



## NETWITNESS INSIGHT

### CLOUD SERVICE OFFERING - TERMS OF SERVICE

#### **\*\*\* IMPORTANT INFORMATION – PLEASE READ CAREFULLY \*\*\***

This Service Offering contains proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of these Terms of Service (the “Terms of Service”).

This Agreement is a legally binding document between you (meaning the individual person or the entity that the individual represents that has purchased the Service Offering for its internal productive use and not for outright resale) (the “Customer”) and NetWitness (which means (i) RSA Security LLC, if Customer is located in the United States, Mexico or South America; (ii) the local NetWitness sales subsidiary if Customer is located outside United States, Mexico or South America and in a country in which NetWitness has a local sales affiliate; or (iii) RSA Security & Risk Ireland Limited or other authorized NetWitness entity as identified on the NetWitness Quote or other NetWitness ordering document if Customer is located in a country outside United States, Mexico or South America and in a country in which NetWitness does not have a local sales affiliate). Unless NetWitness agrees otherwise in writing, this Agreement governs Customer's use of the Service Offering, except to the extent all or any portion of the Service Offering is: (a) the subject of a separate written agreement set forth in a quotation issued by NetWitness; or (b) governed by a third party licensor's terms and conditions. Capitalized terms have meaning stated in the Agreement.

By proceeding with the installation, use or reproduction of this Service Offering, or authorizing any other person to do so, you are representing to NetWitness that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of this Agreement shall govern the relationship of the parties with regard to the subject matter in this Agreement and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement. If you do not have authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement on behalf of the Customer, immediately cease any further attempt to use this Service Offering for any purpose.

#### **1. THE SERVICE OFFERING.**

**1.1 Generally.** NetWitness may deliver the Service Offering with the assistance of NetWitness' affiliates and suppliers. NetWitness will remain responsible to Customer for delivery of the Service Offering.

#### **1.2 Use of the Service Offering.**

**1.2.1** Customer may use the Service Offering only (a) during the Subscription Term, (b) for Customer's own internal use and (c) in accordance with the Agreement. To use the Service Offering Customer may be required to register and set up an authorized account with Login Credentials. Customer must keep Customer registration information accurate and complete during the term of the Agreement.

**1.2.2** Customer is responsible for (i) any use of the Service Offering that occurs under Customer's Login Credentials, (ii) Customer's Content, and (iii) Customer's Users' compliance with the Agreement. If Customer becomes aware of any User's violation of the Agreement, Customer must promptly suspend that User's access to the Service Offering. If Customer believes Customer's account has been compromised, including any unauthorized access to or use or disclosure of any account information, passwords, usernames, or Login Credentials, Customer must notify NetWitness as soon as possible. Customer may not impersonate another user or provide false identity information to gain access to or use the Service Offering.

**1.2.3** Customer may receive software from NetWitness, incidental to Customer's use of the Service Offering, which must be installed in Customer's on-premises environment to enable Customer to use the Service Offering (“Incidental Software”). Customer may use that software only (a) in connection with Customer's use of the Service Offering, (b) for the Subscription Term, and (c) in accordance with the Agreement. If that software is subject to an accompanying license agreement, Customer must comply with the terms of that license. If that software does not have an accompanying license agreement, then NetWitness' standard end user license

agreement made generally available by NetWitness on its website specifically referenced in the Incidental Software section of the Service Description, applies.

**1.2.4** If NetWitness reasonably believes a problem with the Service Offering may be attributable to Customer's Content or to Customer's use of the Service Offering, Customer must promptly cooperate with NetWitness to identify the source of the problem and to resolve the problem.

**1.3 Monitoring.** NetWitness monitors and collects configuration, performance, and usage data relating to Customer's use of the Service Offering: (a) to facilitate delivery of the Service Offering (such as (i) tracking entitlements, (ii) providing support, (iii) monitoring the performance, integrity, and stability of the Service Offering's infrastructure, and (iv) preventing or addressing service or technical issues); and (b) to improve our products and services, and Customer's experience. Customer must not interfere with that monitoring. NetWitness will not access Customer's Content except as reasonably necessary to provide the Service Offering, or pursuant to Section 1.8 ("Required Disclosures").

**1.4 Third-Party Content.** Where available, Customer may use Third-Party Content, at Customer's option. If Customer chooses to use Third-Party Content, Customer is responsible for complying with any terms that are presented to Customer when Customer accesses that Third-Party Content, including any separate fees or charges imposed by the provider of that Third-Party Content. Third-Party Content is available "AS IS" without indemnification, support (unless otherwise specified), or warranty or condition of any kind. NetWitness may suspend or terminate provision and hosting of any Third-Party Content at any time, and that suspension or termination will not be deemed a material, detrimental change.

**1.5 Evaluation Use.** If Customer uses any Evaluation Service, the terms of this Section 1.5 govern that use, and control over any conflicting provision of these Terms of Service. The term "Service Offering" includes an Evaluation Service in all provisions of these Terms of Service that are not in conflict with the provisions of this Section 1.5.

**1.5.1** Customer may use an Evaluation Service only (a) for internal testing and evaluation or trial purposes, and (b) for a period of 60 days (unless NetWitness specifies otherwise) beginning on the date NetWitness provides Customer Login Credentials for or access to the Evaluation Service. Customer will not have access to the Evaluation Service or to any data or Content in the Evaluation Service after Customer's authorized use period ends.

**1.5.2** Use of an Evaluation Service may be subject to additional terms from a third-party service provider.

**1.5.3** Customer may use the Service Offering Documentation provided with an Evaluation Service solely in support of Customer's authorized use of the Evaluation Service.

