# SPLICECLOUD TERMS AND CONDITIONS

(a) Cybersplice Proprietary Limited ("Cybersplice") offers a cloud-based service providing Customers with security visibility and optional monitoring of its operational technology network.

(b) The Customer has agreed to a proposal submitted by Cybersplice or the Customer has elected to procure the services as described herein on the website of Cybersplice in terms of which Cybersplice will provide the Customer with Splicecloud services as set out herein.

(c) The terms and conditions upon which Cybersplice will render the Splicecloud services to the Customer are set out herein.

1. **INTERPRETATION**

1.1. In this Agreement the following terms have the following meanings:

1.1.1. "**Agreement**" means the Order Form, these Terms and Conditions and all other schedules attached to the Order Form;

1.1.2. "**Business Day**" means any day in South Africa other than a Saturday, Sunday or a public holiday;

1.1.3. "**Confidential Information**" means all technical, trade, commercial and management information of the Disclosing Party, including any information in respect of know-how, processes, procedures, systems, methods and techniques used by the Disclosing Party in the conduct of its business; any information contained in any model, network and/or architecture design; all information contained in any document prepared by the Disclosing Party in connection with the Agreement; all computer software, specifications and internal control systems of the Disclosing Party; all trade secrets, inventions, data, profiles, designs, formulations and all other information belonging to or in the possession of the Disclosing Party and used by it in its business operations; details of the Disclosing Party's business associates; the Disclosing Party's methods of conducting business, any other information which relates to the business of the Disclosing Party which is not readily available in the normal course of business to competitors of the Disclosing Party and which may come to the knowledge of the recipient, and whether subject to or protected by common law or statutory laws relating to copyright, patent, trade mark (registered or unregistered) or otherwise;

1.1.4. "**Customer**" means the customer as set out in the Order Form;

1.1.5. "**Customer Data**" means all data and information, including details of nodes detected, probes deployed, network behaviours and intrusion alerts detected, created pursuant to the Customer's use of Splicecloud;

1.1.6. "**Disclosing Party**" means the Party who discloses Confidential Information;

1.1.7. "**Fees**" means the fees and other charges payable by the Customer to Cybersplice, as detailed in the Order Form;

1.1.8. "**Force Majeure Event**" means a fire, flood, earthquake, act of nature, civil disorder, rebellion or revolution;

1.1.9. "**Go-Live Date**" means the earlier of (a) the date indicated in the Order Form as being the Go-Live Date or (b) if no such date has been indicated, the date on which Splicecloud has been deployed as set out in the Order Form;

1.1.10. "**Hosting**" means the third-party hosting services used by Cybersplice to host the Splicecloud Platform;

1.1.11. "**Intellectual Property Rights**" means all intellectual property rights of any nature whatsoever owned and/or controlled directly or under licence by a Party, including, without limiting the generality of the aforegoing, the Trademarks and any rights, title and interest in and to all technology, source code/s, proprietary material, databases, know-how, trade secrets, systems, processes, procedures, functionalities, methods, patents and copyright whether registered or not, and all other rights in the nature of any of the aforesaid items in any country or jurisdiction and all applications and rights to apply for protection of any of the same;

1.1.12. "**OT Network**" means network(s) of the Customer where it operates Operational Technology Devices.

1.1.13. "**Parties**" means collectively, Cybersplice and the Customer and "**Party**" shall refer to any one of them as indicated by the context;

1.1.14. "**POPI**" means the South African Protection of Personal Information Act No. 4 of 2013;

1.1.15. "**Probes**" means small utility programs, virtual appliances and hardware devices used to investigate, monitor or analyse network activity of OT devices on the OT network as set out on the Order Form;

1.1.16. "**Order Form** means the web form or the written proposal to which these Terms and Conditions are attached or linked to, and which describes, amongst other things, the Services, the Fees and additional commercial terms;

