

## CRYOSERVER APPLIANCE AGREEMENT

This appliance agreement (**Appliance Agreement**), together with the Order Form, is a legal agreement between (1) you (**you**) and (2) the Cryoserver company named on the Order Form (**us or we**) for:

- Cryoserver software (**Software**);
- support services as further defined in the Schedule (**Support Services**);
- printed materials and online documentation (available at [www.cryoserver.com](http://www.cryoserver.com)) to enable you to use and understand the Software (**Documentation**); and
- the supply of Cryoserver hardware to store and hold the Software (**Hardware**),

together (the **Services**).

We license use of the Software and Documentation to you on the basis of this Appliance Agreement and the Order Form. We do not sell the Software or Documentation to you. We remain the owners of the Software and Documentation at all times. We sell the Hardware to you. We will provide the Support Services to you on the basis set out in the Schedule.

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Appliance Agreement.

<b>Active Users;</b>	has the meaning set out in the Order Form.
<b>Additional Users;</b>	the additional User Subscriptions as set out in an Order Form.
<b>Applicable Laws;</b>	as defined in clause 12.6.1.
<b>Confidential Information;</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.
<b>Customer Data;</b>	the data inputted by you or Active Users for the purpose of using the Services.
<b>Claim;</b>	as defined in clause 8.4.
<b>Data Controller;</b>	has the meaning set out in the Data Protection Legislation.
<b>Data Processor</b>	has the meaning set out in the Data Protection Legislation.

<b>Data Legislation;</b>	<b>Protection</b>	shall mean the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications). Where UK Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>Effective Date;</b>		has the meaning set out in the Order Form.
<b>Fees;</b>		all fees set out in section 6 of the Order Form and any other fees agreed in writing between us from time to time.
<b>Initial Subscription Term;</b>		the initial subscription term of this Appliance Agreement as set out in the Order Form.
<b>Intellectual Rights;</b>	<b>Property</b>	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
<b>Maintenance Releases;</b>		releases of the Software to correct faults, add functionality or otherwise amend or upgrade the Software, which do not constitute a new version of the Software and are generally made available to our customers.
<b>Order Form;</b>		the Cryoserver order form.
<b>Permitted Objective;</b>		as defined in clause 7.1.3.

<b>Personal Data;</b>	has the meaning set out in the Data Protection Legislation.
<b>Renewal Period;</b>	the period described in clause 15.1.
<b>Software Warranty Period;</b>	as defined in clause 7.1.2.
<b>Subscription Fee;</b>	the subscription fee payable by you to us for the User Subscriptions, as set out in the Order Form.
<b>Subscription Term;</b>	means the Initial Subscription Term together with any subsequent Renewal Periods.
<b>User Subscriptions;</b>	the user subscriptions purchased by you which entitle Active Users to access and use the Services and the Documentation in accordance with this Appliance Agreement.

1.2 Clause and paragraph headings shall not affect the interpretation of this Appliance Agreement.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## 2. SALE OF HARDWARE

2.1 Any quotation is valid for a period of 30 days only, and we may withdraw it at any time by notice to you.

2.2 Each order or acceptance of a quotation for Hardware by you shall be deemed to be an offer by you subject to this Appliance Agreement. It is your responsibility to ensure that an order or quotation is complete and accurate.

2.3 A binding contract shall not come into existence between you and us unless and until we issue an Order Form to you, or we deliver the Hardware to you (whichever occurs earlier).

2.4 No order which has been acknowledged by us may be cancelled by you, except with our agreement in writing and provided that you indemnify us in full against all costs, charges and expenses incurred by us as a result of cancellation.

2.5 The quantity and description of the Hardware shall be as set out in the Order Form.

## 3. WARRANTY FOR HARDWARE

3.1 We warrant to you that the Hardware is free from defects of workmanship and materials. We undertake (subject to the remainder of this clause 3), at

our option, to repair or replace Hardware (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within five years of delivery and installation.

- 3.2 We shall not in any circumstances be liable for a breach of the warranty contained in clause 3.1 unless:
  - 3.2.1 you give written notice of the defect to us within seven days of the time when you discover or ought to have discovered the defect; and
  - 3.2.2 after receiving the notice, we are given a reasonable opportunity to examine the Hardware and if we ask you to do so, return such Hardware to our place of business at your cost for the examination to take place there.
- 3.3 We shall not in any circumstances be liable for a breach of the warranty in clause 3.1 if:
  - 3.3.1 you make any use of Hardware in respect of which you have given written notice under clause 3.2.1; or
  - 3.3.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice; or
  - 3.3.3 you alter or repair the relevant Hardware without our written consent.
- 3.4 We will invoice you for any expenses we incur associated with the repair or replacement of the Hardware, such as the cost of delivery of the relevant part or Hardware.
- 3.5 Any repaired or replacement Hardware shall be under warranty for the unexpired portion of the five year period.
- 3.6 We shall not in any circumstances be liable for any damage or defect to the Hardware caused by improper use of the Hardware or use outside its normal application.
- 3.7 We shall not in any circumstances be liable for any non-delivery of Hardware (even if caused by our negligence) unless you notify us in writing of the failure to deliver within seven days after the scheduled delivery date.
- 3.8 Any liability of ours for non-delivery of the Hardware shall in all circumstances be limited to replacing the Hardware within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Hardware.

#### **4. GRANT AND SCOPE OF LICENCE, MINOR CHANGES, UPDATES AND UPDATES**

- 4.1 In consideration of you agreeing to abide by the terms of this Appliance Agreement and paying the Subscription Fee, we hereby grant to you a non-exclusive, non-transferable licence to use the Software and the Documentation on a worldwide basis for the Subscription Term on the terms of this Appliance Agreement until terminated in accordance with this Appliance Agreement.
- 4.2 You may:
- 4.2.1 install and use the Software for your internal business purposes for the number of Active Users agreed between you and us and set out in the Order Form;
  - 4.2.2 provided you comply with the provisions in clause 5, make no more than two copies of the Software for full back-up purposes and ten copies for incremental back up purposes;
  - 4.2.3 receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by the us from time to time (but see clause 4.3 and clause 4.4 below); and
  - 4.2.4 use any Documentation in support of the use permitted under clause 4.2.
- 4.3 We may update or require you to update the Software, provided that the Software shall always match the description of it that we provided to you before you bought it.
- 4.4 The Software may be upgraded to reflect changes in the operating system. The Software will work with the current or previous version of that operating system (as it may be updated from time to time).
- 4.5 In relation to the Active Users, you undertake that:
- 4.5.1 the maximum number of Active Users that we authorise to access and use the Services shall not exceed the number of User Subscriptions which entitle Active Users to access and use the Services in accordance with this Appliance Agreement;
  - 4.5.2 you will not allow or suffer any User Subscription to be used by more than one Active User unless it has been reassigned in its entirety to another Active User, in which case the prior Active User shall no longer have any right to access or use the Services;
  - 4.5.3 each Active User shall have the necessary security on their systems to ensure that the Services are held securely;

- 4.5.4 you shall permit us to carry out an audit to verify each Active User. Such audit may be conducted no more than once per quarter, at our expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with your normal conduct of business; and
- 4.5.5 if any of the audits referred to in clause 4.5.4 reveal that you have underpaid Subscription Fees to us, then without prejudice to our other rights, you shall pay to us an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form within 10 business days of the date of the relevant audit.

## **5. ADDITIONAL USER SUBSCRIPTIONS**

- 5.1 Subject to clause 5.2 and clause 5.3, you may, from time to time during any Subscription Term, purchase Additional Users in excess of the number of Active Users set out in the Order Form and we shall grant access to the Services to such Additional Users in accordance with the provisions of this Appliance Agreement, as if they were Active Users.
- 5.2 If you wish to purchase Additional Users, you shall notify us in writing. We shall evaluate such request for Additional Users and respond to you with approval or rejection of the request (such approval not to be unreasonably withheld).
- 5.3 If we approve your request to purchase Additional Users, you shall, within 30 days of the date of our invoice, pay to us the relevant fees for such Additional Users as set out in the Order Form and, if such Additional Users are purchased by you part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

## **6. MAINTENANCE RELEASES**

We will provide you with Maintenance Releases. We warrant that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. You shall install all Maintenance Releases as soon as reasonably practicable after receipt.

## **7. RESTRICTIONS**

- 7.1 Except as expressly set out in this Appliance Agreement or as permitted by any local law, you undertake:
  - 7.1.1 not to copy the Software or Documentation, except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;

- 7.1.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary, alter or modify, the whole or any part of the Software or Documentation nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- 7.1.3 not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software or Hardware nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to decompile the Software to obtain the information necessary to create an independent program that can be operated with the Software or with another program (**Permitted Objective**), and provided that the information obtained by you during such activities:
  - 7.1.3.1 is used only for the Permitted Objective;
  - 7.1.3.2 is not disclosed or communicated without our prior written consent to any third party to whom it is not necessary to disclose or communicate it in order to achieve the Permitted Objective; and
  - 7.1.3.3 is not used to create any software that is substantially similar in its expression to the Software;
- 7.1.4 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- 7.1.5 to include our copyright notice on all entire and partial copies of the Software in any form;
- 7.1.6 not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from us; and
- 7.1.7 to comply with all applicable technology control or export laws and regulations.

## 8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 You acknowledge that all Intellectual Property Rights in the Services throughout the world belong to us, that rights in the Software are licensed (not sold) to you, and that you have no intellectual property rights in, or to, the Services other than the right to use the Services in accordance with the terms of this Appliance Agreement.

- 8.2 You acknowledge that you have no right to have access to the Software in source code form other than as expressly provided in this Appliance Agreement.
- 8.3 You acknowledge that CRYOSERVER brand is a trade mark licensed to us and you may not use the trade mark without our permission.
- 8.4 We will at our own expense defend you or, at our option, settle any claim or action brought against you alleging that the possession or use of the Services (or any part thereof) in accordance with the terms of this Appliance Agreement infringes the Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against you as a result of or in connection with any such Claim. For the avoidance of doubt, this clause shall not apply where the Claim in question is attributable to possession or use of the Services (or any part thereof) by you other than in accordance with the terms of this Appliance Agreement, use of the Services in combination with any hardware or software not supplied or specified by us if the infringement would have been avoided by the use of the Services not so combined, or use of a non-current release of the Software.
- 8.5 If any third party makes a Claim, or notifies an intention to make a Claim against you, our obligations under clause 8.4 are conditional on you:
- 8.5.1 as soon as reasonably practicable, giving written notice of the Claim to us, specifying the nature of the Claim in reasonable detail;
  - 8.5.2 not making any admission of liability, agreement or compromise in relation to the Claim without our prior written consent (such consent not to be unreasonably conditioned, withheld or delayed);
  - 8.5.3 giving us and our professional advisers access at reasonable times (on reasonable prior notice) to your premises and officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within your power or control, so as to enable us and our professional advisers to examine them and to take copies (at our expense) for the purpose of assessing the Claim; and
  - 8.5.4 subject to us providing you with security to your reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as we may reasonably request to avoid, dispute, compromise or defend the Claim.
- 8.6 If any Claim is made, or in our reasonable opinion is likely to be made, against you, we may at our sole option and expense:
- 8.6.1 procure for you the right to continue to use the Software (or any part thereof) in accordance with the terms of this Appliance Agreement;



- 8.6.2 modify the Software so that it ceases to be infringing;
- 8.6.3 replace the Software with non-infringing software; or
- 8.6.4 terminate this Appliance Agreement immediately by notice in writing to you and refund any of the Fee paid by you as at the date of termination (less a reasonable sum in respect of your use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if we modify or replace the Software, the modified or replacement Software must comply with the warranties contained in clause 9.1 and you shall have the same rights in respect thereof as you would have had under those clauses had the references to the date of this Appliance Agreement been references to the date on which such modification or replacement was made.

- 8.7 Notwithstanding any other provision in this Appliance Agreement, clause 8.4 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any third-party software, including open source software, or through the breach of any third-party additional terms by you.
- 8.8 This clause 8 constitutes your exclusive remedy and our only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 10.4.

## 9. WARRANTY FOR SOFTWARE

- 9.1 We warrant that:
  - 9.1.1 the Software will, when properly used on an operating system for which it was designed, perform substantially in accordance with the functions described in the Documentation;
  - 9.1.2 the Documentation correctly describes the operation of the Software in all material respectsfor a period of 90 days from the date of installation of the Software (**Software Warranty Period**).
- 9.2 If, within the Software Warranty Period, you notify us in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Documentation, we will, at our sole option, either repair or replace the Software, provided that you give us proof of purchase and make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault.
- 9.3 The warranty does not apply:

- 9.3.1 if the defect or fault in the Software results from you having altered or modified the Software;
- 9.3.2 if the defect or fault in the Software results from you having used the Software in breach of the terms of this Appliance Agreement;
- 9.3.3 if you have not installed the latest Maintenance Release within a reasonable period.
- 9.4 We do not warrant that the use of the Software will be uninterrupted or error-free.
- 9.5 All other warranties, statements, representations, conditions or other express or implied terms as to the quality, satisfactory quality, suitability or fitness for any particular purpose of the Software is hereby excluded.

## **10. LIMITATION OF LIABILITY**

- 10.1 This clause 10 sets out our entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to you:
  - 10.1.1 arising under or in connection with this Appliance Agreement;
  - 10.1.2 in respect of any use made by you of the Services; and
  - 10.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Appliance Agreement.
- 10.2 Except as expressly and specifically provided in this Appliance Agreement:
  - 10.2.1 you assume sole responsibility for results obtained from the use of the Services by you, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Services, or any actions taken by us at your direction; and
  - 10.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Appliance Agreement.
- 10.3 Nothing in this Appliance Agreement excludes our liability:
  - 10.3.1 for death or personal injury caused by our negligence; or
  - 10.3.2 for fraud or fraudulent misrepresentation.
- 10.4 Subject to clause 10.2 and clause 10.3:

- 10.4.1 we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Appliance Agreement; and
  - 10.4.2 our total aggregate liability in contract restitution or otherwise, arising in connection with the performance or contemplated performance of this Appliance Agreement shall be limited to 125% of the total Fees paid by you during the 12 months immediately preceding the date on which the claim arose.
- 10.5 If defective digital content that we have supplied damages a device or digital content belonging to you, we will either repair the damage or pay you compensation. However, we will not be liable for damage that you could have avoided by following our advice to apply an update offered to you free of charge or for damage that was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.
- 10.6 You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements.

## **11. FEES**

- 11.1 You shall pay the Fees in accordance with this clause 11.
- 11.2 You shall on the Effective Date provide to us approved purchase order information acceptable to us and any other relevant valid, up-to-date and complete contact and billing details and, if you provide:
  - 11.2.1 approved purchase order information to us, we shall invoice you:
    - 11.2.1.1 on the Effective Date for the Fees payable in respect of the Initial Subscription Term; and
    - 11.2.1.2 subject to clause 15.1 thereafter annually for the Fees payable in respect of the Renewal Period,and you shall pay each invoice within 30 days of the date of such invoice.
- 11.3 Where additional Services or products are requested during the Subscription Term, we will send you an invoice for the associated Fees. You are required to pay all such invoices within 30 days of the date of such invoice.

- 11.4 If we have not received payment within 14 days after the due date, and without prejudice to any other rights and remedies of ours:
- 11.4.1 we may, without liability to you, disable your password, account and access to all or part of the Services and we shall be under no obligation to provide access to the Services while the invoice(s) concerned remain unpaid; and
  - 11.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Royal Bank of Scotland from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 11.5 All amounts and Fees stated or referred to in this Appliance Agreement:
- 11.5.1 shall be payable in the currency billed;
  - 11.5.2 are, subject to clause 10.4.2, non-cancellable and non-refundable;
  - 11.5.3 are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate where applicable.
- 11.6 We shall be entitled to increase the Fees at the start of each Renewal Period, by no more than 5%, upon 90 days' prior notice to you and the Order Form shall be deemed to have been amended accordingly.

## 12. CUSTOMER DATA AND DATA PROTECTION

- 12.1 You shall own all right, title and interest in and to all of your Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of your Customer Data.
- 12.2 We shall not have access to Customer Data, (save where we are granted specific access by you), and therefore we shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party. Both parties will comply with all applicable requirements of the Data Protection Legislation. These clauses 12.2 to 12.7 (inclusive) are in addition to, and do not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 12.3 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the Data Controller and we are the Data Processor.
- 12.4 We shall maintain a register setting out the scope, nature and purpose of our processing, the duration of the processing and the types of Personal Data. The parties acknowledge that we shall, in general, not have access to your Personal Data or Customer Data.
- 12.5 Without prejudice to the generality of clause 12.2 and only where applicable, you will ensure that you have all necessary appropriate consents

and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this agreement.

- 12.6 Without prejudice to the generality of clause 12.2, we shall, in relation to any Personal Data processed in connection with our performance of our obligations under this agreement:
- 12.6.1 process that Personal Data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process Personal Data (**Applicable Laws**);
  - 12.6.2 ensure that we have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 12.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - 12.6.4 not transfer any Personal Data outside of the European Economic Area unless your prior written consent has been obtained and the following conditions are fulfilled:
    - 12.6.4.1 either of us has provided appropriate safeguards in relation to the transfer;
    - 12.6.4.2 the data subject has enforceable rights and effective legal remedies;
    - 12.6.4.3 we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - 12.6.4.4 we comply with reasonable instructions notified to us in advance by you with respect to the processing of the Personal Data;

- 12.6.5 assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 12.6.6 notify you without undue delay on becoming aware of a Personal Data breach;
  - 12.6.7 at your written direction, delete or return Personal Data and copies thereof to you on termination of the agreement unless required by Applicable Law to store the Personal Data; and
  - 12.6.8 maintain complete and accurate records and information to demonstrate its compliance with these clauses 12.3 to 12.6 (inclusive) and allow for audits by you or your designated auditor (where so requested in writing by you for the sole purpose of Data Protection Legislation) and inform you as soon as practicable if, in our opinion, an instruction infringes the Data Protection Legislation.
- 12.7 You consent to us appointing such third-party processors of Personal Data under this agreement as are required for the delivery of the Services. Where it is agreed that we will provide you with out of hours Support Services, this is provided by a consultant in Canada with whom we have entered into Model Contract Clauses.

### **13. CONFIDENTIALITY**

- 13.1 Each of us may be given access to information that is proprietary or confidential and is either clearly labelled as such or identified as “Confidential Information” from the other in order to perform its obligations under this Appliance Agreement. A party's Confidential Information shall not be deemed to include information that:
  - 13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 13.1.2 was in the other party's lawful possession before the disclosure;
  - 13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 13.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 13.2 We shall each hold the each other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information

available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Appliance Agreement.

- 13.3 We shall each take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Appliance Agreement.
- 13.4 Neither of us shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.5 We acknowledge that your Customer Data is your Confidential Information.
- 13.6 The above provisions of this clause 13 shall survive termination of this Appliance Agreement, however arising.

#### 14. SUPPORT

- 14.1 As part of the User Subscription, you receive a support package to support your use of the Software that you have licensed, which is set out in the Schedule to this Appliance Agreement.
- 14.2 In addition to clause 14.1, the Support Services will support the Hardware for a five year period from Effective Date. Following the expiry of 5 years, new Hardware should be purchased. If you do not purchase new Hardware, this will be reflected in the Fee which will recognise the higher level of support required for old Hardware.

#### 15. TERM AND TERMINATION

- 15.1 This Appliance Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Appliance Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:
  - 15.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Appliance Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
  - 15.1.2 otherwise terminated in accordance with the provisions of this Appliance Agreement.
- 15.2 We may terminate this Appliance Agreement immediately by written notice to you if:
  - 15.2.1 you commit a material or persistent breach of this Appliance Agreement which you fail to remedy (if remediable) within 14 days

after the service of written notice requiring you to do so. In such circumstances, we shall retain the Charges and fees paid in relation to the Subscription Term; or

15.2.2 you fail to pay any amount due under this Appliance Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment,

in such circumstances, we shall retain the Fees paid in relation to the Subscription Term

15.3 Without affecting any other right or remedy available to it, either party may terminate this Appliance Agreement with immediate effect by giving written notice to the other party if:

15.3.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

15.3.2 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

15.3.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

15.3.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

15.3.5 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

15.3.6 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

15.3.7 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;



- 15.3.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.3.1 to clause 15.3.7 (inclusive); or
- 15.3.9 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.4 Any provision of this Appliance Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Appliance Agreement shall remain in full force and effect.
- 15.5 Termination or expiry of this Appliance Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Appliance Agreement which existed at or before the date of termination or expiry.
- 15.6 Upon termination for any reason:
  - 15.6.1 all rights granted to you under this Appliance Agreement shall cease;
  - 15.6.2 you must cease all activities authorised by this Appliance Agreement;
  - 15.6.3 you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to us (at our option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to us that you have done so; and
  - 15.6.4 we shall immediately stop processing all new emails and prevent access to the Services
- 15.7 Upon termination of this Appliance Agreement, we are able to provide you with a read only annual licence to access your email archive environment. This licence would enable you to read, search and export data out of the environment. There is a Read Only Archive Fee for this facility as set out in the Order Form.

## **16. COMMUNICATIONS BETWEEN US**

- 16.1 If any provision in this Appliance Agreement requires you to give us notice in writing, you can send this to us by pre-paid post to the Cryoserver company set out in the Order Form at Wigglesworth House, 69 Southwark Bridge Road, London, SE1 9HH. We will confirm receipt of this by contacting you in writing.

- 16.2 If we have to contact you or give you notice in writing, we will do so by pre-paid post to the address you provide or confirm to us.

## 17. FORCE MAJEURE

We shall have no liability to you under this Appliance Agreement if it is prevented from or delayed in performing its obligations under this Appliance Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.

## 18. OTHER IMPORTANT TERMS

- 18.1 We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the contract.
- 18.2 You may only transfer your rights or your obligations under this Appliance Agreement to another person if we agree in writing.
- 18.3 This Appliance Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Appliance Agreement.
- 18.4 Nothing in this Appliance Agreement is intended to or shall operate to create a partnership between us, or authorise either of us to act as agent for the other, and neither of us shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 18.5 Each of us acknowledges and agrees that in entering into this Appliance Agreement neither of us is relying on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Appliance Agreement or not) relating to the subject matter of this Appliance Agreement, other than as expressly set out in this Appliance Agreement.
- 18.6 Except as expressly provided in this Appliance Agreement the rights and remedies provided under this Appliance Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 18.7 This Appliance Agreement, the Schedule and any documents annexed as appendices to this Appliance Agreement contain the whole agreement between us relating to the subject matter.

- 18.8 Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 18.9 If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- 18.10 **Which laws apply to this Appliance Agreement and where you may bring legal proceedings.** This Appliance Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each of us 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 Appliance Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 18.11 **Alternative dispute resolution.** Alternative dispute resolution is a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. If you are not happy with how we have handled any complaint, you may want to contact the alternative dispute resolution provider we use. You can submit a complaint to Centre for Effective Dispute Resolution (CEDR) via their website at [adr@cedr.com](mailto:adr@cedr.com).

## The Schedule

### 1. DEFINITIONS

The following definitions apply in this Schedule.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commercially Reasonable Efforts:** the same degree of priority and diligence with which we meet the support needs of our other similar customers.

**Contact List:** a current list of telephone numbers and e-mail addresses provided to you to enable you to make Support Requests.

**Customer Cause:** any of the following causes:

- (a) any improper use, misuse or unauthorised alteration of the Software or Hardware by you;
- (b) any use of the Software or Hardware by you in a manner inconsistent with the then-current Documentation;
- (c) the use by you of any hardware or software not provided by us; or
- (d) the use of a non-current version or release of the Software.

**Fault:** any failure or error of the Software or Hardware referred to in the Service Level Table.

**Help Desk Support:** any support provided by help desk technicians sufficiently qualified and experienced to identify and resolve most support issues relating to the Software and/or the Hardware.

**Higher-level Support:** any higher-level support provided by contacting the Higher-Level Support on the Contact List.

**Out-of-scope Services:** either of the following services:

- (a) any services provided by us in connection with any apparent problem regarding the Software reasonably determined by us not to have been caused by a Fault, but rather by a Customer Cause or a cause outside our control (including any investigational work resulting in such a determination);
- (b) any Higher-level Support provided in the circumstances specified in paragraph 3.3; or
- (c) support for other hardware or software.

**Service Levels:** the service level responses and response times referred to in the Service Level Table.

**Service Level Table:** the table set out in paragraph 5.1.

**Solution:** either of the following outcomes:

- (a) correction of a Fault; or
- (b) a workaround in relation to a Fault (including a reversal of any changes to the Software if deemed appropriate by us) that is reasonably acceptable to you.

**Support Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Support Period:** the Initial Subscription Term, the Renewal Period and, if requested by you, any period during which you transfer the Services to an alternate service provider.

**Support Request:** request made by you in accordance with this Schedule for Support Services in relation to the Software or the Hardware, including correction of a Fault.

**Support Services:** maintenance of the then-current version or release of the Software, the Hardware, including Help Desk Support and Higher-level Support, but excluding any Out-of-scope Services.

## 2. SUPPORT SERVICES

2.1 During the Support Period we shall perform the Support Services during the Support Hours in accordance with the Service Levels.

2.2 As part of the Support Services, we shall:

2.2.1 provide Help Desk Support by means of the following telephone number 0800 280 0525 and e-mail address support@cryoserver.com;

2.2.2 commit appropriate resources to the provision of Higher-Level Support;

2.2.3 where Help Desk Support is not provided within the relevant Service Level response time set out in paragraph 5.1.2 and you escalate a Support Request to request Higher-Level Support;

2.2.4 use Commercially Reasonable Efforts to correct all Faults notified under paragraph 4.3.1; and

2.2.5 provide technical support for the Software in accordance with the Service Levels.

2.3 Any Higher-level Support requested by you and provided by an individual whose qualification or experience is greater than that reasonably necessary to resolve the relevant Support Request shall be deemed an Out-of-scope Service, provided that an appropriately qualified or experienced individual was available at the time when the Higher-level Support was sought.

2.4 We may reasonably determine that any services are Out-of-scope Services. If we make any such determination, we shall promptly notify you of that determination.

2.5 You acknowledge that we are not obliged to provide Out-of-scope Services.

### 3. FEES

3.1 The provision of Support Services on a remote, off-site basis (such as over the telephone or by e-mail) is included in the Subscription Fee.

3.2 The provision of Support Services outside the Support Period or at your Site or the provision of Out-of-scope Services shall be charged for at the applicable time and materials rates set out in our price list.

3.3 The Fees relating to the Support Services for the Hardware are included within the Subscription Fee for a period of 5 (five) years, as stated in clause 14.2 of the Appliance Agreement. Following the expiry of the 5 (five) year period, you will be required to purchase new Hardware or we can provide you with a separate fee for supporting the Hardware.

### 4. SUBMITTING SUPPORT REQUESTS AND ACCESS

4.1 You may request Support Services by way of a Support Request.

4.2 Each Support Request shall include a description of the problem and the start time of the incident.

4.3 You shall provide us with:

4.3.1 prompt notice of any Faults; and

4.3.2 such output and other data, Documentation, information, assistance and (subject to compliance with all Customer's security and encryption requirements notified to us in writing) remote access to your System, as are reasonably necessary to assist us to reproduce operating conditions similar to those present when you detected the relevant Fault and to respond to the relevant Support Request.

4.4 All Support Services shall be provided remotely from our office.

4.5 You acknowledge that, to properly assess and resolve Support Requests, it may be necessary to permit us direct access at your Site, to your System and your files, equipment and personnel.

4.6 You shall provide such access promptly, provided that we comply with all your security requirements and other policies and procedures relating to contractors entering and working on your Site notified to us.

### 5. SERVICE LEVELS

5.1 We shall:

5.1.1 prioritise all Support Requests based on a reasonable assessment of the severity level of the problem reported; and

5.1.2 use all reasonable endeavours to respond to all Support Requests in accordance with the responses and response times specified in the table set out below:

Severity level of Fault	Definition	Target Response Time	Target Resolution Time
1	Complete failure of the Software.	Less than 2 hours within the Support Hours	Less than 1 Business Day
1	Complete failure of Hardware	Less than 2 hours within the Support Hours	Replacement Hardware despatched to you within 1 Business Day of you informing us of the Fault.
2	Failure of one or more components of the Software.	Less than 8 hours within the Support Hours	Less than 3 Business Days
2	Failure of one or more components of the Hardware	Less than 8 hours within the Support Hours	Replacement Hardware or component parts despatched within 2 Business Days of you informing us of the Fault.
3	Failure of a non-critical function, which has no significant effect on the operation of the Software or Hardware.	Less than 1 Business Day	Less than 5 Business Days
4	Any failure that has minimal effect on the Software or Hardware, requests for information, or requests for enhancements to the Software.	Less than 2 Business Days	As Appropriate

5.2 We shall contact you to confirm when the Support Request has been allocated to an engineer and use reasonable endeavours to meet the target resolution times stated in paragraph 5.1.

5.3 Each of us may, on a case-by-case basis, agree in writing to a reasonable extension of the Service Level response times.

5.4 We shall give you regular updates of the nature and status of its efforts to correct any Fault.

## 6. **OTHER REMEDIES**

If a Solution is not provided within the relevant Service Level response time, the Support Request may be escalated to each of our respective relationship managers identified on the Order Form and then to their respective senior management.

## 7. **SUB-CONTRACTING**

We shall be entitled to sub-contract the Support Services to a third party at any time during the Term and the sub-contractor shall provide the Support Services and the obligations in this Appliance Agreement as if those Support Services were provided by us.

## 8. **TERMINATION**

On termination of the Appliance Agreement in accordance with its terms, the Support Services shall automatically cease.