**1.5.4** NetWitness will provide the Evaluation Service: (a) free of charge; (b) without support; (c) "AS IS"; and (d) without indemnification, warranty, or condition of any kind. No service level commitment will apply to the Evaluation Service.

**1.5.5** The Data Processing Addendum does not apply to Customer's use of (i) an Evaluation Service or (ii) any feature within an Evaluation Service, that is not generally available to our customers.

**1.5.6** Certain features or functionality of a Service Offering may not be available in an Evaluation Service. Providing any Evaluation Service, or any feature or functionality in an Evaluation Service, does not constitute our commitment to offer the Evaluation Service or that feature or functionality on a generally available basis.

**1.5.7** NetWitness may modify or terminate an Evaluation Service at any time, and any modification or termination will not be deemed a material, detrimental change.

**1.5.8** The aggregate liability (excluding indirect damages, for which NetWitness expressly disclaim all liability) of NetWitness, and its affiliates and suppliers, for any claim arising from Customer's use of an Evaluation Service will not exceed \$5,000 USD (or the equivalent in local currency).

**1.6 Open Source Software.**

**1.6.1** Customer may receive open source software when Customer uses the Service Offering or any Evaluation Service.

**1.6.2** Open source software embedded in the Service Offering will not be deemed to be "Third-Party Content". All provisions in these Terms of Service applicable to the Service Offering (e.g., our warranty, liability, indemnification, and other obligations) will control as between Customer and NetWitness over any conflicting terms set forth in any open source software license otherwise applicable to that open source software.

**1.7 Optional Feedback.** Customer may provide comments and suggestions regarding a Service Offering, but Customer is not required to do so. If Customer provides comments or suggestions, NetWitness may use that feedback

without restriction, and Customer hereby irrevocably assigns to NetWitness all right, title, and interest in and to that feedback. Subject to the preceding sentence regarding any feedback Customer provides, providing any comments and suggestions does not grant us any rights in Customer's Content or Customer's intellectual property.

**1.8 Required Disclosures.** If NetWitness is required by a subpoena, court order, agency action, or any other legal or regulatory requirement to disclose any of Customer's Content, NetWitness will provide Customer with notice and a copy of the demand as soon as practicable, unless NetWitness is prohibited from doing so pursuant to applicable law. If Customer requests, NetWitness will, at Customer's expense, take reasonable steps to contest any required disclosure. NetWitness will limit the scope of any disclosure to only the information NetWitness is required to disclose.

## **2. DATA PROTECTION AND SECURITY.**

**2.1** Customer is solely responsible for ensuring that the Service Offering and its security is appropriate for Customer's Content and Customer's intended use.

**2.2** Customer is responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of Customer's Content.

**2.3** Customer is responsible for providing any necessary notices to Users and obtaining any legally required consents from Users regarding their use of the Service Offering.

## **3. ACCEPTABLE USE.**

**3.1 General Restrictions.** Customer must not: (a) resell or sublicense the Service Offering; (b) reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the software included with the Service Offering, or any part thereof; or (c) use the Service Offering (i) in a way prohibited by law or that would cause Customer or NetWitness to be out of compliance with applicable law, (ii) to violate any rights of others, (iii) to try to gain unauthorized access to, test the vulnerability of, or disrupt the Service Offering or any other service, device, data, account, or network, (iv) to distribute spam or malware, (v) in a way that could harm the Service Offering or impair anyone else's use of it, (vi) in a way intended to work around the Service Offering's technical limitations, recurring fees calculation, or usage limits, (vii) for High Risk Activities; (viii) use the Service Offering to create or enhance a competitive offering or for any purpose which is competitive to NetWitness; (ix) perform or fail to perform any other act which would result in a misappropriation or infringement of NetWitness' intellectual property rights in the Service Offering; (x) attempt to use or gain unauthorized access to NetWitness' or to any third-party's networks or equipment; (xi) attempt to probe, scan or test the vulnerability of the Service Offering, or a system, account or network of NetWitness or any of NetWitness' customers or suppliers; (xii) transmit unsolicited bulk or commercial messages or intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items; (xiii) restrict, inhibit, interfere or attempt to interfere with the ability of any other person, regardless of purpose or intent, to use or enjoy the Service Offering or a user's network, or cause a performance degradation to any facilities used to provide the Service Offering. Where applicable, if Customer purchases any managed services from NetWitness, Customer will not cause NetWitness to use anything for which NetWitness would need to obtain a license from such third-party in order to provide those managed services.

**3.2 Content Restrictions.** Customer's Content cannot: (a) create a risk of harm or any other loss or damage to any person or property; (b) constitute or contribute to a crime or a tort; (c) include any data that is illegal, unlawful, harmful, pornographic, defamatory, infringing, or invasive of personal privacy or publicity rights; (d) contain any data that Customer does not have a right to upload into the Service Offering; or (f) is otherwise prohibited as specified in the Agreement

**3.3 Uploading Content.** Customer's use of the Service Offering does not constitute a disclosure of Customer's Content to NetWitness and, accordingly, Section 12 (Confidential Information) does not apply to Customer's Content.

## **4. INTELLECTUAL PROPERTY OWNERSHIP.**

**4.1 Ownership of Service Offering.** As between Customer and NetWitness, NetWitness owns all right, title, and interest in and to the Service Offering and any related NetWitness Software, including all improvements, enhancements, modifications, and derivative works of them, and all Intellectual Property Rights in all of them. This includes any information NetWitness collects and analyzes about Customer's use of the Service Offering pursuant to Section 1.3 ("Monitoring"). Customer's rights to use the Service Offering are limited to those expressly granted in the Agreement. No other rights are implied with respect to the Service Offering, any related NetWitness Software, or any related Intellectual Property Rights.

