



Wireless Everywhere

Master Services Agreement

GENERAL TERMS AND CONDITIONS

RELATING TO

Cygnus Software and Services

1 MASTER SERVICES AGREEMENT

- 1.1 This Master Services Agreement ("**MSA**") applies to all use of the Software to be licensed to a customer as expressly specified in the Order Form.
- 1.2 This MSA is a legally binding contract between:
- (A) any member of the Cygnus Group identified as the contracting party in an Order Form, based in the country of the Customer's registration ("**Cygnus**"); and
 - (B) the corporate entity identified as the customer in the relevant Order Form ("**Customer**").

2 DEFINITIONS AND INTERPRETATION

- 2.1 Definitions:
- 2.1.1 "**Acceptable Use Policy**" has the meaning given in Schedule 1;
 - 2.1.2 "**Authorised Users**" means the employees and representatives of the Customer unless otherwise provided in the Schedules;
 - 2.1.3 "**Business Day**" means a day other than a Saturday, Sunday or bank or public holiday in England;
 - 2.1.4 "**Business Hours**" means the period from 8.30 am to 5.00 pm on any Business Day.
 - 2.1.5 "**Cause of Action**" means all causes of action arising under and/or in connection with this MSA whether such causes of action arise in contract (including under any indemnity and warranty), in tort (including negligence or for breach of statutory duty) or otherwise;
 - 2.1.6 "**Charges**" means the fees together with any other amount payable to Cygnus under this MSA as set out in an Order Form;
 - 2.1.7 "**Confidential Information**" means any and all information that is proprietary and/or confidential in nature and is clearly labelled as such or would, by its nature, be considered by a reasonable business person to be confidential (including Cygnus Property), in whatever form or medium, disclosed by the party to the other;
 - 2.1.8 "**Contract Year**" means each successive period of twelve (12) calendar months from the Effective Date;
 - 2.1.9 "**Customer Data**" means the data submitted to Cygnus Software and/or SaaS Products by the Customer, its Authorised Users, customers or Cygnus on the Customer's behalf including personal data;
 - 2.1.10 "**Customer Materials**" means the Customer Data, together with all other information, content, materials, logos, photos and/or other information provided and/or made available to Cygnus by the Customer under this MSA.
 - 2.1.11 "**Cygnus ALERT App**" means the ALERT mobile application available for download from the relevant app store (including all other releases, versions, upgrades or updates of such mobile application) provided by or on behalf of Cygnus to the Customer in accordance with Schedule 4;
 - 2.1.12 "**Cygnus ALERT App Terms**" means terms and conditions set out in Schedule 4;
 - 2.1.13 "**Cygnus ALERT Portal**" means the web application located at <https://www.cygnus-ALERT.com/> that provides updates and ALERT notification as described in the Documentation;
 - 2.1.14 "**Cygnus Configuration Tool**" means Cygnus Software provided by Cygnus to the Customer free of charge for Customer's configuration and modification of its customer's devices linked to that customer's sites;

- 2.1.15 **"Cygnus Materials"** means any services, data, information, content, Software, websites, portals, mobile apps, tools, systems and other materials and products provided, developed or made available by or on behalf of Cygnus under and/or in connection with this MSA, but excluding all Customer Data;
- 2.1.16 **"Cygnus Property"** means any material owned or made available by Cygnus, its licensors (excluding Customer Materials) or a member of its Group (and any modifications and/or enhancements to such materials) under or in connection with this MSA, including:
- (a) all Documentation;
 - (b) Cygnus Software;
 - (c) Cygnus SaaS Products;
 - (d) Cygnus Materials; and
 - (e) any and all adaptations, add-ons, modifications, updates, and/or enhancements to the Cygnus Software, Cygnus SaaS Products, Cygnus Materials and such Documentation (including where such adaptations, add-ons, modifications, updates, and/or enhancements are made by or at the suggestion or direction of the Customer or an Authorised User);
- 2.1.17 **"Cygnus SaaS Products"** has the meaning given in clause 2.3.2 of the SaaS Terms in Schedule 1;
- 2.1.18 **"Cygnus Software"** means: (a) the object code version of the computer-based software licensed and delivered to the Customer under the relevant Order Form; (b) installed and used by the Customer and its Authorised Users; (c) any new releases, updates and version thereof made available by Cygnus under this MSA; and (d) any complete or partial copies of any of the foregoing;
- 2.1.19 **"Cygnus Site Protect Configuration Tool"** means Cygnus Software used for Cygnus devices configuration;
- 2.1.20 **"Cygnus Wiki"** means the online knowledge base website containing customers' frequently asked questions, located at <https://www.cygnus-systems.com/support/> and provided by Cygnus to the Customer free of charge;
- 2.1.21 **"Data Protection Legislation"** means:
- (i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; and
 - (ii) to the extent the EU GDPR applies, the law the European Union or any member state of the European Union to which the Customer or Cygnus is subject, which relates to the protection of Personal Data; and
 - (iii) to the extent applicable, the data protection or privacy laws of any other country.
- 2.1.22 **"Documentation"** means the operating manuals, user instruction manuals, technical literature and all other related materials supplied by Cygnus in respect of the Software;
- 2.1.23 **"Force Majeure Event"** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this MSA (provided that an inability to pay is not Force Majeure), arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet, acts of God, epidemic, pandemic, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to a party's personnel;
- 2.1.24 **"Effective Date"** has the meaning given in clause 3.1.1;

- 2.1.25 **"EU GDPR"** means the General Data Protection Regulation ((EU) 2016/6790).
- 2.1.26 **"Group"** and **"group"** means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;
- 2.1.27 **"Intellectual Property Rights"** or **"IPR"** means:
- (a) patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, plant variety rights, applications for any of the foregoing (including, but not limited to, continuations, continuations-in-part and divisional applications), the right to apply for and be granted any of the foregoing, rights in inventions,
 - (b) copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights,
 - (c) trade marks and service marks, applications for any of the foregoing, the right to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs,
 - (d) rights in know-how, trade secrets and confidential information, data exclusivity rights, and
 - (e) all other forms of intellectual property right having equivalent or similar effect to any of the foregoing which may exist anywhere in the world;
- 2.1.28 **"Insolvency Event"** means in respect of a party, that party:
- (a) is unable to pay its debts as defined in section 123 of the Insolvency Act 1986;
 - (b) proposes a voluntary arrangement;
 - (c) has steps taken for a receiver, administrative receiver or manager to be appointed over the whole or a material part of its business or assets;
 - (d) is subject to an order being made, a resolution passed or other steps being successfully taken for its winding-up (except for the purposes of a bona fide solvent reorganisation), bankruptcy or dissolution;
 - (e) proposes or enters into any composition or arrangement with its creditors generally or any class of them;
 - (f) ceases to carry on business or claim the benefit of any statutory moratorium; or
 - (g) suffers an event or proceeding in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) – (f) above.
- 2.1.29 **"Losses"** means all losses, liabilities, damages, costs, charges, and reasonably incurred expenses (including management time, legal fees, other professional advisers' fees, and costs and disbursements of investigation, litigation, settlement, judgment, interest, fines, penalties and remedial actions) howsoever arising in connection with a party's breach of this MSA;
- 2.1.30 **"MSA"** means this Master Services Agreement, comprised of: (a) the relevant Order Form; (b) the MSA Terms; (c) the SaaS Terms in Schedule 1 (including Acceptable Use Policy); (d) the Software Terms in Schedule 2; Schedule 3 (Support and Maintenance Services); (f) Schedule 4 (Cygnus ALERT App Terms) and (g) Schedule 5(DPA) with Annex A.
- 2.1.31 **"MSA Terms"** means the terms and conditions set out in the main body of this MSA;

2.1.32 **"Order Form"** means a written order form (in electric or physical form), signed by both parties' authorised representatives to which this MSA is appended, detailing:

- (a) Software and Services to be provided by Cygnus under this MSA; and
- (b) the Charges.

2.1.33 **"SaaS Terms"** means the terms and conditions set out in Schedule 1;

2.1.34 **"Services"** means the Cygnus SaaS Products, ALERTs, notifications and other cloud based services accompanying devices provided by Cygnus, including any associated services provided by Cygnus to the Customer under this MSA;

2.1.35 **"Software"** means any application or computer program (whether in source code or machine executable object code and whether newly developed, enhanced from existing software, customised or configured or otherwise), any and all copies thereof and related Documentation provided by Cygnus to the Customer, whether downloaded to the Customer's computer, tablet, mobile device or utilised online as part of the Cygnus SaaS Products;

2.1.36 **"Software Terms"** means terms and conditions set out in Schedule 2; and

2.1.37 **"Term"** has the meaning given in clause 3.1.2.

