its option: (a) procure for Customer the right to continue using the Products as set forth herein; (b) replace or modify the Products to make it non-infringing, provided that such replacement or modification does not compromise Zscaler's obligations under this Agreement; or (c) if options (a) or (b) are not commercially and reasonably practicable as determined by Zscaler, terminate this Agreement and the applicable Order and refund Customer, on a pro-rated basis, any pre-paid Fees for the corresponding unused portion of the Subscription Term. Zscaler will have no liability or obligation under this Section with respect to any claim if such claim is caused in whole or in part by: (i) Customer's use of a Product not in accordance with the Documentation; (ii) modification of a Product by anyone other than Zscaler; or (iii) the combination, operation, or use of any Product with other hardware or software not provided by Zscaler where the Product would not by itself be infringing absent such combination, operation, or use. THIS SECTION 8.1 STATES ZSCALER'S ENTIRE LIABILITY AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS OR ZSCALER MATERIALS.

**8.2 Customer Indemnity.** Customer will defend and indemnify Zscaler from and against any claim brought by a third party against Zscaler arising from or related to Customer's violation of Section 4.4 of this Agreement.

**8.3 Indemnity Procedure.** The indemnification obligations in this Section shall be subject to the indemnified party: (i) promptly notifying the indemnifying party in writing upon receiving notice of any threat or claim of such action; (ii) giving the indemnifying party exclusive control

and authority over the defense and/or settlement of such claim (provided any such settlement unconditionally releases the indemnified party of all liability); and (iii) providing reasonable assistance requested by the indemnifying party, at the indemnifying party's expense.

## **9. LIMITATION OF LIABILITY.**

**9.1 Waiver of Consequential Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY DAMAGES OF ANY KIND, OR ANY LOST PROFITS OR LOST SAVINGS, HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

**9.2 Limitation of Monetary Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT AND ANY ORDER SHALL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE TO ZSCALER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST OCCURRENCE OF THE EVENT(S) GIVING RISE TO SUCH LIABILITY FOR THE APPLICABLE PRODUCT GIVING RISE TO THE LIABILITY.

## **10. DATA PROTECTION AND PRIVACY.**

**10.1 Scope.** This Section 10 applies to all personal data (as defined under applicable laws) processed by the Products on behalf of Customer or otherwise provided by Customer to Zscaler in connection with this Agreement ("**Personal Data**"). For purposes of this Agreement, Zscaler is a "processor" that processes certain Personal Data on behalf of Customer, who is the "controller." Under European Union (EU) privacy legislation, the term "controller" is defined as the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data, and the term "processor" is defined as a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.

**10.2 Data Protection and Privacy.** Zscaler shall comply with all data protection and privacy laws applicable to its processing of Personal Data, including (without limitation) the California Consumer Privacy Act of 2018 (the "**CCPA**") and the General Data Protection Regulation (Regulation (EU) 2016/679) (the "**GDPR**").

**10.3 Customer Responsibilities.** Customer's instructions to Zscaler for the processing of Personal Data shall comply with all applicable data protection laws. Customer will have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data. Customer shall ensure that it is entitled to transfer the Personal Data to Zscaler so that Zscaler may lawfully use, process and transfer the Personal Data in accordance with this Agreement on Customer's behalf.

## **11. EXPORT COMPLIANCE, ANTI-CORRUPTION, AND COMMERCIAL ITEM SOFTWARE.**

**11.1 Export Compliance.** The Products and other software or components of the Products which Zscaler may provide or make available to Customer may be subject to United States export control and economic sanctions laws and other foreign trade controls. The parties agree to comply with applicable laws in connection with this Agreement, including without limitation, applicable U.S. and foreign export controls, economic sanctions, and other trade controls.

**11.2 Anti-Corruption.** In performing this Agreement, the parties agree to comply at all times with the applicable laws related to money-laundering, bribery, and anti-corruption, including the Foreign Corrupt Practices Act, the UK Anti-bribery Act, and any other applicable anti-corruption legislations (“**Anti-corruption Laws**”). Each of the parties agrees and warrants that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**11.3 Commercial Item Software.** The Products and Documentation are “commercial items”, “commercial computer software” and “commercial computer software documentation,” pursuant to DFAR section 227.7202 and FAR section 12.212, as applicable. All Products and Zscaler Materials are and were developed solely at private expense. Any use, modification, reproduction, release, performance, display or disclosure of the Products, Zscaler Materials and Documentation by the United States Government shall be governed solely by this Agreement and shall be prohibited except to the extent expressly permitted by this Agreement.

## **12. GENERAL PROVISIONS.**

**12.1 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**12.2 Notices.** All notices required to be sent hereunder shall be in writing, addressed to receiving party’s current business contact, if known, with a cc: to the Legal Department of the receiving party, and sent to the party’s address as listed in this Agreement, or as updated by either party by written notice. Notices shall be effective upon receipt and shall be deemed to be received as follows: (i) if personally delivered by courier, when delivered; or (ii) if mailed by first class mail, or the local equivalent, on the fifth business day after posting with the proper address.

**12.3 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**12.4 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect.

**12.5 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld), except that either party may assign this Agreement in its entirety, without the consent of the other party, to (i) an Affiliate; or (ii) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.6 Governing Law.** This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act.

**12.7 Force Majeure.** Neither party shall be liable for delay or non-performance of its obligations hereunder (or part thereof) if the cause of delay or non-performance is due to a Force Majeure Event. The party affected shall be relieved from its obligations (or part thereof) for the time that the Force Majeure Event lasts and hinders the performance of said obligations (or part thereof). The party affected shall promptly notify the other party and make reasonable efforts to mitigate the effects of the Force Majeure Event.

**12.8 Evaluation Products.** From time to time, Zscaler may make available certain Products for proof of concept, beta testing, interactive demo, or other similar evaluative purposes (the “**Evaluation Products**”). Customer shall only access and use the Evaluation Products for internal evaluation purposes for a period up to thirty (30) days from the date of first access to the Evaluation Products, unless otherwise agreed to by the parties (the “**Evaluation Period**”). At the end of the Evaluation Period, Customer Data will be deleted pursuant to Zscaler’s standard retention and deletion periods, unless otherwise agreed to by the parties. For any Evaluation Products, only Sections 4, 5.7, 6, 9, 10, 11, 12, and the applicable definitions in Section 1 of this Agreement shall apply.

**12.9 Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties set forth in this Agreement. No terms or conditions set forth on any Customer purchase order, preprinted form or other document shall add to or vary the terms and conditions of this Agreement, and all such terms or conditions shall be null and void.