**4.2 Ownership of Customer's Content.** As between Customer and NetWitness, Customer retains all right, title and interest in and to Customer's Content and all Intellectual Property Rights in Customer's Content. NetWitness' rights to access and use Customer's Content are limited to those expressly granted in the Agreement.

## **5. ORDERS, PAYMENT, AND TAXES.**

## 5.1 Orders Generally.

- 5.1.1 Customer must pay all charges Customer incurs for Customer's use of the Service Offering. Charges may consist of both a committed amount as well as additional amounts, including but not limited to charges for add-on features that Customer orders or enables, as well as charges Customer incurs based on actual usage of the Service Offering (metered charges, or "overages"). Customer must establish a method of payment to cover charges. NetWitness may bill Customer directly for any additional charges, even if Customer purchases the entitlement for the Service Offering through a NetWitness authorized reseller. NetWitness may not require a purchase order to invoice Customer for charges.
- 5.1.2 All Orders are subject to the terms of the Agreement and are not binding until NetWitness accepts them. An Order will be deemed accepted when NetWitness delivers Customer's Login Credentials to the email address associated with the account, or otherwise as set forth in the Service Description. NetWitness is not required to provide the Service Offering to Customer until Customer provides to NetWitness all information NetWitness requires for processing Customer's Order and provisioning the Service Offering for Customer. All Orders are non-refundable and non-cancellable except as expressly provided in the Agreement. Any refunds to which Customer is entitled under the Agreement will be remitted to Customer or to the NetWitness channel partner from which Customer purchased Customer's entitlement to use the Service Offering.
- 5.1.3 If a physical object is shipped in connection with the Service Offering, shipping and delivery terms are Ex Works NetWitness' regional fulfillment facility (INCOTERMS 2010) or as NetWitness or Customer's authorized NetWitness reseller may otherwise specify.
- 5.1.4 If Customer pays for a Service Offering through a credit card, where credit card payment is available, Customer may be subject to any additional terms presented to Customer by NetWitness' third-party credit card payment processor, which may be the merchant of record for that transaction.

5.2 **Direct Orders.** This Section 5.2 applies only to Orders directly with NetWitness. If Customer purchases an entitlement to the Service Offering through a NetWitness authorized reseller, different terms regarding invoicing, payment, and taxes may apply.

5.2.1 Unless Customer and NetWitness agree otherwise, (i) charges Customer incurs for using the Service Offering will be governed by the applicable price list at the time of invoicing, and (ii) Customer must pay all charges no later than 30 days after the date of invoice.

5.2.2 Service Offering fees are exclusive of Taxes. Customer must pay or reimburse NetWitness for all Taxes arising out of the transactions contemplated by the Agreement, except for taxes based on NetWitness' net income, gross revenue or employment obligations. NetWitness shall provide Customer with a valid invoice if VAT is chargeable in respect of any amount payable under this agreement. Customer may qualify for tax exemptions from time to time in which case NetWitness requests that Customer timely provide it with a valid certificate of exemption or other appropriate documentary proof of exemption. If Customer is required to pay or withhold any Tax for payments due under the Agreement, where NetWitness is resident in a different country than Customer, Customer must gross up Customer's payments to NetWitness so that NetWitness receives the amount it would have received if such deduction or withholding tax were not required where legally permitted. If Customer is required to pay any Taxes to a taxing authority, Customer must also provide documentation to NetWitness showing that Customer paid those Taxes. NetWitness will not be responsible to Customer for any penalties, interest or other charges arising from any act or omission by Customer with respect to tax compliance.

## 6. TEMPORARY SUSPENSION.

6.1 **Generally.** NetWitness may, at its option, suspend Customer's use of any Service Offering if:

(a) Customer is in breach of the Agreement (including failure to make timely payment) and does not cure that breach within 10 days after NetWitness notifies Customer of that breach; (b) NetWitness believes that Customer's use of the Service Offering poses a security risk to the Service Offering or to other users of the Service Offering; or (c) NetWitness suspects fraud or abuse. NetWitness will give Customer fifteen day (15) notice before suspending Customer's use of the Service Offering if permitted by law or unless NetWitness reasonably determines that providing notice presents a risk of harm to the Service Offering, to other users of the Service Offering, or to any person or property, in which case NetWitness will notify Customer as soon as feasible or permitted. NetWitness will suspend Customer's access only to the Service Offering that is the subject of the issue giving rise to the suspension. NetWitness will promptly reinstate Customer's access to the Service Offering once NetWitness has determined that the issue causing the suspension has been resolved.

6.2 **Effect of Suspension.** Customer will remain responsible for all fees incurred before and during any suspension. Customer will not be entitled to any service credits under the applicable Service Level Agreement that Customer might have otherwise accrued during any suspension.

## **7. TERMINATION.**

**7.1 Generally.** Customer has the right to use the Service Offering during the applicable Subscription Term. Customer may stop using a Service Offering at any time, but Customer will remain liable for all fees and charges otherwise due during the applicable Subscription Term.

### **7.2 Termination for Cause.**

**7.2.1** NetWitness may, at its option, terminate the Agreement effective immediately upon written notice to Customer (i) if NetWitness has the right to suspend under Section 6.1 (“Temporary Suspension; Generally”), (ii) Customer commits a material breach of the Agreement that cannot be cured, or (iii) to comply with applicable law.

**7.2.2** Either party may terminate the Agreement for cause if the other breaches the terms and fails to cure within thirty (30) days after receipt of the other party’s written notice thereof.

**7.3 Termination for Insolvency.** Either Customer or NetWitness may terminate the Agreement effective immediately upon sending the other party notice if that party: (a) becomes insolvent, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or (b) becomes subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding.