1.1.17. "**Receiving Party**" means the Party who receives Confidential Information from the Disclosing party;

1.1.18. "**Splicecloud**" means the monitoring service provided by Cybersplice utilising a cloud based analytical engine in terms whereof Cybersplice, depending on the options set out on the Order From, provides security visibility and optional monitoring services of the

Customer's OT Network through the deployment of Probes;

1.1.19. "**Splicecloud Console**" means a web based online console can be used by the Customer to manage and configure Splicecloud;

1.1.20. "**Support Services**" means the activities of Cybersplice which enable the delivery and availability of Splicecloud, including but not limited to content management, account management, platform administration, platform reporting and data management;

1.1.21. "**Terms and Conditions**" means the terms and conditions set out in this document;

1.1.22. "**Trademarks**" means any trademarks, marks, logos, designs and trade names owned and/or used by the Parties whether registered or not;

1.1.23. "**Unplanned Downtime**" means the amount of downtime for which Splicecloud is unavailable as a result of factors which are beyond Cybersplice's control, including, as a result of a Force Majeure event and which is not attributable to the negligent and/or intentional act or omission of Cybersplice;

1.1.24. "**VAT**" means value-added tax as levied in terms of the Value-Added Tax Act of South Africa No. 89 of 1991;

1.1.25. "**Cybersplice**" means Cybersplice Proprietary Limited, Registration No. 2018/458570/07, a private company incorporated in terms of the company laws of the Republic of South Africa;

1.1.26. "**Splicecloud Product Documentation**" means all guides, manuals and process maps describing the operation, use and functionality of Splicecloud;

1.2. If any provision in a definition is a substantive provision conferring a right or imposing obligations on any Party, then notwithstanding that it is only in this interpretation clause, effect shall be given to it as a substantive provision forming part of these Terms and Conditions.

1.3. A reference to a Party shall include a reference to that Party's successors and lawful assigns.

1.4. Where the day on or by which anything is to be done is not a Business Day, it shall be done on or by the first Business Day thereafter.

1.5. The termination or expiry of the Agreement shall not affect those provisions of the Agreement which expressly provide that they will operate after such expiry or termination, or those which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

1.6. The term "writing" or "written" in the Agreement excludes "data messages" as defined in the Electronic Communications and Transactions Act 25 of 2002.

1.7. Should there be any conflict between the provisions of the Order Form and these Terms and Conditions, the provisions of the Order Form will take precedence.

2. **COMMENCEMENT AND DURATION**

2.1. The Agreement will commence for an initial period of 1 (one) year from the Go-live Date.

2.2. Upon the expiry of the first year of the Agreement, the agreement will automatically renew for further periods of 1 (one) year each.

2.3. Notwithstanding the above, either Party may terminate this Agreement at any time by providing the other with 1 (one) months' written notice of such termination.

3. **THE SPLICECLOUD SERVICE**

3.1. Splicecloud is an analytical cloud-based software engine that profiles the Customer's OT Network and then alerts on outliers and anomalous activity to identify potential security incidents related to the OT Devices.

3.2. For the duration of this Agreement, Cybersplice hereby grants the Customer the right to use Splicecloud in respect of the OT devices, the Probes, the OT Network(s) and the Users as described on the Order Form.

3.3. Unless indicated otherwise on the Order Form, and then only to the extend as specified on the Order Form, Splicecloud is a self-management service, and it is the responsibility of the Customer to receive and react to any alerts and reports produced by Splicecloud.

3.4. Splicecloud relies on the visibility provided through the Splicecloud Probes deployed by the Customer as indicated on the Order Form, which may include zero touch, light virtual probes, deep virtual probes and optional deep hardware probes.

3.5. Splicecloud is a rapid deployment service and Cybersplice shall endeavour to deploy the Splicecloud tenant by the target Go-Live Date as indicated on the Order From. The Customer acknowledge that achieving this depends amongst others on the Customer's co-operation and timeous performance of its obligations.