2.1.38 **"UK GDPR"** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

2.2 Interpretation:

2.2.1 In this MSA:

- (a) a reference to this MSA includes its Schedules;
- (b) clause, schedule and paragraph headings shall not affect the interpretation of this MSA;
- (c) references to a party shall be construed as Cygnus or the Customer and parties shall be construed as the Customer and Cygnus taken together;
- (d) unless the context otherwise requires, words in the singular shall include the plural and vice versa;
- (e) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (f) any words that follow **'include', 'includes', 'including', 'in particular'** or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- (g) any reference to any enactment or statutory provision or subordinate legislation will be construed as a reference to it as from time to time replaced, amended, consolidated or re-enacted (with or without modification) and includes all orders, rules or regulations made under such enactment;
- (h) any obligation on a party not to do something, includes an obligation not to agree, allow, permit or acquiesce to that thing being done;
- (i) a reference to writing or written includes email.

3 COMMENCEMENT AND DURATION

3.1 This MSA:

3.1.1 is effective from the date described in the relevant Order Form to which this MSA has been attached (the **"Effective Date"**); and

3.1.2 shall continue unless and until terminated earlier in accordance with its terms (the “Term”).

4 MUTUAL WARRANTIES

4.1 Each party hereby represents, warrants, and undertakes to the other that:

4.1.1 it is fully authorised to enter into and perform this MSA;

4.1.2 there are no actions or suits or proceedings in existence or threatened that might affect its ability to perform its obligations under this MSA; and

4.1.3 it has the requisite power and authority to enter into this MSA and to carry out its obligations as contemplated by this MSA.

5 LIABILITY

5.1 The restrictions on liability in this clause 5 apply to any Cause of Action.

5.2 Nothing in this MSA shall limit or exclude either party’s liability to the other for Losses resulting from:

5.2.1 death or personal injury caused by negligence;

5.2.2 fraud or fraudulent misrepresentation; or

5.2.3 any matter in respect of which Losses may not be limited or excluded under applicable laws.

5.3 Nothing in this MSA shall limit or exclude:

5.3.1 Customer’s liability to pay Charges due under this MSA; or

5.3.2 Customer’s liability to Cygnus for Losses arising in connection with:

5.3.2.1 a breach of clause 8 (Confidentiality);

5.3.2.2 under any indemnity; or

5.3.2.3 any wilful default or abandonment of this MSA.

5.4 Subject to clause 5.2 and clause 5.3, neither party shall be liable to the other (or any third party claiming under or through the other) under any Cause of Action for Losses that comprise:

5.4.1 loss of profit or revenue (except for the Charges);

5.4.2 any special, indirect or consequential loss or damage; or

5.4.3 loss or corruption of Customer Data,

5.4.4 in each case, whether arising directly or indirectly under or in connection with this MSA and whether or not reasonably foreseeable, reasonably contemplable, actually foreseen or actually contemplated by a party at the Effective Date.

5.5 Subject to clauses 5.2, 5.3 and 5.4, Cygnus shall not be liable for any avoidable disruptions of Software and/or Services incurred directly or indirectly as a result or in connection with the Customer failing to:

5.5.1 apply the recommended Software updates;

5.5.2 download the latest version of the Cygnus Software; and/or

5.5.3 operate the Software on the minimum system requirements as advised by Cygnus from time to time.

- 5.6 Subject to clauses 5.2, 5.3 5.4 and 5.5, Cygnus' total aggregate liability to the Customer, in each Contract Year and in respect of all Causes of Action arising in that Contract Year (as determined at the date when the liability giving rise to the Causes of Action arose), shall not exceed a sum equivalent to one hundred percent (100%) of the total Charges paid by the Customer to Cygnus under this MSA during the Contract Year in question.
- 5.7 Subject to clause 5.2 and except to the extent expressly set out in this MSA, Cygnus gives no warranties, representations or other commitments to the Customer (or its Authorised Users) as to the functionality, performance, availability, transmission speeds, content, latency and/or accuracy of the Cygnus Software and/or Services.

6 DATA PROTECTION

- 6.1 Each of the parties will comply with Data Protection Legislation in so far as it applies to their obligations under this MSA. Each party shall enter into any documents or agreements, and do all things and take such action, as may be required for compliance with Data Protection Legislation, including but not limited to adhering to the obligations in Schedule 5.
- 6.2 The parties have determined and agreed that for the purpose of Data Protection Legislation and their obligations under this MSA, Cygnus is the Processor in respect of any Personal Data processed by Cygnus on the Customer's behalf, and the Customer is the Controller.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 As between the parties:
- 7.1.1 Cygnus, its Group members and/or its licensors owns all Intellectual Property Rights in the Cygnus Property; and
- 7.1.2 the Customer owns all Intellectual Property Rights in the Customer Materials.
- 7.2 The parties shall have no rights or interests in the Intellectual Property Rights referred to in clause 7.1 except as described in the Schedules.
- 7.3 Cygnus may freely incorporate into the Cygnus Property any feedback and/or suggested improvements to the Cygnus Property given by the Customer or an Authorised User.
- 7.4 The Customer acknowledges and agrees that the Cygnus Property comprises commercially valuable, proprietary assets and trade secrets of Cygnus, its Group member or their licensors, the design and development of which reflect the effort of skilled developers and the investment of considerable time and money by and/or on behalf of Cygnus.
- 7.5 If (at any time): (a) through use of Cygnus Software and/or Cygnus SaaS Products; (b) provision of the Services; (c) by operation of applicable law; or (d) otherwise, the Customer or an Authorised User comes to own Intellectual Property Rights in the Cygnus Property, then the Customer: (a) hereby assigns; or (b) where necessary, shall assign or procure the assignment of (promptly on request from Cygnus and without delay), such Intellectual Property Rights (both present and future) to Cygnus and, to the extent permitted by applicable law, waives (or shall procure the waiver of) all moral rights (and analogous rights) worldwide in connection with such Cygnus Property.
- 7.6 The Customer shall indemnify and defend Cygnus, its members of the Group and its and their directors and employees against any Losses arising out or in connection with any allegation or claim that the Customer Materials infringe any Intellectual Property Rights (the "**Customer Indemnity**").
- 7.7 Cygnus shall ensure that:

- 7.7.1 the Customer is given prompt notice of any such allegation or claim to which the Customer Indemnity applies;
- 7.7.2 it provides reasonable co-operation to the Customer in the defence and settlement of such claim; and
- 7.7.3 the Customer is given sole authority to defend or settle the claim. The Customer shall not without Cygnus' prior written consent (not to be unreasonably withheld or delayed) make any admission on behalf of, or enter into a settlement that imposes any liability on Cygnus.
- 7.8 Subject to clause 7.9 and clause 7.10, Cygnus shall indemnify and defend the Customer against any claim made against it by a third party to the extent that such claim alleges that the Customer's use of Cygnus Software and/or Services in accordance with the provisions of this MSA infringes any Intellectual Property Rights belonging to that third party ("**Cygnus Indemnity**"), provided that Cygnus Indemnity shall only apply if:
 - 7.8.1 Cygnus is given prompt notice of any such claim (and in any event is given notice within five (5) Business Days of the Customer becoming aware of, or being notified of, the claim);
 - 7.8.2 the Customer provides reasonable co-operation to Cygnus in the defence and settlement of such claim;
 - 7.8.3 the Customer takes all reasonable and timely action necessary to mitigate Losses incurred by the Customer as a result of such claim; and
 - 7.8.4 Cygnus is given sole authority to defend and settle the claim.
- 7.9 In the defence or settlement of any such claim to which Cygnus Indemnity applies, Cygnus may procure the right for the Customer to continue using the Cygnus Software and/or Services in question, replace or modify the relevant Cygnus Software and/or Services so that it becomes non-infringing or, if such remedies are not available, terminate or suspend this MSA or the relevant Schedule (and the Customer's use and access to Cygnus Software and/or Services concerned) on notice to the Customer without any additional liability to the Customer.
- 7.10 In no event shall Cygnus be liable to the Customer to the extent that the claim to which Cygnus Indemnity applies is based on:
 - 7.10.1 a modification of the Cygnus Software and/or Services concerned by anyone other than Cygnus;
 - 7.10.2 an infringing Customer Materials; and/or
 - 7.10.3 the Customer's use of the relevant Cygnus Software and/or Services in a manner contrary to the instructions given to the Customer (or its Authorised Users) by Cygnus.
- 7.11 The Customer shall have no rights and remedies in respect of infringement of any third party Intellectual Property Rights except as expressly set out in clause 7.