### **7.4 Effect of Termination.**

**7.4.1** Upon termination of the Agreement for any reason: (a) Customer must stop using the Service Offering, and (b) Customer must return or, if NetWitness requests, destroy, any Confidential Information of NetWitness or its suppliers in Customer’s possession or under Customer’s control (other than information that must be retained pursuant to law). Deletion of any Content remaining in the Service Offering will occur as specified in the applicable Service Description. As between Customer and NetWitness, Customer is responsible for ensuring that Customer has necessary copies of any Customer’s Content prior to the effective date of any termination.

**7.4.2** Any provision that, by its nature and context is intended to survive termination or expiration of the Agreement, will survive. The Data Processing Addendum (to the extent NetWitness continues to process Personal Data, as defined in the Data Processing Addendum, following any termination of the Agreement) will also survive any termination or expiration of the Agreement.

**7.4.3** Except to the extent Customer or NetWitness are permitted to terminate the Agreement pursuant to Sections 7.2 (“Termination for Cause”) or 10.2 (“Indemnification by NetWitness”), any termination of the Agreement will not entitle Customer to any refunds, credits, or exchanges, and Customer will be liable for all fees incurred as of the effective termination date. If NetWitness terminates the Agreement prior to expiration of a Subscription Term pursuant to Section 7.2, Customer will be liable for all fees due with respect to the Service Offering for the remainder of the then-current Subscription Term.

**8. SUPPORT.** NetWitness will provide support to Customer for the Service Offering in accordance with the applicable Support Policy, and as may be further specified in the applicable Service Description. NetWitness will not provide support for Customer’s Content to Customer’s end users.

## **9. WARRANTIES.**

**9.1 Limited Warranty: Duration and Remedy.** NetWitness warrants that the Service Offering will perform substantially in accordance with the applicable Service Level Agreement, if any, during the Subscription Term, provided that the Service Offering has at all times been used in accordance with the Service Level Agreement. If NetWitness fails to meet this limited warranty, Customer’s sole and exclusive remedy for that failure is as specified in the Service Level Agreement.

**9.2 Disclaimer.** OTHER THAN THE LIMITED WARRANTY SET FORTH IN SECTION 9.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, NETWITNESS, FOR ITSELF AND ON BEHALFOF ITS SUPPLIERS, DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO THE SERVICE OFFERING AND TO ALL MATERIALS OR SERVICES PROVIDED TO CUSTOMER UNDER THE AGREEMENT, INCLUDING ANY THIRD-PARTY CONTENT. NETWITNESS AND NETWITNESS’ SUPPLIERS DO NOT WARRANT THAT THE SERVICE OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS OR ERRORS, OR THAT THE SERVICE OFFERING WILL MEET (OR IS DESIGNED TO MEET) CUSTOMER’S BUSINESS REQUIREMENTS.

## **10. INDEMNIFICATION.**

**10.1 Indemnification by Customer.** Subject to the remainder of this Section 10.1, Customer will (a) defend NetWitness against any Third-Party Claim; and (b) indemnify NetWitness from all fines, damages, and other costs

resulting from a final award, judgment, or order of a court of competent jurisdiction or a government agency arising out of a Third-Party Claim. NetWitness will: (i) provide Customer with notice of any Third-Party Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve Customer of Customer's indemnification obligations only to the extent that the delay prejudices Customer), and (ii) reasonably cooperate in response to Customer's requests for assistance. Customer will have sole control over the defense of any Third-Party Claim. Customer may not, without NetWitness' prior written consent, settle any Third-Party Claim if that settlement obligates NetWitness to admit any liability to make any monetary payment, or to undertake any material obligation; or if that settlement would affect any Service Offering or NetWitness business practices or policies.

## **10.2 Indemnification by NetWitness; Infringement Claims.**

**10.2.1** Subject to the remainder of this Section 10.2, NetWitness will: (a) defend Customer against any Infringement Claim; and (b) indemnify Customer from all fines, damages, and costs resulting from a final award, judgment, or order of a court of competent jurisdiction or a government agency, with regard to any Infringement Claim. The foregoing obligations are applicable only if Customer: (i) provides NetWitness with notice of any Infringement Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve NetWitness of its indemnification obligations only to the extent that the delay prejudices NetWitness); (ii) allows NetWitness to have sole control over the defense of the Infringement Claim; and (iii) reasonably cooperates in response to NetWitness' requests for assistance with regard to the Infringement Claim. NetWitness will not, without Customer's prior written consent, enter into any settlement of any Infringement Claim that obligates Customer to admit any liability to make any unreimbursed monetary payment, or to undertake any material obligation.

**10.2.2** If the Service Offering becomes or in NetWitness' opinion is likely to become the subject of an Infringement Claim, NetWitness may at its option and expense: (a) procure the rights necessary for Customer to keep using the Service Offering; (b) modify or replace the Service Offering to make it non-infringing without materially reducing its functionality; or (c) terminate the Agreement and refund any prepaid fees, prorated for the remaining portion of the then-current Subscription Term.

**10.2.3** NetWitness will have no obligation under this Section 10.2 or otherwise with respect to any Infringement Claim based on: (a) combination of the Service Offering with non-NetWitness products or content, including any of Customer's Content and/or any Third-Party Content; (b) use of the Service Offering for a purpose or in a manner not permitted by the Agreement, or use after NetWitness notifies Customer to cease such use due to a possible or pending Infringement Claim; (c) any modification to the Service Offering made without NetWitness' express written approval; (d) any modifications NetWitness makes to the Service Offering pursuant to instructions, designs, specification, or other information Customer provides to NetWitness; (e) Customer's own services (including Infringement Claims where the damages sought are based on revenues from Customer's own services); (f) any data or information Customer or a third party records on or utilizes in connection with the Service Offering; (g) any claim that relates to open source software or freeware technology, Third Party Products, or any derivative or other adaptation thereof; or (h) any Service Offering provided on a no-charge basis.