3.6. The suitability of the Probes, the design of the deployment and the deployment thereof is the responsibility of the Customer.

3.7. The Customer shall:

3.7.1. only use and access Splicecloud in accordance with the terms of the Agreement;

3.7.2. not sub-license or sell rights to access and/or use the Service or transfer or assign rights to access or use the Services in any way;

3.7.3. use Splicecloud in a manner that complies with all applicable laws including intellectual property and copyright laws;

3.7.4. not permit any usernames and passwords of Users to be shared between Users, cached in proxy servers and/or accessed by individuals who are not authorised to do so;

3.7.5. ensure that the Service is only accessed by Users through a single username and password per User;

3.7.6. not intentionally interfere with or disrupt Splicecloud;

3.7.7. not violate any codes of conduct, requirements, terms of use, policies or regulations of networks connected to the Service, as have been conveyed to the Customer; and

3.7.8. procure that, insofar as the obligations and requirements referred to above may be applicable to Users, Users comply with such obligations and requirements.

3.8. The Customer shall procure that Users:

3.8.1. select their own passwords and are responsible for keeping such passwords confidential;

3.8.2. are responsible for the security of their devices on which they access the Service; and

3.8.3. do not use any other software to log onto their user account to use the Services.

4. **SPLICECLOUD CONSOLE**

4.1. The Customer shall use the Splicecloud Console to configure and manage Splicecloud.

4.2. Cybersplice may log into the Customer's Splicecloud Console when necessary to render services, including on initial setup, for purposes of troubleshooting or when the Customer requests support or advice.

5. **CUSTOMER'S GENERAL OBLIGATIONS**

5.1. In addition to any other obligations contained in the Agreement, the Customer shall:

5.1.1. where it is required to implement or obtain any licenses, hardware, software or equipment to facilitate the Services, it shall do so timeously and in compliance with the functional and technical configurations specified by Cybersplice;

6. **AVAILABILITY OF SPLICECLOUD**

6.1. Splicecloud is hosted, depending on geographical location, in tier 1 or tier 3 data centres. Splicecloud's infrastructure availability is therefore dependent on the availability and guarantees provided by the respective data centres. Cybersplice shall use its best endeavours to ensure Splicecloud availability of 99.671% to 99.982%.

6.2. The Customer acknowledges that the availability of Splicecloud may require scheduled and preventative maintenance, to be carried out by Cybersplice in its discretion and at its cost. In this regard Cybersplice shall notify the Customer at least 48 hours in advance of scheduled downtime.

6.3. The Customer is responsible for the provision, support and maintenance of its own network connection and internet facilities.

7. **BACKUPS**

7.1. Cybersplice will make daily backups of the Customer Data. Backups will be encrypted and stored in an offsite location.

8. Depending on the cause of an outage, during recovery, Splicecloud tenant instances may be relocated to an alternate data center. In this case and where clients have configured Splicecloud feeds using static IP addresses, these will have to be reconfigured to re-enable the processing of the feed.

9. **SUSPENSION OF SERVICES**

9.1. Should the Customer fail to make timeous payment of any amount due to Cybersplice in terms of the Agreement, Cybersplice may suspend the Services until it has received payment in full of all such amounts.

10. **FEES AND PAYMENT TERMS**

10.1. The Fees payable in respect of the Services (including the subscription fees for Splicecloud) are contained in the Order Form.

10.2. The Customer shall pay the amount set out in each invoice by no later than 14 (fourteen) days after the date of invoice.

10.3. Each Party shall be liable for its own bandwidth costs.

10.4. Unless otherwise stipulated, all Fees are exclusive of VAT and any other statutory levies, taxes and imposts as may be levied thereon from time to time.

10.5. Customer shall not, unless any other provision in this Agreement expressly provides otherwise, withhold payment of any invoice due under the Agreement and is not entitled to set off any payment due to Cybersplice against any amount owed by Cybersplice to the Customer.

