Darkscope International Terms of Use

For Clients Purchasing Through a Reseller

These Terms ("Terms") are entered into between Darkscope and the Client (Client as defined below) as of the effective date (as defined below). These Terms allow Client to procure Darkscope's products or services ("Service"), obtain support and/or other professional services from Darkscope through a Reseller (as defined below), and establish the terms and conditions governing Client's use of any Darkscope products or services. These Terms supplement the agreement between Client and Reseller by which Reseller is reselling Darkscope's products or services to Client ("Reseller Agreement").

1. Service and Professional Services

1.1. Darkscope's Obligations
Darkscope shall make the Service available to Client under these Terms during the period of the agreement, and grants to Client a limited, non-sublicensable, non-exclusive, non-transferable (except as expressly permitted herein) right during the period to allow its users to access and use the Service in accordance with these Terms and any other relevant documentation, solely for Client's business purposes. Darkscope will comply with all applicable laws in its provision of the Service. Darkscope shall use all reasonable efforts to make the Service available to Client 24 hours a day, 7 days a week, every day of each year (except for any unavailability caused by a Force Majeure event).

1.2. Client's Obligations
(a) Client is responsible for all activities conducted under its and its users' logins to the Service. Client shall use the Service in compliance with these Terms, all relevant documentation, and applicable laws and shall not:
(i) copy, rent, sell, lease, distribute, pledge, assign, or otherwise transfer, or encumber rights to the Service, or any part thereof, or make it available to anyone other than its users;
(ii) send or store in the Service any personally identifiable information (PII) including but not limited to, health, credit card, personal financial data or other such sensitive data which may be, without limitation, subject to any applicable privacy laws and standards.
(iii) send to or store objectionable or illegal material in connection with the Service;
(iv) send to or store malicious or tracking code on the Service;
(v) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Service or the data contained therein;
(vi) modify, copy or create derivative works based on the Service, or any portion thereof;
(vii) access the Service for the purpose of building a competitive product or service or copying its features or user interface; or
(viii) delete, alter, add to or fail to reproduce in and on the Service the name of Darkscope and any copyright or other notices appearing in or on the Service.
(b) Any use of the Service in breach of these Terms by Client or users that, in Darkscope's judgment, threatens the security, integrity or availability of the Service, may result in Darkscope's immediate suspension of Client's access to the Service. However, Darkscope will use reasonable efforts to provide Client with notice of and an opportunity to remedy such violation or threat prior to such suspension.
(c) Client agrees that its purchase of the Service or the Professional Services is neither contingent

upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Darkscope with respect to future functionality or features.

1.3 Professional Services
Client and Darkscope may enter into a Statement of Work that describe the specific Professional Service to be performed by Darkscope. If applicable, while on Client premises for professional services, Darkscope personnel shall comply with reasonable Client rules and regulations regarding safety and conduct made known to Darkscope, and will, at Client's reasonable request, promptly remove any Darkscope personnel not following such rules and regulations.

2. Applicability and Purchasing Through a Reseller

2.1. Applicability to Government
These Terms are part of a contract between the Reseller and the Client for the acquisition of the Service or Professional Service that necessitates a license or other similar legal instrument. These Terms are applicable to any government agency and shall bind the government agency as a Client. These Terms shall not bind a government employee or person acting on behalf of the government in his or her personal capacity.

2.2. Purchasing Through a Reseller
By acquiring any Darkscope product or service through a Reseller, Client agrees that:
(a) the Agreement is between Client and the Reseller and is not binding on Darkscope;
(b) any disputes related to the Reseller Agreement shall be handled directly between Client and the Reseller;
(c) any claims for refunds shall be submitted by Client to the Reseller.
Client understands and agrees that certain products or services may be subject to additional terms and conditions if purchased by Client. These terms and conditions are available at ww.darkscope.com/agreements (or its successor site).
In the event of any conflict between these Terms and the Reseller Agreement, these Terms shall govern as between Darkscope and Client.