**10.2.4** This Section 10.2 states Customer's sole and exclusive remedy and NetWitness' entire liability for any Infringement Claims.

## **11. LIMITATION OF LIABILITY.**

**11.1 Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL NETWITNESS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING, OR LOSS, DAMAGE, OR CORRUPTION OF CONTENT FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS (SUBJECT TO NETWITNESS' OBLIGATIONS UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**11.2 Cap on Monetary Liability.** NETWITNESS' LIABILITY FOR ANY CLAIM UNDER THE AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR PAYABLE TO NETWITNESS FOR CUSTOMER'S USE OF THE PARTICULAR SERVICE OFFERING GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATION OF LIABILITY IN THIS SECTION 11.2 WILL NOT APPLY TO (i) NETWITNESS' INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.2.1 OF THESE TERMS OF SERVICE OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.

## **11.3 Further Limitations.**

**11.3.1** NetWitness' suppliers have no liability of any kind under the Agreement. Customer may not bring a claim directly against any of them under the Agreement. NetWitness' liability with respect to any Third-Party Content used or made available as part of a Service Offering is subject to this Section 11.

**11.3.2** Customer may not bring a claim under the Agreement more than eighteen (18) months after the cause of action arises.

## **12. CONFIDENTIAL INFORMATION.**

**12.1 Protection.** Either party (the "**recipient**") may use Confidential Information of the other party (the "**discloser**") disclosed to it in connection with the Agreement solely to exercise its rights and perform its obligations under the Agreement or as otherwise permitted by the Agreement. Customer and NetWitness will each use reasonable care to protect that Confidential Information in the same manner as each party protects its own Confidential Information of a similar nature, but in any event with not less than reasonable care. The recipient may disclose the discloser's Confidential Information only to the recipient's employees, or to third parties, who have a need to know the Confidential Information for purposes of the Agreement, and who are under a duty of confidentiality no less restrictive than as specified in this Section 12. The recipient may also disclose the discloser's Confidential Information in accordance with the procedures set forth in Section 1.8 ("Required Disclosures").

**12.2 Exceptions.** The recipient's obligations under Section 12.1 with respect to any of the discloser's Confidential Information will terminate if the recipient can show by written records that the information: (a) was, at the time of disclosure by the discloser, already rightfully known to the recipient without any obligation of confidentiality; (b) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (c) at the time of disclosure is, or through no fault of the recipient has become, generally available to the public; or (d) was independently developed by the recipient without access to or use of the discloser's Confidential Information.

**12.3 Injunctive Relief.** Nothing in the Agreement limits either party's ability to seek equitable relief.

## **13. GENERAL.**

**13.1 Assignment.** Customer may not assign or transfer the Agreement, in whole or in part, by operation of law or otherwise, without NetWitness' prior written consent. Any attempted assignment or transfer of the Agreement without NetWitness' consent will be void and will be a breach of the Agreement. Subject to these limitations, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

**13.2 Notices.** Any notice by NetWitness to Customer under the Agreement will be given: (a) by email to the email address associated with Customer's account, if Customer has subscribed to this method of receiving notices, or (b) by posting on either the Service Offering portal or NetWitness' generally available customer access portal. Customer must direct legal notices or other correspondence to NetWitness' physical address of its headquarters Attention: Legal Department, with a copy to legalnotices@rsa.com, and/or such other address or addresses as provided by NetWitness to Customer.

**13.3 Waiver.** Waiver of a breach of any provision of the Agreement will not constitute a waiver of any later breach of that provision, or waiver of a breach of any other provision.

**13.4 Severability.** If any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in force to the extent feasible.

**13.5 Compliance with Laws.** Customer and NetWitness must each comply with all laws applicable to the actions contemplated by the Agreement.

**13.6 Export Control.** Customer acknowledges that the Service Offering is of United States origin, is provided subject to the U.S. Export Administration Regulations (including "deemed export" and "deemed re-export" regulations), and may be subject to the export control laws of any other applicable country. Customer represents and warrants that: (a) Customer, and any User, are not, and are not acting on behalf of, (i) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List, or any similar designated persons list published for the jurisdiction in which the applicable data center is located; (b) Customer, and any User, will not permit the Service Offering to be used for any purposes prohibited by law, including any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons; (c) no Content will be classified or listed on the United States Munitions list or similar list published for the jurisdiction in which the applicable data center is located, or contain defense articles, defense services, or

ITAR- related data; (d) no Content will require an export license or is restricted under applicable export control laws from export to any country where NetWitness' or NetWitness' service providers maintain facilities or personnel; and (e) Customer, and any User, are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, Customer's United States export privileges. Customer must notify NetWitness promptly if Customer or any User becomes subject to any order of that type. For purposes of sales to government entities in the United States, any Service Offering and the accompanying Service Offering Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosure of any Service Offering or the Service Offering Documentation, by or for the U.S. Government will be governed solely by the terms and conditions of the Agreement, in conjunction with statutes, regulations, and the terms of the GSA Schedule, and in accordance with the provisions of Section 13.13 ("Order of Precedence"). Customer agrees to indemnify and hold NetWitness harmless for any liability, loss, damage, cost, expense, or penalty arising from Customer's non-compliance with the AECA, ITAR, or the provisions of this Section.