11. **DATA PROTECTION**

11.1. It is recorded, for the avoidance of doubt, that Cybersplice will not process as part of Splicecloud any personal information of the Customer, it staff or other individual.

12. **SECURITY**

12.1. Where access to Splicecloud requires an access code, the Customer in terms of a secure access mechanism furnished by Cybersplice shall select this code. The Customer shall ensure that only the Customer and the Users, where required, have access to such code.

12.2. If for any reason such code is no longer secure including instances where it is or may be in the possession of any unauthorised person, the Customer will immediately notify Cybersplice so that the code may be deactivated and a new code selected.

## 13. CONFIDENTIALITY

13.1. Notwithstanding the cancellation or termination of the Agreement for any reason whatsoever, the Receiving Party shall not during the existence of the Agreement or at any time thereafter use, divulge, disclose, exploit, distribute or permit the use of the Disclosing Party's Confidential Information divulged to it in terms of this Agreement or otherwise received in connection with the performance of the Services; provided that the Receiving Party may disclose the Disclosing Party's Confidential Information:

13.1.1. to the extent required by law;

13.1.2. to its personnel to the extent strictly necessary for the purpose of implementing or enforcing this Agreement and/or conducting its business; and

13.1.3. to its professional advisors for the purpose of obtaining advice in respect of any aspect of this Agreement.

13.1.4. The provisions of this clause 13. shall cease to apply to any Confidential Information of a Party which (i) is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this clause 13.; or (ii) is also received by the Receiving Party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of the Disclosing Party; or (iii) was known to the Receiving Party prior to receiving it from the Disclosing Party.

## 14. INTELLECTUAL PROPERTY RIGHTS

14.1. All Intellectual Property Rights owned or controlled by a Party before entering into the Agreement, will remain the property of such Party.

14.2. A Party may not use the Trademarks of the other Party without prior written consent and the Parties shall not perform any act which may negatively impact the reputation or goodwill attaching to their respective names or Trademarks or which would prejudice their rights in and to such names and Trademarks. Neither Party will by virtue of this Agreement acquire any rights in the other Party's Trademarks.

14.3. All Intellectual Property Rights developed by a Party independently and outside of the Agreement and provided or used during the course of the Agreement, shall remain the sole property of that Party.

14.4. If the Parties jointly develop new Intellectual Property Rights during the course of this Agreement relating to Splicecloud or any part of the Services, Cybersplice shall be deemed to be the author or inventor thereof, as the case may be, as well as the owner thereof. The Customer shall, however, acquire a non-exclusive non-transferrable perpetual licence to use such new Intellectual Property.

14.5. Subject to clause 17.4 and unless otherwise agreed between the Parties in writing, all Intellectual Property Rights in any information, software, processes, data, or documentation furnished by Cybersplice to the Customer, and/or developed or created by Cybersplice pursuant to and in terms of the Agreement, shall be the property of and remain vested in Cybersplice, except where such documentation contains any of the Customer's Confidential Information, Intellectual Property Rights and/or proprietary information. Notwithstanding the aforesaid, the Customer shall at all times have the right to use the aforementioned documentation during the course of this Agreement for the purpose of using Splicecloud and on terms as provided for in this Agreement.

14.5.1. The Customer may not modify, translate, generate or create derivative works from, reverse engineer, decompile or attempt to derive source code from Splicecloud and Probes and may not use Splicecloud or Probes to develop any product which competes in any way, whether directly or indirectly, with Splicecloud.

## 15. LIMITATION OF LIABILITY

15.1. Cybersplice shall not be liable for any direct, indirect, special or consequential damages (including, whether foreseeable or not, loss of use, business interruption, loss of data or goodwill, and even if a Party has been advised of the possibility of such damages arising) however arising.

15.2. Notwithstanding any other provision of the Agreement, Cybersplice shall not be liable for any loss, liability, damages, whether direct, indirect or consequential or expense of whatsoever nature and howsoever arising which is caused by or attributable to (i) the Customer (ii) a Force Majeure Event; (iii) any telecommunication infrastructure and/or communication line faults not attributable to the fault of Cybersplice; (iv) power failure or power interruption; (v) changes made to any facilities, machines, software and/or operating environment which were not timeously communicated to Cybersplice; (vii) Cybersplice being unable to access any premises or system necessary to enable Cybersplice to carry out its obligations in terms of the Agreement, that is not attributable to the fault of Cybersplice; (viii) the failure of any hardware, software programs, operating systems, applications, networks, telecommunication lines or any other computer system (or any component thereof) and/or the non-availability of any services and/or resources of any third party relied upon to render the Services; or (ix) any Excusable Delays, that are not attributable to the fault of Cybersplice. Cybersplice shall however under the aforementioned circumstances take all reasonable commercial efforts to mitigate and

limit any damage or loss incurred to the Customer.

15.3. Without derogating from clause 15.1. and 15.2. above, Cybersplice's entire liability shall be limited to direct damages and losses to the Customer which shall not exceed the Fees paid or payable during the 12 (twelve) months preceding the date on which the claim arose.

16. **WARRANTIES AND DISCLAIMERS**

16.1. Cybersplice warrants, represents and undertakes that it has the necessary authority and rights to provide Splicecloud to the Customer.

16.2. Cybersplice does not warrant that Splicecloud will operate without interruption or error, that Splicecloud will be totally secure or that Splicecloud will always be available.

16.3. To the extent that data is being transmitted over the internet, the Customer acknowledges that Cybersplice has no control over the Internet, and Cybersplice makes no representations or warranties of any kind regarding the performance of the Internet.

16.4. Except as expressly set forth in this Agreement, Cybersplice makes no warranties, express or implied, including but not limited to any implied warranties of merchantability, non-infringement, or fitness for a particular purpose in respect of the Services.

16.5. Cybersplice warrants it has the necessary technical skills, staff and infrastructure to deliver the Services as agreed on in all written proposals as well as this document.

17. **FORCE MAJEURE**

17.1. If either Party ("Affected Party") is prevented or restricted directly or indirectly from carrying out all or any of its obligations under the Agreement by reason of a Force Majeure Event, the Affected Party shall be relieved of its obligations hereunder during the period that such event continues (and for so long as the Affected Party is so prevented from fulfilling its obligations, then the corresponding obligations of the other Party shall be suspended to the corresponding extent). The Affected Party shall not be liable for any delay and/or failure in the performance of its obligations under the Agreement during such period, provided that if the Force Majeure Event continues for a period longer than 14 (fourteen) days, either Party may cancel this Agreement.

17.2. In the event that the Affected Party is unable to perform its obligations pursuant to clause 17.1., the Affected Party shall –

17.2.1. Immediately notify the other Party of the occurrence of the Force Majeure Event and describe, at a reasonable level of detail, the circumstances causing such delay; and

17.2.2. Use its reasonable efforts to mitigate the consequences of such Force Majeure Event and perform (or recommence performing) its obligations as soon as, and to the extent, possible, including through the use of alternative sources, workarounds, and plans.

18. **CESSION AND ASSIGNMENT**

18.1. Neither Party may cede, assign, make over, transfer or encumber any of its rights, title and interest hereto, or delegate any of its obligations hereunder without the prior written consent of the other Party, which consent shall not unreasonably be withheld.

18.2. Notwithstanding clause 18.1. above, a Party may not cede, assign or delegate any rights or obligations to an affiliate, without prior written consent given in a notice to the other Party, such consent not to be unreasonably withheld by each Party.