3. Security and Support services

3.1. Security
Darkscope's Services conform to a high standard of security protocols to protect the Service and the Clients data. Darkscope shall maintain appropriate administrative, physical, and technical safeguards to maintain the security and integrity of the Service and the Client data. Darkscope shall not materially diminish the protections provided by the controls set forth in this agreement.

3.2. Support Services
Darkscope shall provide support services to Client in accordance with Darkscope's current support policy for the term of this contract, as described below. (Section 11 Service and Support Levels)

4. Confidentiality

4.1 Confidential Information
Each party agrees to protect the confidential information (as defined below) of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event using less than a reasonable standard of care. A party shall not: (i) disclose or use any confidential information of the other party for any purpose outside the scope of these Terms, except with the other party's prior written permission and (ii) disclose or make the

other party's confidential information available to any party, except its employees, contractors, and agents that have signed an agreement containing disclosure and use provisions substantially similar to those set forth herein and have a "need to know" in order to carry out the purpose of these Terms.

4.2 Confidential Information Definitions
Confidential information includes the intellectual property, "know-how" and unique processes of the other party, any business and product development plans or new product or service features disclosed to the other party and any personally identifiable information (PII) of the other party or any client, prospect or partner of the other party. It shall not include any information that:
(a) is already in the public domain;
(b) is or becomes generally known to the public, other than as a result of the act or omission of the receiving party;
(c) was rightfully known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party;
(d) is lawfully received from a third party without breach of any obligation owed to the other party; or
(e) was independently developed by a party without breach of any obligation owed to the other party.

4.3 Disclosure of Confidential Information
If a party is compelled by law to disclose to a third party confidential information, it shall provide prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure. Notwithstanding anything in these Terms to the contrary, the Client may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of these Terms.

4.4 Remedies for Disclosure of Confidential Information
Each party recognizes and agrees that in the event of a breach or threatened breach of a party's obligations under this section, irreparable damage may be caused to the non-breaching party for which monetary damages alone would not adequately compensate such party. Therefore, each party agrees that, in addition to all other remedies available at law or in equity, the non-breaching party is entitled to seek an injunction or other equitable relief for the enforcement of any such obligation.

5. Ownership, Feedback, and Statistical Usage Data

5.1. Client Data
Client owns its data. Client grants to Darkscope, its affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Client data, as reasonably necessary for Darkscope to provide the Service in accordance with these Terms. Subject to the limited licenses granted herein, Darkscope acquires no right, title or interest in any Client data. Client shall be responsible for the accuracy, quality and legality of its data and the means by which Client acquired this data.

5.2. Darkscope Ownership of the Service
Except for the rights expressly granted under these Terms, Darkscope and its licensors retain all right, title, and interest in and to the Service, documentation and professional services, including all related intellectual property rights inherent therein. If Client purchases professional services,

Darkscope grants to Client a worldwide, non-exclusive, non-transferable (except as expressly permitted in Section 13.1), non-sublicensable right to use the professional services solely for Client's use with the Service. No rights are granted to Client hereunder other than as expressly set forth in these Terms.

5.3. Feedback

Darkscope shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into its products and services any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client or its users ("Feedback"). Darkscope shall have no obligation to use feedback, and Client shall have no obligation to provide feedback.

5.4. Statistical Usage Data

Darkscope owns the statistical usage data derived from the operation of the Service, including data regarding web applications utilized in connection with the Service, configurations, log data, and the performance results for the Service ("usage data"). Nothing herein shall be construed as prohibiting Darkscope from utilizing the usage data for purposes of operating Darkscope's business; provided that the usage data shall be anonymised and aggregated so that it will not disclose the identity of Client or any user to any third party.

6. Fees

6.1 Client agrees to pay all agreed fees as outlined in the Client order provided to the reseller. All fees are
(a) based on a right to access and use the Service and not actual usage, and
(b) non-refundable by Darkscope to Client unless expressly noted hereunder.
Any disputes related to the Fees or invoicing shall be handled directly between Client and the Reseller.