**13.7 Force Majeure.** Except for payment of fees, if a party's performance of its obligations is prevented or interfered with due to any force majeure event, including strikes, riots, insurrection, terrorism, cyberattacks, epidemics, pandemics, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party ("Non-Performance Cause"), such Party shall (i) promptly notify the other; and (ii) be excused from the performance of the affected obligations on a day-for-day basis, during the force majeure event; (iii) use reasonable efforts to avoid or remove the Non-Performance Cause; and (iv) move to resume performance as soon as possible after the Non-Performance Cause is removed or ceases.

**13.8 Construction.** The headings of sections of these Terms of Service are for convenience and are not for use in interpreting these Terms of Service. As used in these Terms of Service, the word "including" means "including but not limited to".

**13.9 Language.** The Agreement is in English, and the English language version governs any conflict with a translation into any other language.

**13.10 Governing Law.** This Agreement is governed by: (i) the laws of the Commonwealth of Massachusetts and the federal laws of the United States when NetWitness means RSA Security LLC; (ii) the laws of the applicable country in which the applicable NetWitness affiliate is registered to do business when NetWitness means the local NetWitness affiliate, and (iii) the laws of Ireland when NetWitness means RSA Security & Risk Ireland Limited. In each case, the applicability of laws shall exclude any conflict of law rules. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. In the event of a dispute concerning this Agreement, Customer consents to the sole and exclusive personal jurisdiction of the courts of competency in the location where NetWitness is domiciled.

**13.11 Third Party Rights.** Other than as expressly provided in the Agreement, the Agreement does not create any rights for any person who is not a party to it, and only persons who are parties to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in the Agreement.

**13.12 Independent Parties.** NetWitness and Customer are independent contracting parties, and the Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship between Customer and NetWitness. Neither Customer nor NetWitness, nor any of NetWitness' respective affiliates, officers, directors, or employees, is an agent of the other for any purpose, nor has the authority to bind the other.

**13.13 Order of Precedence.** The terms of the Agreement will supersede any conflicting or additional terms and conditions of any purchase order or other purchasing-related document issued by Customer relating to any Order for the Service Offering. In case of conflict between a Service Description and the terms of this Agreement, the Service Description shall take precedence.

**13.14 Entire Agreement.** The Agreement as it may be modified from time to time is the entire agreement between Customer and NetWitness regarding its subject matter. The Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between Customer and NetWitness regarding its subject matter.

## **14. DEFINITIONS.**

**"Account Information"** means information about Customer that Customer provides to NetWitness in connection with creation or administration of Customer's account, including names, usernames, phone numbers, email addresses, and billing information associated with Customer's account.



**“Confidential Information”** means Customer’s Login Credentials, and any non-public technical, business, or other information or materials disclosed or otherwise made available by either Customer or NetWitness to the other party regarding the Agreement or the Service Offering, that are in tangible form and labeled “confidential” or the like, or are provided under circumstances reasonably indicating confidentiality. Customer’s Confidential Information does not, for purposes of the Agreement, include Customer’s Content. If Customer discloses Customer’s Content to NetWitness or if NetWitness accesses Customer’s Content as permitted by the Agreement, including for purposes of providing support to Customer, NetWitness will use the same standard of care with respect to that data as NetWitness uses to protect its own Confidential Information.

**“Content”** means any data, including all text, sound, video, or image files, and software (including machine images), or other information.

**“Customer’s Content”** means Content uploaded into the Service Offering for processing, storage or hosting, by Customer or by any User, but does not include (i) Third-Party Content, (ii) Account Information, or (iii) data NetWitness collects as specified in Section 1.3 (“Monitoring”).

**“Data Processing Addendum”** means the then-current version of the NetWitness’ Data Processing Addendum, if applicable.

**“Evaluation Service”** means any Service Offering, or a feature or functionality of a Service Offering, that NetWitness offers on an evaluation or trial basis. If Customer is participating in a separate NetWitness technical preview or beta program, then the terms of that program will apply.

**“High Risk Activities”** means workloads or applications used to control or operate activities with a likelihood of injury or death, including but not limited to controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario where failure could lead to personal injury, death, or environmental damage.

**“Infringement Claim”** means any claim by a third party that the Service Offering (excluding Third Party Products and Services, open source software, and Evaluation Services) infringes any patent, trademark, or copyright of that third party, or misappropriates a trade secret of that third party (but only to the extent that the misappropriation is not a result of Customer’s actions), under the laws of: (a) the United States, (b) Canada, (c) European Economic Area member states, (d) Australia, (e) New Zealand, (f) Japan, or (g) the People’s Republic of China, to the extent that Customer’s instance of the Service Offering is provisioned in a data center located in the applicable country (e.g., the laws of Japan would control regarding an Infringement Claim based on a Service Offering instance provisioned in a data center located in Japan).

**“Intellectual Property Rights”** means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

**“Law”** includes any statute, ordinance, regulation, or governmental requirement, order, or decree.

**“Login Credentials”** means any passwords, authentication keys, or security credentials that enable Customer’s access to and management of the Service Offering.

**“NetWitness Software”** means the software programs listed in NetWitness’ commercial price list.

**“Order”** means the ordering document, that evidences Customer’s purchase of a Service Offering.

**“Service Description”** means the then-current version of the Service Description for the particular Service Offering.

**“Service Level Agreement”** means the then-current version of the Service Level Agreement for the particular Service Offering, found in the applicable Service Description. Certain Service Offerings may not have a Service Level Agreement.

**“Service Offering”** means the NetWitness cloud service offering specified in Customer’s Order. “Service Offering” includes an Evaluation Service.

**“Service Offering Documentation”** means: (i) the NetWitness Data Processing Addendum, which is applicable to all Service Offerings, and (ii) the specific Service Description, Supplemental Terms, Support Policy, and/or Service Level Agreement (if any) for the Service Offering; all as revised by NetWitness from time to time.

**“Subscription Term”** means the initial term of Customer’s authorized use of the Service Offering, as set forth in the applicable quote or ordering document, together with any renewal terms (if applicable, as may be set forth in the Service Description). The initial term begins on the earlier of: (i) the date on which Customer starts using the Service Offering or (ii) the date Customer completes the registration process (iii) the date on which NetWitness first provides Customer with access to the Service Offering; or as otherwise specified in the Order or in the applicable Service Description. For purposes of any on-demand Service Offering, “Subscription Term” means the period during which

Customer is using the Service Offering, for which Customer will be billed, as specified in the applicable Order, and as may be further defined in the Service Description.

“**Support Policy**” means the then-current version of the Support Policy for the particular Service Offering, found at: <https://www.netwitness.com/standard-form-agreements/>.

“**Taxes**” means any sales, VAT (value-added tax), GST (goods and services tax), use, excise, and other similar taxes (other than income taxes), export and import fees, customs duties, and similar charges imposed by any government or other authority.

“**Third-Party Claim**” means any third-party claim or demand arising from or relating to (i) Customer’s Content, or (ii) Customer’s use of any Service Offering, including an Evaluation Service, in violation of the Agreement or (iii) Customer’s combination of the Service Offering with non-NetWitness products or content, including any Customer’s Content and/or any Third-Party Content.

“**Third-Party Content**” means Content provided by a third party, that interoperates with the Service Offering, including open source software, but that is not embedded in or required for use of the Service Offering. As an example, Third-Party Content may include an application that is listed on a marketplace or in a catalog.

“**Third-Party Products and Services**” means products (whether hardware, software, firmware, or otherwise) or services, where such products or services are not branded with a trademark or service mark owned by Supplier or its affiliates.

“**User**” means any person who is authorized to access or use the Service Offering or Customer’s Content directly under Customer’s Login Credentials, and may include Customer’s employees, contractors, service providers, and other third parties.

## 15. Country Specific Terms (If Applicable) :

15.1 United Kingdom. The terms in this subsection 15.1 apply only when NetWitness means the NetWitness sales affiliate located in the United Kingdom (currently RSA Security UK Limited):

15.1.1 Section 9.2 (Warranties - Disclaimer) is deleted and replaced with the following:

9.2 Disclaimer. Except as expressly stated in the applicable warranty set forth in this Agreement, NetWitness (including its suppliers) provides the Service Offering “AS IS” and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES AND CONDITIONS (SAVE FOR THE WARRANTIES AND CONDITIONS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979) ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

15.1.2 Section 11 (LIMITATION OF LIABILITY). This Section is deleted in its entirety and replaced with:

11.1 LIMITATION OF LIABILITY AND PRESERVATION OF DATA. The entire aggregate liability of NetWitness (including its suppliers) under or in connection with the supply the Service Offering, whether in tort (including negligence), for breach of contract, misrepresentation or otherwise, is limited in respect of each event or a series of events: (i) to the amounts actually paid by Customer for the Service Offering which give rise to such liability during the twelve (12) month period immediately preceding the date of the cause of action giving rise to such claim; or (ii) Great British Pounds Sterling one million (£1,000,000), whichever is the greater amount. The limitation of liability in this section 11.1 will not apply to (i) NetWitness’ indemnification obligations under section 10.2.1 of these Terms of Service or (ii) any liability which may not be excluded by law.

11.2 In no event shall NetWitness (including its suppliers) or Customer be liable to the other or any other person or entity for loss of use of the Service Offering, or loss, damage, or corruption of content or data for any reason including power outages, system failures, or other interruptions (subject to NetWitness’ obligations under the applicable Service Level Agreement), loss of profits, loss of revenue, loss of use or any indirect, special, incidental, consequential or exemplary damages arising out of or in connection with this Agreement, and the use, performance, receipt or disposition of the Service Offering, even if such party has been advised of the possibility of such damages or losses. Nothing in this Agreement shall operate to exclude or restrict NetWitness’ liability for: (a) death or personal injury resulting from negligence; (b) breach of obligations arising

from section 12 of the Sale of Goods Act 1979; or (c) fraud.

11.3 CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA. During the Term of the Agreement, the Customer shall: 1) from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such backups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site; 2) have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question; 3) use anti-virus software, regularly install updates across all data which is accessible across the network, and protect all storage arrays against power surges and unplanned power outages with Uninterruptible Power Supplies; and 4) ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to NetWitness recommended versions and that any proposed changes thereto shall be communicated to NetWitness in a timely fashion.

11.4 Further Limitations. NetWitness' suppliers have no liability of any kind under the Agreement. Customer may not bring a claim directly against any of them under the Agreement. NetWitness' liability with respect to any Third-Party Content used or made available as part of a Service Offering is subject to this Section 11.

11.5 Limitation period. Customer may not bring a claim under the Agreement more than eighteen (18) months after the cause of action arises.

**15.1.3** Section 13 (GENERAL). Add the following as new subsection 13.15:

13.15 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to Customer for a breach of the warranties shall be for breach of contract under the terms of this Agreement. Nothing in Section 11 shall however operate to limit or exclude any liability for fraud. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person that is not a party to this Agreement. If any part of this Agreement is held unenforceable, the validity of the remaining provisions shall not be affected.

**15.2** Ireland. The terms in this subsection 15.2 apply only when NetWitness means the NetWitness sales affiliate located in Ireland (currently RSA Security & Risk Ireland Limited):

**15.2.1** Section 9.2 (Warranties - Disclaimer) is deleted and replaced with the following:

9.2 Disclaimer. Except as expressly stated in the applicable warranty set forth in this Agreement and the applicable exhibits, NetWitness (including its suppliers) provides the Service Offering "AS IS" and ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED BY LAW, CUSTOMER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES, TERMS AND CONDITIONS, OF FITNESS FOR PURPOSE, DESCRIPTION, AND QUALITY ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

**15.2.2** Section 11 (LIMITATION OF LIABILITY). This section is deleted in its entirety and replaced with the following:

11.1 NetWitness does not exclude or limit its liability to the Customer for death or personal injury, or, breach of obligations implied by Section 12 of the Sale of Goods Act, 1893, as amended by the Sale of Goods and Supply of Services Act, 1980, or, due to the fraud or fraudulent misrepresentation of NetWitness, its employees or agents.

11.2 Subject always to subsection 11.1, the liability of NetWitness (including its suppliers) to the Customer under or in connection with an order, whether arising from negligent error or omission, breach of contract, or otherwise ("Defaults") shall be: (i) the aggregate liability of NetWitness for all Defaults resulting in direct loss of or damage to the tangible property of the Customer shall be limited to damages which shall not exceed the greater of two hundred per cent (200%) of the applicable price paid and/or payable for the Service Offering, or one million euros (€1,000,000); or (ii) the aggregate liability of NetWitness for all Defaults, other than those governed

by subsection 11.2 (i) shall be limited to damages which shall not exceed the greater of one hundred and fifty per cent (150%) of the applicable price paid and/or payable or five hundred thousand euro (€500,000). The limitation of liability in this section 11.2 will not apply to (i) NetWitness' indemnification obligations under section 10.2.1 of these Terms of Service or (ii) any liability which may not be excluded by law.

11.3 In no event shall NetWitness (including its suppliers) be liable to Customer for (i) loss of profits, loss of business, loss of revenue, loss of use, wasted management time, cost of substitute services or facilities, loss of goodwill or anticipated savings, loss of or loss of use of any software or data; and/or (ii) indirect, consequential or special loss or damage; and/or (iii) damages, costs and/or expenses due to third party claims; and/or (iv) loss of use of the Service Offering, or loss, damage, or corruption of content or data for any reason including power outages, system failures, or other interruptions (subject to NetWitness' obligations under the applicable Service Level Agreement); and/or (v) loss or damage due to the Customer's failure to comply with obligations under this Agreement, failure to do back-ups of data or any other matter under the control of the Customer. For the purposes of this Section 11, the term "loss" shall include a partial loss, as well as a complete or total loss.

11.4 The parties expressly agree that should any limitation or provision contained in this Section 11 be held to be invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Section 11.

11.5 The parties expressly agree that any order for specific performance made in connection with this Agreement in respect of NetWitness shall be subject to the financial limitations set out in subsection 11.2.

11.6 CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA. During the Term of the Agreement the Customer shall:

1) from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site;

2) have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question;

3) use anti-virus software and regularly install updates across all data which is accessible across the network; and

4) ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to NetWitness recommended versions and that any proposed changes thereto shall be communicated to NetWitness in a timely fashion.

11.7 WAIVER OF RIGHT TO BRING ACTIONS: The Customer waives the right to bring any claim arising out of or in connection with this Agreement more than twenty-four (24) months after the date of the cause of action giving rise to such claim.

**15.3** Australia. The terms in this subsection 15.3 apply only when NetWitness means the NetWitness sales affiliate located in Australia (currently RSA Security Australia Pty. Ltd.):

Section 11 (LIMITATION OF LIABILITY). This section is amended by the insertion of the new section 11.4, as follows:

11.4. Fair Trading Legislation. Trade Practices Legislation: NetWitness' liability under any statutory right or any condition or warranty, including any implied by any State Fair Trading Act or the Competition and Consumer Act 2010 is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, NetWitness' liability is limited at the option of NetWitness to any one or more of the following: (i) the replacement thereof or the supply of its equivalent; (ii) the repair thereof; (iii) the payment of the cost of replacement thereof or of acquiring its equivalent; or (iv) the payment of the cost of having such repaired.

- 15.4** New Zealand. The terms in this subsection 15.4 apply only when NetWitness means the NetWitness sales affiliate located in Ireland (currently RSA Security & Risk Ireland Limited)

Section 11 (LIMITATION OF LIABILITY). This section is amended by the insertion of the new section 11.4, as follows:

11.4. Fair Trading Legislation. NetWitness' liability under any statutory right or any condition or warranty, including any implied by the Fair Trading Act 1986 or Consumer Guarantees Act 1993 ("FTA") or any similar law is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, NetWitness' liability is limited at the option of NetWitness to any one or more of the following: (i) the replacement thereof or the supply of its equivalent; (ii) the repair thereof; (iii) the payment of the cost of replacement thereof or of acquiring its equivalent; or (iv) the payment of the cost of having such repaired.

- 15.5** France. The terms in this subsection 15.5 apply only when NetWitness means the NetWitness sales affiliate located in France (currently RSA Security France SAS):

- 15.5.1** At Section 5.2.2 of these Terms of Service, the following shall be added to the end of the section:

A forty (40) euro penalty will also be charged in accordance with article L441-3 of the French Commercial Code.

- 15.5.2** Section 11 (Limitation of Liability). This section is deleted in its entirety and replaced with the following:

11. LIMITATION OF LIABILITY. Limitations on Damages. The limitations, exclusions and disclaimers stated below apply to any and all disputes, claims, or controversies (whether in contract, tort, or otherwise) related to or arising out of the Agreement or any quote or Order ("Dispute"). The terms of this Section are agreed allocations of risk constituting part of the consideration for NetWitness' sale of the Service Offering to Customer and will apply regardless whether a party has been advised of the possibility of the liabilities.

11.1 Limitation on Direct Damages. Except for Customer's obligations to pay for Service Offering, