

ENGUARD LLC

IMPORTANT: UNLESS OTHERWISE AGREED IN WRITING SIGNED BY BOTH PARTIES, THIS SERVICES AGREEMENT (THE “AGREEMENT”) GOVERNS ALL USE BY YOU AND THE BUSINESS ENTITY THAT YOU REPRESENT (COLLECTIVELY, “CUSTOMER”) OF ENGUARD SERVICES.

ENGUARD LLC (“ENGUARD”) IS WILLING TO PROVIDE THE SERVICES TO CUSTOMER ONLY UPON THE TERMS CONTAINED IN THIS AGREEMENT. BY ACCEPTING THIS AGREEMENT, SUBMITTING AN ORDER FOR SERVICES, OR BY USING ANY PART OF THE SERVICES, CUSTOMER IS BINDING ITSELF TO ALL TERMS OF THIS AGREEMENT.

WHEREAS, Enguard has the capability and capacity to provide certain cybersecurity management services; and

WHEREAS, Customer desires to retain Enguard to provide the said services, and Enguard is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Enguard and Customer agree as follows:

1. Services. Enguard shall provide to Customer the services (the “**Services**”) set out in one or more orders to be issued by Customer and accepted by Enguard (each, an “**Order**”) from time to time. Orders shall be deemed issued and accepted only if submitted in writing by an authorized representative of Customer and accepted in writing by an authorized representative of Enguard. Customer acknowledges and agrees that Enguard’s Services include the management, provision and facilitation of services (“**Third Party Services**”) provided by third party service providers (“**Third Party Providers**”).

2. Customer Responsibilities. As reasonably necessary and appropriate in furtherance of the Services, Customer will: (a) provide Enguard with information and data on Customer operations, activities, and existing systems; (b) provide Enguard with the necessary security access to systems and facilities during the performance of Services; (c) ensure availability and responsiveness of Customer personnel as necessary to support the Services; and (d) provide and maintain suitable hardware, network and telecommunications hardware and services necessary and adequate to Customer’s requirements and the Services. If Enguard determines that the Services require Enguard to access Customer’s computer systems, whether remotely or on site, Customer agrees that it shall also provide Enguard with all the information reasonably requested by Enguard for Enguard to remotely access Customer’s computer systems. Customer also acknowledges and agrees that the providing of the Services may in some circumstances result in the disruption of services at Customer’s facility or on Customer’s computer systems or loss or damage to software or hardware.

3. Fees and Expenses.

3.1 In consideration of the provision of the Services by Enguard, Customer shall pay the fees set forth in the applicable Order. Payment to Enguard of such fees and the reimbursement of expenses pursuant to this Section shall constitute payment in full for the performance of the Services. Unless otherwise provided in the applicable Order, said fee will be payable within thirty (30) days of receipt by the Customer of an invoice from Enguard.

3.2 Customer shall reimburse Enguard for all reasonable expenses incurred in accordance with the Order within thirty (30) days of receipt therefor by the Customer of an invoice from Enguard.

3.3 Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Enguard's income, revenues, gross receipts, personnel, or real or personal property, or other assets.

3.4 Except for invoiced payments that the Customer has successfully disputed, all late payments shall bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Customer shall also reimburse Enguard for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Enguard does not waive by the exercise of any rights hereunder), Enguard shall be entitled to suspend the provision of any Services if the Customer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof.

4. Limited Warranty and Limitation of Liability.

4.1 Enguard warrants that it shall perform the Services:

- (a) in accordance with the terms and subject to the conditions set forth in the respective Order and this Agreement.
- (b) using personnel of commercially reasonable skill, experience, and qualifications.
- (c) in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

4.2 Enguard's sole and exclusive liability and Customer's sole and exclusive remedy for breach of this warranty shall be as follows:

- (a) Enguard shall use reasonable commercial efforts to promptly cure any such breach; provided, that if Enguard cannot cure such breach within a reasonable time (but no more than 30 days) after Customer's written notice of

such breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance herewith.

(b) The foregoing remedy shall not be available unless Customer provides written notice of such breach within 30 days after delivery of such Service to Customer.

4.3 ENGUAUD MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 4.1, ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, ARE EXPRESSLY DISCLAIMED.

5. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures, and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works, and all other rights (collectively, “**Intellectual Property Rights**”) in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Enguard in the course of performing the Services (collectively, the “**Deliverables**”) except for any Confidential Information of Customer shall be owned by Enguard or by Enguard’s Third Party Provider licensors, as applicable. To the extent Enguard holds Intellectual Property Rights in the Deliverables, Enguard hereby grants Customer a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, non-transferable, non-sublicenseable basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services during the Term.

6. Indemnification.

6.1 Enguard shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys’ fees) (“**Losses**”) incurred by Customer resulting from any third-party claim, suit, action, or proceeding (“**Third-Party Claim**”) that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party’s United States patents, copyrights, or trade secrets, provided that Customer promptly notifies Enguard in writing of the claim, cooperates with Enguard, and allows Enguard sole authority to control the defense and settlement of such claim. This Section 6.1 will not apply to the extent that the alleged infringement arises from Third Party Services or from use of the Services in combination with data, software, hardware, equipment, or technology not provided by Enguard or authorized by Enguard in writing.

6.2 If such a claim is made or appears possible, Customer agrees to permit Enguard, at Enguard’s sole discretion, to modify or replace the Services, or component or part thereof, to make it non-infringing, or obtain the right for Customer to continue use. If Enguard determines that neither alternative is reasonably available, Enguard may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

6.3 THIS SECTION 6 SETS FORTH CUSTOMER'S SOLE REMEDIES AND ENGUARD'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

7. Confidentiality. From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of Disclosing Party ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would use to protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's employees, officers, directors, partners, members, service providers, attorneys, accountants and financial advisors who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy.

8. Use of Data.

8.1 Enguard may collect, use, and share aggregate anonymized data ("**Aggregate Data**") derived from Customer's use of the Services. This Aggregate Data will be aggregated and anonymized in a manner that ensures it cannot be used to identify you or any individual user. Enguard may use Aggregate Data for any purpose, including the development and enhancement of marketing strategies and its Services. Enguard may sell or license Aggregate Data to third parties.

8.2 By using Enguard Services, you expressly acknowledge and consent to the collection and use of Aggregate Data as outlined herein. You also acknowledge and agree to Enguard's use of your data according to Enguard's Privacy Policy, located here on Enguard's website, as modified and amended from time to time.

9. Term, Termination, and Survival.

9.1 This Agreement shall commence as of the Effective Date and shall continue thereafter during the period of any applicable Order(s), unless sooner terminated pursuant to Section 9.2 or Section 9.3 (the “**Term**”). Unless expressly provided in an Order, no Order may be terminated prior to the expiration of the term identified therein, except pursuant to Section 9.2 or 9.3.

9.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the “**Defaulting Party**”), if the Defaulting Party:

- (a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.
- (b) Becomes insolvent or admits its inability to pay its debts generally as they become due.
- (c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing.
- (d) Is dissolved or liquidated or takes any corporate action for such purpose.
- (e) Makes a general assignment for the benefit of creditors.
- (f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

9.3 Notwithstanding anything to the contrary herein, Enguard may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder: (a) and such failure continues for ten (10) days after Customer’s receipt of written notice of nonpayment; or (b) more than two (2) times in any six (6) month period.

9.4 The rights and obligations of the Parties set forth in Sections 4 - 8 and 10 - 24, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

10. Limitation of Liability.

10.1 IN NO EVENT SHALL ENGUARD BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES

WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT ENGWARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2 IN NO EVENT SHALL ENGWARD'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO ENGWARD PURSUANT TO THE APPLICABLE ORDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Non-Solicitation. Without the prior written consent of Enguard, neither Customer nor any of its affiliates will, for a period of one (1) year following the termination of this Agreement, solicit for employment or employ any employee of Customer. Notwithstanding the above, this Section shall not restrict the right of either party to solicit or recruit generally in the media, and shall not prohibit either party from hiring, without prior written consent, the other party's employee, who answers any advertisement, or who otherwise voluntarily applies for hire, without having been solicited or recruited by the hiring party.

12. Force Majeure. No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of the Customer to make payments to Enguard hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) epidemics or pandemics; (h) telecommunication breakdowns or power outages or shortages; and (i) other events beyond the reasonable control of the Impacted Party.

13. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

14. Notices. All notices under this Agreement must be in writing and addressed to the other Party at its address or email address as set forth in the applicable Order (or to such other address that the receiving Party may designate from time to time in accordance with this Section). All notices must be delivered by email, personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only on receipt by the receiving Party.

15. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

17. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

18. Assignment. Customer shall not assign, transfer, delegate, or subcontract any of its rights or delegate any of its obligations under this Agreement, including by virtue of any merger or corporate reorganization which may be deemed an assignment, without the prior written consent of Enguard. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Customer of any of its obligations under this Agreement. Enguard may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Enguard's assets without Customer's consent.

19. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

20. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

22. Choice of Law. This Agreement and all related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of North Carolina, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina.

23. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, in any forum other than state or federal courts resident in the State of North Carolina. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.