8 CONFIDENTIAL INFORMATION

- 8.1 The parties each acknowledge and agree that they will have access to Confidential Information of the other party subject to the restrictions in this clause 8.
- 8.2 Except as described in clause 8.3 and clause 8.4, the receiving party shall not (except in the proper course of discharging its obligations or exercising its rights under this MSA), either during the term of or at any time after the expiry or termination of this MSA, use or disclose to any third party, any of the disclosing party's Confidential Information.
- 8.3 The restriction in clause 8.2 does not apply to:
 - 8.3.1 any use or disclosure of Confidential Information that is authorised by the disclosing party or required by applicable laws provided the party compelled by applicable law to make the disclosure:

- 8.3.1.1 notifies the disclosing party (to the extent permitted by applicable law) of the proposed disclosure;
- 8.3.1.2 permits the disclosing party to make representations to try to avoid or limit the extent of the required disclosure; and
- 8.3.1.3 only discloses the minimum amount of Confidential Information necessary to comply with such applicable law;
- 8.3.2 any information which is already in the possession of the receiving party independently of this MSA and which is not subject to any obligations of confidence;
- 8.3.3 any information which is already in, or comes into, the public domain otherwise than through the receiving party's unauthorised disclosure of Confidential Information; and/or
- 8.3.4 the parties agree in writing that the information is not confidential.
- 8.4 Each party shall hold the other party's Confidential Information in confidence using at least the same level of protection used in respect of its own Confidential Information and shall only disclose the other party's Confidential information to such of its officers, directors, and employees (and, in the case of Cygnus, those officers, directors, and employees of its Group members) who have strict need to know the Confidential Information in connection with the performance of this MSA (which, in the case of Cygnus shall include disclosure to a member of its Group for its internal business purposes).
- 8.5 At the request of the disclosing party, the receiving party shall promptly and without undue delay:
 - 8.5.1 destroy or return to the disclosing party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the disclosing party's Confidential Information; and
 - 8.5.2 erase or put beyond use all of the disclosing party's Confidential Information from its computer systems.
- 8.6 In the event that a party, erases or puts Confidential Information beyond use as described in clause 8.5.2, it shall certify the same in writing to the other party.
- 8.7 The parties acknowledge that damages alone would not be an adequate remedy for the breach of any of the provisions of this clause 8 and that accordingly, and without prejudice to any other rights and remedies that a party may have under this MSA or applicable law, the disclosing party shall be entitled to seek the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this clause 8.

9 TERMINATION

- 9.1 Termination for Convenience
 - 9.1.1 Either party may terminate this MSA for convenience by giving the other party at least thirty (30) days' written notice expiring on or after the expiry of twenty four (24) months from the Effective Date.
- 9.2 Termination for Cause
 - 9.2.1 Either party may terminate this MSA immediately at any time by giving written notice to the other party if:
 - 9.2.1.1 the other party commits a material breach of this MSA that is:

- (a) irremediable; or
- (b) remediable, but not so remedied within thirty (30) calendar days from written notice requiring remedy of the material breach; or
- (c) the other party suffers an Insolvency Event;
- (d) the other party breaches clause 8 (Confidential Information).

9.2.2 Without limiting Cygnus' right to terminate under clause 9.2.1, Cygnus may terminate this MSA or suspend any Services immediately at any time by giving written notice to the Customer:

9.2.2.1 if the Customer and/or its Authorised User commits any breach of one or more of the following clauses:

- (a) clause 3 (Conditions of Use) of the SaaS Terms in Schedule 1; and/or
- (b) clause 3 (Conditions of Use) of the Software Terms in Schedule 2;

9.2.2.2 if the Customer fails to pay any Charges due under this MSA by the due date for payment of such Charges; and/or

9.2.2.3 the Customer undergoes a change of Control (within the meaning of s1124 of the Corporation and Tax Act 2010).

10 CONSEQUENCES OF TERMINATION

10.1 **Accrued Rights.** Termination of this MSA (howsoever occurring) shall be without prejudice to any rights or liabilities which may have accrued up to the date of such termination and it shall not affect the coming into force or the continuance in force of any of its provisions which are expressly or by implication intended to come into or continue in force on or after such termination.

10.2 **Survival.** All rights and obligations under this MSA which are expressly or by their nature intended to survive termination shall remain in full force and effect, including the following clauses:

- 10.2.1 2 (Definitions and Interpretation);
- 10.2.2 5 (Liability);
- 10.2.3 7 (Intellectual Property Rights);
- 10.2.4 8 (Confidential Information);
- 10.2.5 10 (Consequences of Termination);
- 10.2.6 11 (Force Majeure); and
- 10.2.7 12 (General).

10.3 **Consequences.** Upon termination of this MSA for any reason:

- 10.3.1 each party shall comply with clause 8.5 (Confidential Information) as if a request had been made by the disclosing party;
- 10.3.2 all rights and licences granted under this MSA shall immediately terminate; and
- 10.3.3 the Customer shall (and shall procure that each Authorised User shall):
 - 10.3.3.1 stop using the relevant Cygnus Software and Services;

- 10.3.3.2 uninstall the relevant Cygnus Software and/or Documentation (as the case may be);
- 10.3.3.3 remove the Cygnus ALERT App from any Customer's device and stop using any Cygnus Accounts; and
- 10.3.3.4 upon Cygnus' request destroy, delete or return any copies of the Cygnus Property. In the event that the Customer uninstall, destroy and/or delete the Cygnus Property as described in this clause 10.3, it shall certify the same in writing to Cygnus.

11 FORCE MAJEURE

- 11.1 Subject to the remaining provisions of this clause 11, a party may claim relief from liability for non-performance of its obligations (except for the payment of Charges) to the extent due to a Force Majeure Event.
- 11.2 A party cannot claim relief if the Force Majeure Event or its level of exposure to such event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 11.3 If the period of delay or non-performance continues for two (2) months, either party may terminate this MSA by giving fifteen (15) days' written notice to the other party.

12 GENERAL

- 12.1 **Conflicts.** If and to the extent there is any conflict, inconsistency or ambiguity within this MSA, then except as is expressly provided otherwise or agreed between the parties in writing, such conflict, inconsistency or ambiguity shall be resolved in accordance with the following order of precedence (with the document higher in the list prevailing over a document lower in the list):
 - 12.1.1 Schedule 5 (DPA) OR the DPA and Appendix B to the Order Form (Annex A (Details of Processing of Customer personal data));
 - 12.1.2 the MSA Terms;
 - 12.1.3 terms and conditions set out in the Schedules (and all other documents referenced in the Schedules) ; and
 - 12.1.4 the Order Form (and all other documents referenced in the Order Form);.
- 12.2 **Variations.** No variation of this MSA (including its Schedules) shall be effective unless it is in writing and signed by the parties' authorised representatives.
- 12.3 **No Waiver.** No failure or delay by a party to exercise any right or remedy provided under this MSA or by applicable law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 12.4 **Severability.** If any provision (or part of a provision) of this MSA is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 12.5 Entire Agreement:
 - 12.5.1 This MSA (with its Schedule and the Order Form) constitutes the entire agreement between the parties and supersede all previous understandings, arrangements or agreements between them relating to the subject matter they cover, whether in writing or oral.

- 12.5.2 Each party acknowledges and agrees that in entering into this MSA it does not rely on any promise, assurance, undertaking, statement, representation, warranty or understanding (whether in writing or not and whether made innocently or negligently) that is not expressly set out in this MSA.
- 12.6 **Assignment and sub-contracting.** The Customer shall not assign, sub-contract, sub-licence, charge or otherwise deal with this MSA or any rights and obligations under this MSA in whole or in part, without the prior written consent of Cygnus.
- 12.7 **No Partnership or Agency.** The parties are independent and are not partners or principal and agent and this MSA does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.
- 12.8 **Third Party Rights.** the Customer agrees that:
- 12.8.1 all benefits, warranties, indemnities, licences and other rights and remedies provided to or conferred upon Cygnus under this MSA are also provided to or conferred upon all members of Cygnus Group; and
- 12.8.2 other than in respect of any duty or obligation of Cygnus or any right of the Customer, any reference to Cygnus outside this clause 12.8 is deemed to refer to any member of Cygnus Group.
- 12.8.3 Cygnus may enforce directly against the Customer any of the rights or the benefits conferred on any member of Cygnus Group by this MSA and recover any Cygnus Group member Losses subject to the limitations and exclusions of the Customer's liability set out in clause 5 (Liability).
- 12.8.4 **Liability:** The limitations of liability in this MSA apply to Cygnus and its Group members as a whole so that they apply to all liabilities incurred under or in connection with this MSA either:
- 12.8.4.1 by the Customer to Cygnus and any member of its Group in aggregate; or
- 12.8.4.2 by Cygnus and any member of its Group in aggregate to the Customer.
- 12.8.5 **Variation without consent of a member of Cygnus Group:** Cygnus and the Customer may vary or terminate this MSA in accordance with its terms without the agreement or consent of any member of Cygnus Group, even if that variation or termination affects the benefits conferred on the relevant member of Cygnus Group.
- 12.9 **Notices:**
- 12.9.1 Any notice or other communication given or required to be given to a party under or in connection with this MSA shall be in writing and shall be delivered by (a) hand or sent by pre-paid first-class post or other next Business Day delivery services at its registered office; or (b) except with respect to the service of legal proceedings, email to the addresses referred to in clause 12.9.2 below.
- 12.9.2 Any notice or communication shall be deemed to have been received:
- 12.9.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 12.9.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery services; or
- 12.9.2.3 if sent by email: (i) For Cygnus: to the email address provided in the Order Form; or (ii) For the Customer: to the email address provided in the Order Form, from an authorised representative of sufficient authority to give the notice, upon the generation of a receipt notice by the recipient's server or, if such notice is not generated, upon delivery to the recipient's server.
- 12.10 **Counterparts.** This MSA may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

12.11 Governing Law and Jurisdiction:

- 12.11.1 This MSA and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 12.11.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this MSA (including non-contractual disputes or claims).

Schedule 1 – Cygnus software as a services Terms

1. SaaS Terms

- 1.1 These SaaS Terms:
- 1.1.1 are incorporated in and form part of the MSA; and
 - 1.1.2 apply between Cygnus and the Customer to access and use of Cygnus SaaS Products in addition to the MSA Terms (subject to clause 12.1 (Conflicts) of the MSA Terms).
- 1.2 Any terms and phrases defined in the MSA Terms shall have the same meaning in these SaaS Terms, unless expressly provided otherwise hereunder.
- 1.3 For the purpose of this Schedule 1:
- 1.3.1 **"Acceptable Use Policy"** means Cygnus' policy on acceptable use of the Cygnus SaaS Products as updated from time to time, which at the Effective Date is the latest version available at www.cygnus-ALERT.com/Home/Terms
 - 1.3.2 **"Authorised User"** means Customer's directors, employees, agents, contractors and/or End Users (and an End User's employees) authorised by the Customer to access and use Cygnus SaaS Products in accordance with the SaaS terms and Acceptable Use Policy;
 - 1.3.3 **"Cygnus SaaS Products"** means Cygnus ALERT Portal, Cygnus Wiki and any other Cygnus or its licensors' cloud based software, application or features, as set out in the relevant Order Form and made available to the Customer via the internet or another network, rather than computer-based software products;
 - 1.3.4 **"End User"** means the corporate entity, which is a customer of the Customer;
 - 1.3.5 **"Licence Metrics"** means the limitation on the number of Authorised Users, usage of each Cygnus SaaS Product as described in the applicable Order Form by a term such as the number of customers, devices, users and the like;

2. Licence

- 2.1 Subject to the MSA Terms (and payment of the relevant licence fees or subscription fees (as applicable)), Cygnus grants the Customer a non-exclusive, revocable, non-sublicensable and non-transferable right to permit its Authorised Users to access and use Cygnus SaaS Products during the Term solely for use in the Customer's business operations and in accordance with the conditions of use as described in clause 3 (Conditions of Use) below.
- 2.2 The Customer shall only permit Authorised Users to access and use any Cygnus SaaS Product subject to the terms and conditions of this MSA and shall not exceed the number of Licence Metrics specified in the Order Form.
- 2.3 Additional usage or additional features may be purchased at any time during the Term at the Cygnus then-current rates for any additional usage of the Cygnus SaaS Products.

3. Conditions of Use

- 3.1 The Customer shall not (and shall procure that that each Authorised User shall not):
- 3.1.1 permit anyone to access Cygnus SaaS Products who is not an Authorised User;
 - 3.1.2 exceed the Licence Metrics specified in the relevant Order Form;
 - 3.1.3 access, store, distribute or transmit any software, code, file or programme which may prevent, impair or otherwise adversely affect the operation of Cygnus SaaS Products (including without limitation worms, Trojan horses, viruses and other similar things or devices) or submit any material to the Cygnus SaaS Products that:
 - (a) is harmful, discriminatory, threatening, defamatory, obscene, infringing, harassing, or offensive;
 - (b) is submitted unlawfully (including in breach of the Data Protection Legislation) or facilitates illegal activity;
 - (c) is incomplete, inaccurate, or intended to deceive;

- (d) could cause damage or injury to any person or property; and
 - (e) facilitate illegal activity;
- 3.1.4 have any right to copy, adapt, reverse engineer, de-compile, disassemble, modify, adapt or make error corrections to the Cygnus SaaS Product except, with respect to de-compilation of the Cygnus SaaS Product, to the extent such de-compilation is necessary for the exclusive purpose of obtaining the information necessary to create an independent program which can be operated with the Cygnus SaaS Product or with another program and the Customer's right to de-compile the Cygnus SaaS Product shall not apply if:
 - (a) the Customer is in breach of the de-compilation conditions described in section 50B of the Copyright, Designs and Patents Act 1988; or
 - (b) Cygnus: (i) is prepared to carry out, and/or procure the carrying out of, such de-compilation in return for a reasonable fee; or (ii) has provided the information necessary to achieve such inter-operation without such de-compilation within a reasonable period, and the Customer shall request that Cygnus carries out such action or provides such information (and shall meet Cygnus' reasonable costs in providing that information) before undertaking any such de-compilation;
- 3.1.5 access Cygnus SaaS Products in order to build a product or services which compete with any Cygnus SaaS Product or the business of Cygnus; or
- 3.1.6 use Cygnus SaaS Product to provide services to third parties (other than its customers).
- 3.2 The Customer shall (and shall procure that each Authorised User shall):
 - 3.2.1 keep secure and confidential their user name and password for accessing their account;
 - 3.2.2 prevent any unauthorised access to, or use of, Cygnus SaaS Products;
 - 3.2.3 at all times comply with this clause 3 (Conditions of Use); and
 - 3.2.4 notify Cygnus in writing as soon as it becomes aware of any actual or suspected unauthorised access, use and/or any other breach of security.
- 3.3 Where applicable, if any password or permission to access has been provided to an individual who is not an Authorised User, the Customer shall, without delay, disable any such password or permission and notify Cygnus immediately.
- 3.4 The Customer acknowledges and agrees that Cygnus SaaS Products provided under this MSA do not include:
 - 3.4.1 any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of Cygnus SaaS Products); and
 - 3.4.2 dedicated data back up or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of all Customer Data).
- 4. Cygnus Obligations**
- 4.1 Cygnus shall:
 - 4.1.1 make Cygnus SaaS Products available with reasonable skill and care;
 - 4.1.2 ensure that each Cygnus SaaS Product performs (in technical and functional respect) substantially in accordance with the description of that Cygnus SaaS Product in the Documentation; and
 - 4.1.3 use commercially reasonable endeavours to achieve the service levels specified in the Documentation.
- 4.2 Cygnus has sole discretion and control over, and may modify at any time the functionality, performance, configuration, appearance and content of Cygnus SaaS Products provided that, in each case such modifications do not result in a material reduction to, or loss of, the functionality, performance, transmission speeds, content, latency and/or accuracy of the Cygnus SaaS Product concerned.

- 4.3 Subject to clause 5 (Liability) of the MSA Terms and except to the extent expressly set out in these SaaS Terms, Cygnus gives no warranties, representations or other commitments to the Customer as to the functionality, performance, availability, transmission speeds, content, latency and/or accuracy of Cygnus SaaS Products.
- 4.4 Cygnus does not warrant or represent that use of Cygnus SaaS Products will be uninterrupted or error-free or that information obtained by the Customer or its Authorised Users through the Cygnus SaaS Products will meet the Customer's requirements.
- 4.5 Subject to clause 4.1 of these SaaS Terms, all warranties, conditions, representations, and terms (whether written or oral, express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, including as to satisfactory quality, fitness for a particular purpose or use, accuracy, adequacy, completeness or timeliness) are hereby excluded to the fullest extent permitted by applicable law.
- 4.6 Cygnus obligations under clause 4.1 of these SaaS Terms shall not apply if non-conformance is caused by: (i) use of Cygnus SaaS Products contrary to the Documentation or Cygnus' instructions; or (ii) modification or alteration of any Cygnus SaaS Product by any party other than Cygnus or Cygnus' duly authorised contractors or agents. If any Cygnus SaaS Product does not conform with clause 5.1 of these SaaS Terms, Cygnus will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly without any additional liability to the Customer.
- 4.7 Cygnus is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Documentation and Cygnus SaaS Products may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.8 Cygnus has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these SaaS Terms.

5. Customer Obligations

- 5.1 The Customer shall:
- 5.1.1 provide Cygnus with all necessary co-operation in relation to Cygnus SaaS Products;
 - 5.1.2 use the latest end-point security and versions of anti-virus definitions and software available from an industry accepted anti-virus software provider in respect of its computer systems, technology and network infrastructure;
 - 5.1.3 ensure that its network and systems comply with the relevant specifications necessary to access Cygnus SaaS Products (if any);
 - 5.1.4 unless otherwise agreed in writing, be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Cygnus data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
 - 5.1.5 and shall procure that each Authorised User shall accept and at all times comply with the Acceptable Use Policy.
- 5.2 The Customer is responsible for all acts and omissions of its Authorised Users as if such acts or omissions were its own and shall defend, indemnify and hold harmless Cygnus against all Losses incurred or suffered by Cygnus, or for which Cygnus may become liable (whether direct, indirect or consequential and including any economic loss or other loss of profits, business or goodwill), arising out of or in connection with: (a) any act or omission of any Authorised User, including for any breach of the SaaS Terms and/or Acceptable Use Policy; (c) any third party claims related to an Authorised User infringing the Intellectual Property Rights of anyone (including Cygnus); (d) any misuse of the Cygnus SaaS Products or the Acceptable Use Policy by the Customer or an Authorised User.

6. Termination

- 6.1 Without limiting Cygnus' right to terminate under clauses 9.2.1. and 9.2.2 of the MSA Terms, Cygnus may terminate this MSA if the Customer (and/or an Authorised User) commits any breach of clause 5 (Customer's Obligations) and/or the Acceptable Use Policy.

7. Use of Aggregate Data

- 7.1 Cygnus may collect, group, anonymise and aggregate data and information submitted to each Cygnus SaaS Product (the "**Aggregated Data**") and the Customer hereby gives its consent to the same.
- 7.2 Cygnus shall ensure that Aggregated Data is not attributable to any particular Customer and does not reveal data about a Customer without its consent.

SCHEDULE 2 – TERMS AND CONDITIONS FOR CYGNUS SOFTWARE

1. Software Terms

- 1.1 These Software Terms are incorporated in and form part of this MSA and apply between Cygnus and the Customer in addition to the MSA Terms (subject to clause 12.1 (Conflicts) of the MSA Terms).
- 1.2 Any terms and phrases defined in the MSA Terms shall have the same meaning in these Software Terms, unless expressly provided otherwise hereunder.
- 1.3 For the purpose of this Schedule 2:
 - 1.3.1 **"Authorised User"** means a person authorised by the Customer to access and use Cygnus Software on a Permitted Device;
 - 1.3.2 **"Licence Restrictions"** means the restrictions set out in the Order Form; and
 - 1.3.3 **"Permitted Device"** means a Windows operated computer or laptop on which Cygnus Software is installed and where such device is owned, or exclusively reserved for use, by the Customer (i.e., is not a shared device with a third party) and provided and identified as such by the Customer upon acceptance of the relevant Order Form.

2. Delivery and Licence

- 2.1 Cygnus Software and relevant Documentation will be made available to the Customer via access to electronic download. Customer is responsible for accessing and downloading Cygnus Software on the Customer's Permitted Device from the network. Cygnus will email Customer instruction for download of the Documentation and Cygnus Software.
- 2.2 Subject to the Customer's compliance with this MSA and in consideration of the relevant licence fee or subscription fees (as applicable), Cygnus grants the Customer, from the Effective Date a non-exclusive, non-transferable and fully revocable right, for the Term or duration identified in the relevant Order Form, to: (a) install and use Cygnus Software on the Permitted Device solely for the Customer's internal business operations (including customer backup); (b) allow its Authorised Users to access and use Cygnus Software; and (c) make one copy for backup purposes of each Cygnus Software.

3. Conditions of Use

- 3.1 Except as expressly permitted under this MSA or by applicable law, the Customer shall not (and shall not permit any third party to):
 - 3.1.1 use, copy, modify, adapt, correct errors, or create derivative works from, Cygnus Software;
 - 3.1.2 decode, reverse engineer, disassemble, decompile or otherwise translate or convert Cygnus Software other than in the circumstances set out in clause 3.2 of these Software Terms;
 - 3.1.3 assign, sub-licence, lease, resell, distribute or otherwise deal in or encumber Cygnus Software;
 - 3.1.4 remove or modify any copyright or similar notices, or any of Cygnus' or other third party branding, that Cygnus Software causes to be displayed when used or that is displayed in the Documentation accompanying Cygnus Software;
 - 3.1.5 attempt to circumvent or interfere with any security features of Cygnus Software.
- 3.2 If it is necessary for the Customer to decompile Cygnus Software in order to create an independent program to allow the interoperability of Cygnus Software with other software, it shall notify Cygnus in writing in advance and request the provision of the information necessary to enable such interoperability. Cygnus may, but is not obliged to, provide such information and assistance to the Customer as it considers appropriate.
- 3.3 The Customer shall not exceed the Licence Restrictions and acknowledges that it shall be required, without prejudice to any other rights or remedies to which Cygnus may be entitled, to pay Cygnus at Cygnus' then-current rates for any additional usage of Cygnus Software.
- 3.4 The Customer may use Cygnus Software backup copy referred to in clause 2.2 (c) of these Software Terms for the purposes of testing the Customer's disaster recovery and business continuity arrangements, for such reasonable period of time (not exceeding one week per Contract Year during the Term) as is necessary to complete the disaster recovery and business continuity testing.

- 3.5 The Customer shall install and use the Software at all times in accordance with the Documentation and all other terms of this MSA.
- 3.6 The Customer shall be permitted to use Cygnus Software in machine-readable object code form only.
- 3.7 The Customer shall notify Cygnus in writing as soon as it becomes aware of any actual or suspected unauthorised installation or use of Cygnus Software (including any installation or use in excess of the Licence Restrictions).

SCHEDULE 3 – CYGNUS SUPPORT AND MAINTENANCE SERVICES

1. SCHEDULE 3

1.1 This Schedule 3 is incorporated in and form part of this MSA and apply between Cygnus and the Customer in addition to the MSA Terms (subject to clause 12.1 (Conflicts) of the MSA Terms).

1.2 Any terms and phrases defined in the MSA Terms shall have the same meaning in this Schedule 3, unless expressly provided otherwise hereunder.

2. UPDATES AND NEW VERSIONS

2.1 During the Term Cygnus may furnish updates, modifications, enhancements and/or new versions of the Cygnus Software or Cygnus SaaS Products at its discretion ("**Maintenance Release**").

2.2 Any such Maintenance Release will be provided under this MSA unless they come with separate terms in which case Cygnus will provide the Customer an opportunity to review and accept those terms.

2.3 Accordingly, it is Customer's responsibility to maintain the currency of the relevant Software by deploying the latest version made available by Cygnus.

2.4 End-of-Support (EOS)

2.4.1 Cygnus reserves the right to retire or cease to provide any security updates, maintenance and technical support to any prior version of the Software which is not the Supported Software.

2.4.2 Cygnus shall issue an EOS notice in writing to the Customer at least three (3) months before the date on which the relevant Software version ceases to be maintained and supported ("**EOS Date**").

2.4.3 With effect from the EOS Date, the EOS Software version will be declared out of use and the Customer shall either update or cease (as applicable) all use of the same.

2.4.4 Any Cygnus' future obligations under this MSA to deliver, licence, maintain or support the EOS Software version shall cease, and all service levels, warranties and other obligations of Cygnus in respect of such EOS Software version shall cease to apply at the EOS Date.

2.4.5 Any use of the EOS Software version by the Customer or its Authorised Users after the EOS Date shall be entirely at the Customer's risk, and:

(a) Cygnus shall not be liable for Losses arising from or in connection with the Customer's (and/or an Authorised User's) continued use of the EOS Software version; and

(b) the Customer shall indemnify and keep indemnified Cygnus against all Losses (including consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by Cygnus in connection with, or paid or agreed to be paid by Cygnus in settlement of, any claim arising out of or in connection with the Customer's (or an Authorised User's) continued use of the EOS Software version beyond the EOS Date.

3. SUPPORT SERVICES

3.1 During the Term Cygnus shall perform the services described in this Schedule 3 (Support and Maintenance Services) during the Support Hours (as defined below) in accordance with the service levels described in paragraph 6 (Service Levels) of this Schedule.

3.2 For the purpose of this Schedule:

3.2.1 "**Support Hours**" mean five days a week, between the hours of 08:00 and 17:00 excluding public holidays in United Kingdom;

3.2.2 "**Out-of-scope Support Services**" shall mean any services provided by Cygnus in connection with any apparent problem regarding the Software reasonably determined by Cygnus not to have been caused by a fault, but rather by a Customer cause (including, without limitation, any improper use, misuse or unauthorised alteration of the Software by the Customer) or a cause outside Cygnus's control (including any investigational work resulting in such a determination).

3.3 As part of the Support Services, Cygnus shall:

- 3.3.1 provide help desk support by means of the following telephone number 01432 279000, dedicated customer portal available at <https://www.cygnus-systems.com/en-gb/#support> and e-mail address techsupport@cygnus-systems.com ;
- 3.3.2 use commercially reasonable efforts to correct all faults notified to Cygnus by the Customer;
- 3.3.3 provide maintenance and technical support for the most current version of the Cygnus Software and Cygnus SaaS Products and one prior version ("**Supported Software**"); and
- 3.3.4 provide technical support for the Cygnus Software and Cygnus SaaS Products in accordance with the Service Levels.
- 3.4 Cygnus may (acting reasonably) determine that any services are Out-of-scope Support Services.
- 3.5 If Cygnus makes any such determination, it shall promptly notify the Customer of that determination.
- 3.6 The Customer acknowledges that Cygnus is not obliged to provide Out-of-scope Support Services.

4. SUPPORT FEES

- 4.1 Cygnus will, as part of the Services, provide the Customer with the support services as described in this Schedule. In the event that the Customer requires Cygnus to perform additional support services, then the fees payable in consideration of any additional support services shall be in accordance with Cygnus' then applicable fees for such additional support services, available at request.
- 4.2 The provision of Out-of-scope Support Services shall be charged for at the applicable time and materials rates as set out in the Order Form.

5. SUBMITTING SUPPORT REQUESTS AND ACCESS

- 5.1 The Customer may request Support Services by way of a support request containing the information described under this paragraph 5.
- 5.2 Each support request shall include a description of the problem and the start time of the incident.
- 5.3 The Customer shall provide Cygnus with:
 - 5.3.1 prompt notice of any faults; and
 - 5.3.2 such output and other data, documents, information, assistance and (subject to compliance with all Customer's security and encryption requirements notified to Cygnus in writing) remote access to the Customer's system, as are reasonably necessary to assist Cygnus to reproduce operating conditions similar to those present when the Customer detected the relevant fault and to respond to the relevant support request.
- 5.4 All Support Services shall be provided from Cygnus's office unless agreed otherwise.
- 5.5 The Customer acknowledges that, to properly assess and resolve support requests, it may be necessary to permit Cygnus direct access at the Customer's premises and to its system, files, equipment and personnel.
- 5.6 The Customer shall provide such access promptly, provided that Cygnus complies with all the Customer's security requirements and other policies and procedures relating to contractors entering and working on the Customer's premises notified to Cygnus in advance in writing.

6. SERVICE LEVELS

- 6.1 Cygnus shall:
 - 6.1.1 prioritise all support requests based on its reasonable assessment of the severity level of the problem reported; and
 - 6.1.2 respond to all support requests in accordance with the responses and response times specified in the table set out below:
- 6.1.3

Severity level	Description	Response Time	Time/Update	Target Resolution Time
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1	Business Critical Failures: e.g. An error in, or failure of, the Software that is severely impacting use of the relevant Software from being performed or disables major functions of that Software and all [OR large number of] Authorised Users are affected.	1 Support Hour	4 Support Hours
2	Major Failure: e.g. there is a major impact on functionality of the relevant Software and/or significant performance degradation is experienced by majority of Authorised Users.	4 Support Hours	8 Support Hours
3	Median Failure: e.g. means that there is a partial, non-critical loss of use of the relevant Software. A short-term work-around is available.	8 Support Hours	5 Support Days
4	Minor Failure: [e.g. means that there is enquiry regarding a routine technical issue; information is requested on functionality of the relevant Software.]	12 Support Hours	8 Support Days

6.2 The parties may, on a case-by-case basis, agree in writing to a reasonable extension of the Service Level response times.

6.3 Cygnus shall give the Customer regular updates of the nature and status of its efforts to correct any fault.

SCHEDULE 4 – CYGNUS ALERT APP TERMS

2. Cygnus ALERT App Terms

2.1 These Cygnus ALERT App Terms:

2.1.1 are incorporated in and form part of this MSA and apply between Cygnus and the Customer in addition to the MSA Terms (subject to clause 12.1 (Conflicts) of the MSA Terms); and

2.1.2 govern Customer's and its Authorised Users [download], access and use of the Cygnus ALERT App.

2.2 Any terms and phrases defined in the MSA Terms shall have the same meaning in these Cygnus ALERT App Terms, unless expressly provided otherwise hereunder.

2.3 For the purpose of this Schedule 4 and where used elsewhere in this MSA:

2.3.1 **"Authorised User"** means Customer's directors and employee authorised by the Customer to download, access and use the Cygnus ALERT App;

2.3.2 **"Cygnus Account"** has the meaning given in clause 5.1 of these Cygnus ALERT App Terms;

2.3.3 **"Google Play"** means the app distribution platform operated by Google; and

2.3.4 **"Google's rules"** means Google's terms of service (and other applicable terms).

3. Licence

3.1 Subject to the MSA Terms (and payment of the relevant licence fees and/or subscription fees (as applicable)), Cygnus grants the Customer a non-exclusive, revocable, non-sublicensable and non-transferable right to permit its Authorised Users to download, access and use the Cygnus ALERT App during the Term solely for use in the Customer's business operations, in accordance with the MSA Terms, these Cygnus ALERT App Terms and Google's rules.

3.2 The licence also covers updates to the Cygnus ALERT App unless they come with separate terms, in which case Cygnus will give you an opportunity to review and accept the new terms.

3.3 Authorised Users shall download, access and use the Cygnus ALERT App with the same Cygnus Account access credentials (usernames/email address and passwords) they use to login into their Cygnus ALERT Portal account, and the Customer shall procure that all Authorised User keep their business access credentials confidential.

3.4 The Customer does not own the Cygnus ALERT App or any of its contents but the Customer may use it on any device that Customer owns or controls, in accordance with the provisions of these Cygnus ALERT App Terms and Google's rules.

3.5 If the Customer sells or gives away the device on which an Authorised User has downloaded the Cygnus ALERT App to a third party, the Customer shall (or shall procure that the relevant Authorised User shall) first remove the Cygnus ALERT App from the device concerned.

3.6 All Intellectual Property Rights in the Cygnus ALERT App, belong to Cygnus (or its licensors) and the rights in the Cygnus ALERT App are licensed (not sold) to the Customer. The Customer has no Intellectual Property Rights in, or to, the Cygnus ALERT App other than the right to download, access and use the Cygnus ALERT App in accordance with these Cygnus ALERT App Terms.

3.7 **Conflict.** If and to the extent there is any conflict or inconsistency between the MSA Terms, these Cygnus ALERT App Terms and Google's rules, the following order of precedence (with the document higher in the list prevailing over a document lower in the list):

3.7.1 Google's rules;

3.7.2 the MSA Terms; and

3.7.3 these Cygnus ALERT App Terms.


4. Cygnus ALERT App

4.1 The Cygnus ALERT App:

4.1.1 connects to the Cygnus ALERT Portal;

4.1.2 is available as read-only and on an *"as is"* and *"as available"* basis; and

4.1.3 relies on a number of things working properly such as internet connection, device on which Cygnus ALERT App is downloaded and Google Play, that are entirely outside of Cygnus' control. Cygnus shall have no liability for any delays, delivery failures, or any other loss or damage resulting from poor internet connection, faulty components in the device, failure of Google Play to function properly or anything else outside Cygnus' reasonable control.

4.2  Cygnus does not warrant or represent:

4.2.1 that use of the Cygnus ALERT App will be uninterrupted or error-free;

4.2.2 the completeness or accuracy of the information obtained by the Customer through the Cygnus ALERT App;

4.2.3 that such information is up to date; or

4.2.4 that such information will meet the Customer's specific requirements.

5. Technical Requirements

5.1 The Cygnus ALERT App requires an Android compatible device with a minimum of 50MB of memory and the Android operating system version 9 or later.

6. Conditions of Use

6.1 The Customer shall procure that each Authorised User uses the same Cygnus account created with an email address provided or assigned to that Authorised User by the Customer ("**Cygnus Account**").

6.2 The Customer shall not permit any Cygnus ALERT App account to be used by more than one individual Authorised User, unless such Cygnus ALERT App account has been reassigned in its entirety to another Authorised User, in which case the Customer shall procure that the previous Authorised User shall cease using the Cygnus ALERT App and remove its account from the relevant device.

6.3 The Customer shall not (and shall procure that that each Authorised User shall not):

6.3.1 access, store, distribute or transmit any software, code, file or programme which may prevent, impair or otherwise adversely affect the operation of the Cygnus ALERT App;

6.3.2 modify the Cygnus ALERT App's code in any way, including inserting new code, either directly or through the use of another app or piece of software;

6.3.3 translate, merge, adapt, vary, alter or modify, the whole or any part of the Cygnus ALERT App, nor permit the Cygnus ALERT App or any part of it to be combined with, or become incorporated in, any other programs, except as necessary to use the Cygnus ALERT App on devices as permitted in these Cygnus ALERT App Terms;

6.3.4 have any right to reverse engineer, or disassemble or de-compile the Cygnus ALERT App except to the extent such de-compilation is necessary for the exclusive purpose of obtaining the information necessary to create an independent program which can be operated with the Cygnus ALERT App or with another program and the Customer's right to de-compile the Cygnus ALERT App shall not apply if:

(a) the Customer is in breach of the de-compilation conditions described in section 50B of the Copyright, Designs and Patents Act 1988; or

(b) Cygnus: (a) is prepared to carry out, and/or procure the carrying out of, such de-compilation in return for a reasonable fee; or (b) has provided the information necessary to achieve such inter-operation without such de-compilation within a reasonable period, and the Customer shall request that Cygnus carries out such action or provides such information (and shall meet Cygnus' reasonable costs in providing that information) before undertaking any such de-compilation;

6.3.5 create any software that is substantially similar in its expression to the Cygnus ALERT App

6.3.6 access the Cygnus ALERT App in order to build a product or service which competes with the Cygnus ALERT App or the business of Cygnus;

6.3.7 use the Cygnus ALERT App to provide services to third parties;

6.3.8 deliberately attempt to avoid or manipulate any security features included in the Cygnus ALERT App; and

6.3.9 use the Cygnus ALERT App to:

- (a) break the law, encourage any unlawful activity or for any unlawful purpose, or in any manner inconsistent with this the provisions of this schedule or act fraudulently or maliciously;
- (b) infringe Cygnus' or any third party's Intellectual Property Rights;
- (c) transmit any harmful software code such as viruses;
- (d) try to gain unauthorised access to computers, data, portals, systems, accounts or networks;
- (e) deliberately disrupt the operation of Cygnus' website, portal, server or business; and/or
- (f) disable, overburden, impair or compromise Cygnus' systems, portal or security or interfere with other Authorised Users.

6.4 The Customer shall:

6.4.1 be responsible for any act or omission of its Authorised Users; and

6.4.2 comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the Cygnus ALERT App.

6.5 The Customer acknowledges and agrees that if the Customer or any Authorised User commits any breach of these Cygnus ALERT App Terms, without prejudice to any of its rights and remedies Cygnus may immediately suspend that Authorised User's access to the Cygnus ALERT App and the Customer shall be liable to Cygnus for any Losses suffered or incurred by Cygnus from any such breach.

7. **Support and Maintenance**

7.1 Because the Cygnus ALERT App is "as is", Cygnus may not provide support services for it and the Customer acknowledges that Google has no obligation to provide any support or maintenance services in relation to the Cygnus ALERT App.

7.2 Cygnus may update the Cygnus ALERT App from time to time for reasons that include fixing bugs or security vulnerabilities or enhancing functionality.

7.3 Updates will either download automatically or each Authorised User may need to trigger them, depending on the device and its settings.

7.4 The Customer:

7.4.1 shall procure that each Authorised User downloads all updates as soon as they become available; and

7.4.2 acknowledges that, depending on the nature of the update, the Cygnus ALERT App may not work properly or at all, or an Authorised User may be exposed to security vulnerabilities, if the Cygnus ALERT App is not kept updated to the latest version that Cygnus makes available.

7.5 Cygnus has sole discretion and control over, and may modify at any time the functionality, performance, configuration, appearance and content of the Cygnus ALERT App provided that, in each case such modifications do not result in a material reduction to, or loss of, the functionality, performance, transmission speeds, content or latency of the Cygnus ALERT App.

SCHEDULE 5 – DATA PROCESSING ADDENDUM (DPA)

1. Data Processing Addendum (DPA)

1.1 This DPA:

- 1.1.1 is incorporated in, and forms part of, the MSA by way of reference under clause 6;
- 1.1.2 sets out the additional terms, requirements and conditions on which Cygnus will process Personal Data when providing Services under this MSA; and
- 1.1.3 is supplemental to this MSA (subject to clause 12.1 (Conflicts) of the MSA Terms).

1.2 Any terms and phrases defined in the MSA Terms shall have the same meaning in this DPA, unless expressly provided otherwise hereunder.

1.3 For the purpose of this Schedule 4 and where used elsewhere in this MSA:

- 1.3.1 **"Business Purpose"** means the Services to be provided by Cygnus to the Customer as described in this MSA and any other purpose agreed between the parties in writing;
- 1.3.2 **"Commissioner"** means the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018);
- 1.3.3 **"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "Processing"** have the meaning given to them in the Data Protection Legislation;
- 1.3.4 **"DPA Term"** has the meaning give in clause 10.1.2 of this DPA;
- 1.3.5 **"Records"** have the meaning given in clause 12.1 of this DPA; and
- 1.3.6 **"Standard Contractual Clauses (SCCs)"** the ICO's International Data Transfer Agreement for the transfer of personal data from the UK; and/or the ICO's International Data Transfer Addendum to EU Commission Standard Contractual Clauses and/or the European Commission's Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 as set out in the Annex to Commission Implementing Decision (EU) 2021/914; and/or the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU, or such alternative clauses as may be approved by the European Commission or by the UK from time to time.

1.4 The Annexes from part of this DPA and will have effect as if set out in full in the body of this DPA.

2. Personal Data Types and Processing Purposes

2.1 The parties acknowledge and agree that for the purposes of the Data Protection Legislation:

- 2.1.1 the Customer retains control of the Personal Data and remains responsible for its compliance obligations under the Data Protection Legislation, including but not limited to providing any required notices and obtaining any required consents, and for the written processing instructions it gives to Cygnus.
- 2.1.2 The Annex A sets out the scope, nature and purpose of processing by Cygnus, the duration of the processing and the types of Personal Data and categories of Data Subject.

3. Cygnus' Obligations

- 3.1 Cygnus will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Customer's written instructions. Cygnus must promptly notify the Customer if, in its opinion, the Customer's instructions do not comply with the Data Protection Legislation.
- 3.2 Cygnus shall comply with written instructions from the Customer requiring Cygnus to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 Cygnus will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third parties unless the Customer or this DPA specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner).
- 3.4 Cygnus must promptly notify the Customer of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting Cygnus' performance of this MSA or this DPA.

4. Cygnus' Employees

4.1 Cygnus will ensure that all of its employees:

- 4.1.1 are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;
- 4.1.2 have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and
- 4.1.3 are aware both of Cygnus' duties and their personal duties and obligations under the Data Protection Legislation and this DPA.

5. Security

5.1 Cygnus shall implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data including the security measures set out in Annex A.

5.2 Cygnus shall implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:

- 5.2.1 the pseudonymisation and encryption of Personal Data;
- 5.2.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- 5.2.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
- 5.2.4 a process for regularly testing, assessing and evaluating the effectiveness of the security measures.

6. Personal Data Breach

6.1 Cygnus shall without undue delay notify the Customer if it becomes aware of any Personal Data Breach.

6.2 Where Cygnus becomes aware of a Personal Data Breach it shall, without undue delay, also provide the Customer with the following information:

- 6.2.1 description of the nature of the Personal Data Breach including the categories of in-scope Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;
- 6.2.2 the likely consequences; and
- 6.2.3 a description of the measures taken or proposed to be taken to address the Personal Data Breach including measures to mitigate its possible adverse effects.

6.3 Following any Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Further, Cygnus will reasonably co-operate with the Customer in the Customer's handling of the matter, including:

- 6.3.1 making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Customer, providing these are not business confidential documents for Cygnus; and
- 6.3.2 taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data Processing.

6.4 Cygnus will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining the Customer's written consent, except when required to do so by domestic law.

6.5 Cygnus agrees that the Customer has the sole right to determine:

- 6.5.1 whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and

- 6.5.2 whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

7. Cross-border transfer of Personal Data

- 7.1 Where such consent is granted, Cygnus may only process, or permit the processing, of the Personal Data outside the EEA or UK under the following conditions:
- 7.1.1 Cygnus is processing the Personal Data in a territory which is subject to adequacy regulations under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals. Cygnus shall identify in Annex A the territory that is subject to such adequacy regulations; or
- 7.1.2 Cygnus participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that Cygnus (and, where appropriate, the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR and EU GDPR; or
- 7.1.3 the transfer otherwise complies with the Data Protection Legislation for the reasons set out in Annex A.
- 7.2 If the Customer consents to appointment by Cygnus of a subcontractor located outside the EEA in compliance with the provisions of clause 8 below, then the Customer authorises Cygnus to enter into SCCs for the transfer of Personal Data to the subcontractor.

8. Subcontractors

- 8.1 The Customer authorises the appointment of the subcontractors listed in Annex A.
- 8.2 Subject to clause 8.1 above, Cygnus may authorise other subcontractor to process the Personal Data if:
- 8.2.1 the Customer is provided with an opportunity to object to the appointment of each subcontractor within five (5) Business Days after Cygnus supplies the Customer with full details in writing regarding such subcontractor;
- 8.2.2 Cygnus enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this DPA, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Customer's written request, and ensure such subcontractor complies with all such terms; and
- 8.2.3 where the subcontractor fails to fulfil its obligations under the written agreement with Cygnus which contains terms substantially the same as those set out in this DPA, Cygnus remains liable to the Customer for the subcontractor's performance of its agreement obligations.

9. Complaints, Data Subject Request and third-party rights

- 9.1 Cygnus shall take such technical and organisational measures as may be appropriate to enable the Customer to comply with:
- 9.1.1 the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify, port and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
- 9.1.2 information or assessment notices served on the Customer by the Commissioner or other relevant regulator under the Data Protection Legislation.
- 9.2 Cygnus must notify the Customer promptly in writing if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.
- 9.3 Cygnus shall notify the Customer within five (5) Business Days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation.
- 9.4 It shall be the Customer's responsibility to reply to all such requests as required by the Data Protection Legislation.

10. Term and Termination

- 10.1 This DPA will remain in full force and effect so long as:
- 10.1.1 this MSA remains in effect; or

10.1.2 Cygnus retains any of the Personal Data related to this MSA in its possession or control ("**DPA Term**").

10.2 Any provision of this DPA that expressly or by implication should come into or continue in force on or after termination of this MSA in order to protect the Personal Data will remain in full force and effect.

10.3 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its MSA obligations, the parties may agree to suspend the processing of the Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Personal Data processing into compliance with the Data Protection Legislation either party may terminate this MSA with immediate effect on written notice to the other party.

11. Data Return and Destruction

11.1 At the Customer's request, Cygnus will give the Customer a copy of all or part of the Personal Data in its possession or control. To the extent that the Customer has not notified Cygnus on the termination end date or expiry of this MSA that it requires Cygnus to return such Personal Data, Cygnus shall securely delete or destroy all or any of the Personal Data related to this DPA in its possession or control.

11.2 If any law, regulation, or government or regulatory body requires Cygnus to retain any documents or materials or Personal Data that Cygnus would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.

12. Records

12.1 Cygnus will keep detailed, accurate and up-to-date written records regarding any processing of the Personal Data, including but not limited to, the access, control and security of the Personal Data, subcontractors, the processing purposes, categories of processing, any transfers of personal data to a third country and related safeguards, and a general description of the technical and organisational security measures referred to in clause 5.1 ("**Records**") of this DPA.

12.2 Cygnus will ensure that the Records are sufficient to enable the Customer to verify Cygnus' compliance with its obligations under this DPA and Cygnus will provide the Customer with copies of the Records upon request.

13. Audit

13.1 Once a year, Cygnus will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this DPA.

13.2 On the Customer's written request, Cygnus will make all of the relevant audit reports available to the Customer for review. The Customer will treat such audit reports as Cygnus' confidential information under this MSA.

13.3 Cygnus will address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by Cygnus management.

13.4 Liability:

13.5 The liability of the parties to one another shall be limited in accordance with the provisions of clause 5 (Liability) of the MSA Terms in relation to all Losses and any third party claims against the other party, howsoever arising under or in connection with this DPA, whether as a result of a breach of any clause of this DPA by a party, or any breach of Data Protection Legislation.

14. Notice

14.1 Any notice given to a party under or in connection with this DPA must be in writing and delivered to:

14.1.1 for the Customer: the email address provided in the Order Form; or

14.1.2 for Cygnus: the email address provided in the Order Form.

14.2 This clause 14 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

ANNEX A - DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

Subject matter of processing:

The data processed pertains to the services referred to in this MSA. Namely Cygnus SaaS Products, ALERTs, notifications and other cloud based services accompanying devices provided by Cygnus.

Scope and duration of the processing of Customer Personal Data

The data used in these services is minimal and only that necessary to ensure the correct function of the service, is processed. The duration of this processing is limited to the duration of the MSA.

The nature and purpose of the processing of Customer Personal Data

The data processed relates to customer data only and the minimal required to provide cygnus SaaS products, ALERTs, notifications and other cloud-based services accompanying devices provided by Cygnus.

The categories of Data Subject to whom the Customer Personal Data relates

Customers and their authorised users, as defined in this MSA.

The types of Customer Personal Data to be processed

- a) First and Last Name
- b) Email Address
- c) Customer Name
- d) Customer's Site Address
- e) Password
- f) Phone Number

Approved Subcontractors:

Company name	Purpose	Location	Transfer mechanism
Microsoft Azure	Data Processing and Data storage	EEA	adequacy decision
ClickSend	Data Processing	EEA	HTTPS

Security measures

Physical access controls:

Microsoft Azure datacentres are subject to security access protocols that prevent unauthorized physical access and restrict granted access to a minimum.

System access controls:

All services use Transport Layer Security (TLS) X.509 certificates from Azure Certificate Authority (CA) to cryptographically verify identities presented by communicating parties.

Web sites and services are only published using the HTTPS protocol, rather than less secure HTTP protocol.

Data access controls:

All services use role-based user access control measures that ensures users only have the access to the data they require for their role. The lowest privilege role required for that user, is set at registration. Customer admins can reduce or withdraw privileges for users within their organisation as required. All administration interfaces require two-factor authentication to access.

Transmission controls:

All services are hosted in Azure and are published using the above security protocols. Internal data transfer is therefore protected by encryption in transit in the same way as it is to and from consumer end devices.

Only one 3rd party API is used, to provide secure email and SMS services. This is provided by ClickSend, who use the same security methods as Azure, utilising TLS X.509 certificates issued by GlobalSign and only permitting access over HTTPS protocol.

The Cygnus API uses the same authentication as the website, so a token is required for data access which can only be created when a user authenticates with the portal website. In this way endpoints are protected from access by unauthenticated clients.

Input controls:

Forms are validated using AntiForgery Tokens and our backend uses Entity Framework Core to sanitize against SQL injection attacks.

Storage of data:

Data bearing devices in Azure are wiped at the end of their working life using a solution that is NIST 800-88 compliant. For hard drives that can't be wiped, a destruction process is used that renders the recovery of information impossible. This process is managed by Microsoft.

Data backups are managed, stored and encrypted by Microsoft Azure in accordance with their GDPR policy.

Data segregation

While all customer data is stored within a common database, a central access control mechanism ensures that each customer's access is restricted to their and only their data. There is no way to access other customers data within the platform or via a querying interface. In addition, direct customer access is not provided to any data stores.