7. Warranties and Disclaimer

7.1 Warranty

We make no warranty that our Service will protect against all possible threats, be error-free or free from interruptions or other failures, that our Service will meet your specific requirements or that our Service are fit for use in special risk areas.

7.2. Warranties for Service

Each party warrants that it has the authority to enter into these Terms. Darkscope warrants that during the term:
(i) the Service shall perform materially in accordance with the applicable documentation;
(ii) Darkscope will employ then-current, industry-standard measures to test the Service to detect and remediate malicious code designed to negatively impact the operation or performance of the Service, and
(iii) the overall functionality of the Service will not be materially decreased as described in the applicable documentation.

7.3 Warranties for Professional Services

Darkscope warrants that the Professional Services will be performed in a good and workmanlike manner consistent with applicable industry standards. As Client's sole remedy and Darkscope's entire liability for any breach of the foregoing warranty set forth in this Section 7.2, Darkscope will, at its sole option and expense, promptly re-perform the non-conforming Professional Services or

refund to Client the fees paid for the non-conforming Professional Services; provided that Client notifies Darkscope no later than thirty (30) days after delivery of such Professional Services

7. . Disclaimer

Darkscope and its suppliers hereby disclaim all warranties relating to the service or other subject matter of these terms, express or implied, including, but not limited to, any warranties of non-infringement of third-party rights, title, merchantability and fitness for a particular purpose. The parties are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of these terms. Darkscope makes no warranty regarding any non-Darkscope application with which the service may interoperate.

8. Limitation of Liability

8.1. In no event will either party (or Darkscope's third party licensors) be responsible or liable with respect to any subject matter of these Terms or related terms and conditions under any contract, negligence, tort, strict liability or other theory for:
(a) error or interruption of use,
(b) loss or inaccuracy or corruption of data,
(c) cost of procurement of substitute goods, services, rights, or technology,
(d) any loss of profits or revenues,
(e) any indirect, special, incidental, consequential or punitive damages, whether or not a party has been advised of the possibility of such damage.

8.2. To the maximum extent permitted by law, in no event shall the aggregate liability of each party together with all of its affiliates arising out of or related to these terms exceed the total amount paid by Client under the applicable Client order for the Service giving rise to the liability in the twelve-month period preceding the first incident out of which the liability arose. This limitation shall apply whether an action is in contract or tort and regardless of the theory of liability but will not limit Client's payment obligations.

9. Third Party Claims Regarding Client's Use of the Service

In the event of any claim, demand, suit or proceeding made or brought against Darkscope by a third party alleging that the Client data infringes or misappropriates their intellectual property rights, or violates applicable law, or arising out of Client's use of any Service in breach of these Terms, Darkscope may require, by written notice to Client, that Client delete from the Service any Client data that is the subject of the claim. After receiving any such notice, Client will immediately delete such Client data and certify such deletion to Darkscope in writing. Darkscope shall be authorized to provide a copy of such certification to the applicable claimant.

10. Client Mention

Darkscope may, upon Client's prior written consent, use Client's name to identify Client as an Darkscope Client of the Service, including on Darkscope's public website. Darkscope agrees that any such use shall be subject to Darkscope complying with any written guidelines that Client may deliver to Darkscope regarding the use of its name and shall not be deemed Client's endorsement of the Service.

Darkscope

11. Service, support, Alerting and Reporting Levels

11.1 <u>Service Levels – Internet Searches</u>
Services that use Internet searches, such as Domainwatch, are automated i.e. machine code (or Artificial Intelligence). As such these searches are subject to   use

11.2 Service Levels – Cyberspace Searches

The size, form and nature of cyberspace – the internet, social media and the deep and dark webs, is constantly evolving and changing. No organisation, service or tool can effectively monitor the whole of cyberspace, or even parts of it, entirely. Where the Service includes searching, monitoring and reporting services on Client-specific information for a part or parts of cyberspace, Darkscope's search engines and tools will perform their searches for this Client-specific information at least once every 24 hours. Due to the ever-changing nature of the data being interrogated Darkscope cannot guarantee that:
(a) all available data on searching is available and can be found at the time of the search being performed,
(b) information relating the searches performed will not be changed, moved or deleted between searches, by others,
(c) actions taken by others to obscure, hide, or falsify information about the Client can be detected or defeated, especially in the darkweb.
Darkscope uses machine learning applications and algorithms to filter, rate and score the information it finds and reports to Client. This process is designed to provide meaningful information to Client, specifically to avoid "false positives" and "information dumping". As a result of these processes Darkscope does not guarantee the completeness or accuracy of any report provided to Client.

11.3 Service Levels – Darkweb Searches

The darkweb is the cyberspace content that exists on darknets which are overlay networks in cyberspace that requires specific software, configurations, or authorization to access. Through the darkweb, private computer networks can communicate and conduct business anonymously without divulging identifying information, such as a user's location. The darkweb forms a small part of the deep web, the part of cyberspace not indexed by search engines.
Darkscope uses its own search engine technology, machine learning applications and algorithms to filter, rate and score the information it finds and reports to Client from the darkweb. Due to the secretive nature of the darkweb and to protect Darkscope's tools that access it, information can be filtered, and the results summarised before reporting to the Client. This process may mean that some information is not available to Client, or is presented in an anonymised form.

11.4 Support Levels – Online Portal

Darkscope shall use commercially reasonable endeavours to provide a Monthly Uptime Percentage of no less than 99.90% each month in connection with Client use of the Online Portal when used to access the Service. If Darkscope fails to meet the Monthly Uptime Percentage then, subject to these Terms, Client shall be entitled to claim a Service Credit as detailed herein. This support guarantee does not apply to any events described in the Exclusions.

11.4.1 <u>Claims and Payment Process</u>
(a) If Client believes that the Service Guarantee in connection with use of the Service is not met in

any billing month, then Client may file a claim for Service Credit in accordance with this Clause

11.4.1. The claim must include at least the following information:

(i) A detailed description of the incident, including the logs or messages for request failure documenting the errors and claimed outage;

(ii) The date, time and duration of the downtime;

(iii) Information relating the affected instances, including the affected instance IDs; and

(iv) Any other information that Darkscope reasonably ask Client to provide to support any claim.

11.4.2 Client's claim for a Service Credit must be received by Darkscope within thirty (30) days after the last day of the billing month of occurrence of the event giving rise to the claim. Failure to submit the claim within this time will be deemed to be an irrevocable waiver of Client's right to claim and receive such Service Credit. Once the claim is received, Darkscope will review and evaluate it and may require Client co-operation in conducting a joint investigation to ascertain whether the Service Guarantee has been breached and if so, the cause of the failure. Darkscope will make a good faith determination if a Service Credit is to be provided in our sole discretion and will inform Client the result as soon as reasonably practicable. Darkscope will use commercially reasonable effort to process the claim and provide the Service Credit as early as possible.

11.4.3 If after a good faith review of the claim, Darkscope determines that a Service Credit must be provided, the Service Credit to be provided will be the following:

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.90%, but equal to or greater than 95.00%	20%
Less than 95.00%	40%

11.4.4 Subject to Clauses in this section (11.4), the Service Credit shall apply to set-off the fees payable by Client for the Service only. The Service Credit shall not be used or applied to set-off the fees for the other Darkscope services, unless otherwise stated to by Darkscope in writing.

11.4.5 The Service Credit provided in any billing month for a Service will not, under any circumstance, exceed 50% of Clients Monthly Service Fee for that affected Service or Service resource, as applicable, in the billing month.

11.4.6 The Service Credit provided to Client must be used within one (1) month from the date the Service Credit is made available to use.

11.4.7 Client agrees that any decision or determination made by Darkscope relating to a claim for any Service Credit shall be final and binding.

11.4.8 In the event of any inconsistency between Client and Darkscope's system records relating to a claim, unless the discrepancy is caused by any material error or malfunction of Darkscope's system, Darkscope's system record shall at all times prevail and be the final and conclusive reference for calculating the Service Credits to be provided.

11.4.9 The Service Credits provided in this section are the sole and exclusive remedy for any failure in the performance of the Service and Darkscope shall not be liable to Client or any person claiming for any direct, indirect, consequential, or incidental damages or losses or expenses whatsoever, including but not limited to, loss of profits or business and irrespective of whether the claim arises in contract, tort (including negligence), or otherwise.

11.5 Support Levels – Information and Support Requests

All requests for support, additions or alterations to information or access rights from Client shall be made through the online portal support request service or by emailing support@darkscope.com. Darkscope will respond to these requests within 24 hours of acknowledgement by email to the Client from Darkscope.

11.6.1. <u>Alert Levels</u>
Darkscope, at its sole discretion, will determine the threshold levels for Client-specific and Client related information that it finds in cyberspace to be considered for alert or warning status and alerted to Client. However, Client can apply for an adjustment to these thresholds by sending a support ticket to support@darkscope.com.

11.6.2. <u>CIRS Reporting</u>
Cyber Interference Risk Score™ reporting is in two parts:
1. Client score
2. Geographical and Industry-specific score.
The Client score is determined from the specific results of cyberspace searches on the Client. The geographical and industrial score is a composite score from Darkscope's searches on thousands of organisations that are in the same region and industrial sector/s as the Client. Darkscope uses machine learning and algorithms to determine scores that are reported to Client. As they are refreshed every 24 hours, these scores are subject to variation and have a margin of error of +/- 10%.

11.6.3. <u>All Other Reporting</u>
All other reported information supplied by Darkscope to Client is supplied on a "best effort" basis.

12. Termination and Effect of Termination

12.1. <u>Termination</u>
Darkscope shall not unilaterally revoke, terminate, or suspend any rights granted to Client hereunder except as allowed by the applicable contract between Client and the Reseller. If Darkscope or Reseller believes the Client is in breach of these Terms, it shall pursue its rights under the appropriate Contract Disputes law or other applicable Government or Federal law while continuing performance.

12.2. <u>Termination for Convenience</u>
When Client unilaterally elects to terminate the Service without cause, Client shall not be relieved of the obligation to pay all future amounts due in full and shall not be entitled to any refund for the unused portion of Service that has been paid in advance.

12.3. <u>Effect of Termination</u>
Upon termination of Client's subscription to the Service, all rights and subscriptions granted to Client will immediately terminate and Client will cease using the Service and any Darkscope Confidential Information. Termination for any reason other than termination for cause by Client pursuant to Section 12.1 shall not relieve Client of the obligation to pay all future amounts due.

The sections titled "Definitions," "Confidentiality," "Ownership, Feedback, and Aggregated Data," "Fees," "Disclaimer," "Limitation of Liability," "Termination and Effect of Termination," and "General" shall survive any termination or expiration of these Terms.

13. General

12.1. <u>Assignment</u>
Neither the rights nor the obligations arising under these Terms are assignable or transferable by Client or Darkscope without the other party's prior written consent which shall not be unreasonably withheld or delayed, and any such attempted assignment or transfer shall be void and without effect. Notwithstanding the foregoing, Darkscope or its assignee may assign its rights to receive

payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any U.S. Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

12.2. Controlling Law, Attorneys' Fees and Severability

These Terms and any disputes arising out of or related hereto shall be governed by New Zealand law. In the event that any of the provisions of these Terms shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that these Terms shall otherwise remain in full force and effect and enforceable.

12.3. Notices

Any communication to be served on either of the parties by the other shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.
It shall be deemed to have been delivered:
(a) if delivered by hand: on the day of delivery;
(b) if sent by post to the correct address within the same country: within 72 hours of posting
(c) if sent by post to the correct address via airmail to another country: within seven days of posting
(d) If sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

12.4. Force Majeure

If the performance of these Terms or any obligation hereunder (other than obligations of payment) is prevented or restricted by reasons beyond the reasonable control of a party including but not limited to computer related attacks, hacking, or acts of terrorism (a "Force Majeure Event"), the party so affected shall be excused from such performance and liability to the extent of such prevention or restriction.

12.5. Independent Contractors

The parties shall be independent contractors under these Terms, and nothing herein shall constitute either party as the employer, employee, agent, or representative of the other party, or both parties as joint venturers or partners for any purpose. There are no third-party beneficiaries under these Terms, other than Reseller with respect to Client's payment obligations hereunder.

12.6. US Federal Government Export Compliance

Each party represents that it is not named on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities, and Client will not access or use the Service in any manner that would cause any party to violate any U.S. or international embargo, export control law, or prohibition.

12.7. U.S. Federal Government Rights

The Service constitutes a commercial item and includes commercial computer software and commercial computer software documentation. Pursuant to US Federal Acquisition Regulations 12.211 and 12.212 or Defense Federal Acquisition Regulation Supplement 227.7102-1(b) and 227.7202-3, as applicable, the US Government shall have only the license rights in technical data, computer software, and computer software documentation specified in these Terms. This provision applies in lieu of and supersedes any US Federal Acquisition Regulation, US Defense Federal Acquisition Regulation Supplement, or other clause or provision pertaining to the US Government's rights in technical data, computer software, and computer software documentation.

12.8. Anti-Corruption

Client agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Darkscope's employees or agents in connection with the Client Order Form or these Terms. Reasonable gifts and entertainment provided in the ordinary course of business that are permissible under applicable ethics and compliance rules or Laws do not violate the above restriction. If Client learns of any violation of the above restriction, Client will use reasonable efforts to promptly notify Darkscope.

12.9. Updating Terms

After acceptance of these Terms by Client, Darkscope may unilaterally revise non-material aspects of these Terms. To the extent a modification relates to a material Term, such a change shall be executed through a bilateral modification of the Client Order Form executed by Client and Reseller.

12.10. Audit Rights

Darkscope may audit Client's use of the Service to verify Client's usage complies with these Terms. Darkscope shall bear the costs of any such audit. To the extent the audit identifies instances of noncompliance with these Terms, Client shall bear the costs associated with any identified noncompliance.

12.11. Trials of Service

If Client registers for a Trial Service with Darkscope or through a Reseller, Darkscope will make such Trial Service available to Client on a trial basis, for the agreed charge, until the earlier of
(a) the end of the trial period for which Client registered to use the applicable Trial Service, or
(b) the start date of any Service subscription purchased by Client corresponding to such Trial Service.
Notwithstanding anything to the contrary, the Trial Service is provided "as-is" without any representation, warranty or indemnity. The Trial Service may differ from the service the Client subscribes to.
Darkscope makes no representation or warranty and shall have no indemnification obligations with respect to a Trial Service. Darkscope shall have no liability of any type with respect to a Trial Service. Notwithstanding anything to the contrary in section 8 ("Limitation of Liability"), Client shall not use the Trial Service in a manner that violates applicable laws and will be fully liable for any damages caused by its use of Trial Service. Any data and configurations entered into Client's Trial Service account may be permanently lost upon termination of the Trial Service.
Trial Service is offered without any expectation of future payment from the Client, and Darkscope expressly waives any future claims for payment from the Client in connection with any Trial Service. An individual accepting these Terms on behalf of a U.S. Federal Government agency represents that they have the authority to bind such agency to these Terms. If the individual does not have such authority, or if the individual does not agree with these Terms, such individual must not accept these Terms and may not use the Trial Service.

12.12. Entire Agreement

These Terms constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all prior or contemporaneous written or oral agreements existing between the parties, including any non-disclosure agreement(s), and related to the subject matter hereof are expressly cancelled. The parties agree that any term or condition stated in Client's purchase order or in any other of Client's order documentation is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be:
(1) these Terms,
(2) the applicable Client order, and
(3) the Documentation.
No modification, amendment or waiver of any provision of these Terms will be effective unless in

writing and signed by both parties hereto. Any failure to enforce any provision of these Terms shall not constitute a waiver thereof or of any other provision.

13. Definitions

13.1. "Affiliate" means, with respect to Darkscope, any entity that directly or indirectly controls, is controlled by, or is under common control with Darkscope. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

13.2. "Trial Service" means any Darkscope service or functionality that may be made available by Darkscope to Client to try at Client's option, at the agreed charge, and which is clearly designated as "beta," "trial," "non-GA," "pilot," "developer preview," "evaluation," or by a similar designation.

13.3. "Confidential Information" means
(a) Client data;
(b) the Service and the documentation; and
(c) each party's technical and business information (including but not limited to hardware, software, designs, specifications, techniques, processes, procedures, research, development, projects, products or services, business and marketing plans or opportunities, finances, vendors, penetration test results and other security information, defect and support information and metrics, and third party audit reports and attestations)
that is designated by the disclosing party as confidential. Neither these Terms nor the applicable contract price list shall be deemed Confidential Information.

13.4. "Client" means the entity that has contracted with Reseller to purchase Darkscope products or services.

13.5. "Client data" means all electronic data submitted by or on behalf of Client to the Service.

13.6. "Client order" means an ordering document between Client and Reseller that specifies the products or services purchased by Client under these Terms, including any supplements or addenda thereto. Client orders do not include the terms of any pre-printed terms on a Client purchase order or other terms on a purchase order that are additional or inconsistent with these Terms.

13.7. "Documentation" means Darkscope's user guides and other end user documentation for the applicable Service available on the online help feature of the Service, as may be updated by Darkscope from time to time including without limitation the materials available at www.darkscope.com/support.

13.8. "Effective Date" means the last date these Terms are executed, upon executing a Client Order, by accessing or using the Service in any manner, or by completing the "Darkscope Domainwatch Client Information Sheet" (or a similar) for use of a Trial Service.

13.9. "Laws" means any local, state, or national law, treaties and/or regulations applicable to a respective party.

13.10. "Malicious Code" means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.

13.11. "Non-Darkscope Application" means a web-based, offline, mobile, or other software application that is provided by Reseller, Client or a third party and interoperates with the Service.

13.12. "Darkscope" means Darkscope International Limited, a company registered in New Zealand (NZBN 9429046804457).

13.13. "Professional Services" means implementation and configuration services provided by Darkscope in connection with the Service, as described more fully in a Statement of Work. Professional Services shall not include the Service.

13.14. "Reseller" means the authorized Darkscope reseller that has contracted with (a) Darkscope to resell Darkscope's products or services and (b) Client for the sale of Darkscope's products or services.

13.15. "Service" means the products and services subscribed to by Client under a Client Order and provided by Darkscope as described in the Documentation. "Service" excludes Professional Services, Trial Service, and Non-Darkscope Applications.

13.16. "Statement of Work" means a document that describes certain Professional Services purchased by Client under these Terms and/or pursuant to a Client Order. Each Statement of Work shall incorporate these Terms by reference.

13.17. "Support Services" means the support services provided by Darkscope in accordance with Darkscope's then-current support policy.

13.18. "Term" means the applicable term for the products or services purchased by Client as specified on a Client Order Form. For the avoidance of doubt, subscriptions to the Service commence on the subscription start date and are for a period, as set forth in the applicable Client Order.

13.19. "Users" means individuals (including non-human devices, such as applications and services) who are authorized by Client to use the Service, for whom a subscription to the Service has been procured. Users may include, for example, Client's employees, consultants, clients, external users, contractors, agents, and third parties with which Client does business.

13.20. "U.S. Federal Government" or "Government" means: an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C.101, 102, and 104(1), respectively; any wholly owned Unite States of America Government corporation within the meaning of 31 U.S.C. 9101; an executive agency or any independent establishment in the legislative or judicial branch of the Government; as well as any "Eligible Ordering Activity" purchasing through a Federal Supply Schedule Contract, as defined in GSA Order OGP 4800.2I (or its successor).