19. **BREACH**

19.1. Notwithstanding any other provision of this Agreement, should either Party ("Defaulting Party") commit a breach of any provision of this Agreement and fail to remedy such breach within 10 (ten) Business Days of receiving written notice from the other Party ("Aggrieved Party") requiring it to do so, then the Aggrieved Party shall be entitled, without prejudice to its/his/her other rights in law, to terminate this Agreement or to claim immediate specific performance of all of the Defaulting Party's obligations whether or not due for performance, in either event without prejudice to the Aggrieved Party's right to claim damages.

20. **SUMMARY TERMINATION**

20.1. Should either Party-

20.1.1. be wound-up, liquidated, deregistered or be subject to business rescue proceedings, in any such event whether or not provisionally or finally and whether or not voluntarily or compulsorily, or pass a resolution providing for any such event; or

20.1.2. have any application or other proceedings brought against or in respect of it in terms of which it is sought to be deregistered, wound-up, liquidated or placed under business rescue, in any such event whether provisionally or finally; or

20.1.3. be deemed to be unable to pay its debts or have any business rescue proceedings commenced against it in terms of the Companies Act; or passes a resolution to place itself under business rescue; or

20.1.4. compromise or attempt to compromise with its creditors generally,

then the other Party shall be entitled to cancel this Agreement immediately by providing written notice thereof.

21. **RIGHTS ON TERMINATION**

21.1. On termination of this Agreement:

21.1.1. the Customer shall pay to Cybersplice all amounts due and owing to Cybersplice as at the date of termination;

21.1.2. Cybersplice will retain the Customer Data for a period of 7 (seven) days from the date of termination. Cybersplice will provide the Customer with a copy of the Customer Data in csv format, containing details of nodes detected, behaviours, Probes and intrusion alerts triggered upon request.

21.1.3. Cybersplice shall after the abovementioned 7 (seven) day period permanently delete from all computer and/or electronic media all Customer Data and Confidential Information belonging to the Customer, save for that which Cybersplice is obliged by law to retain.

21.2. Termination of this Agreement shall not relieve a Party of obligations imposed upon such Party by statute or regulation or by this Agreement prior to its termination.

22. **APPLICABLE LAW AND JURISDICTION**

22.1. Subject to clause 23. below, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court (Cape Town) for the purpose of all or any legal proceedings arising from or concerning this Agreement. The Agreement shall be interpreted and governed in all respects by the laws of the Republic of South Africa.

23. **DISPUTES AND ESCALATION**

23.1. Any dispute of whatsoever nature which arises out of or in connection with the Agreement ("Dispute") and which has not been resolved between the Authorised Representatives, shall be referred to the Chief Executive Officer of Cybersplice ("CEO") and the Chief Information Officer of the Customer (or his/her authorised representative) ("CIO") for resolution before any formal legal steps shall be taken.

23.2. Should the CEO and the CIO (or their duly authorised representatives) fail to resolve the Dispute within 10 (ten) Business Days of such dispute being referred to them, either Party may refer the Dispute to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa, such arbitration to be held in Cape Town or such other place as agreed between the Parties.

23.3. The award of the arbitrator will be final and binding upon the Parties and may be entered as a judgement in any court having jurisdiction.

23.4. These provisions shall not, however, prevent either Party from approaching any court or other judicial forum having appropriate jurisdiction to obtain timely interdictory or other relief in cases of urgency.

24. **DOMICILIUM AND NOTICES**

24.1. The Parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to the Agreement, including the giving of any notice, the payment of any sum, the serving of any process, as set out on the cover page of these Terms and Conditions.

24.2. Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante).

25. **GENERAL**

25.1. Nothing in the Agreement shall be construed as creating any relationship of agency, employment, partnership or joint venture between Cybersplice and the Customer.

25.2. The Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein.

25.3. The Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.

25.4. No change, novation or agreed cancellation of any provision of the Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.

25.5. No indulgence or extension of time which either Party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof.

25.6. This Agreement may be executed in any number of counterparts (including faxed counterparts) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.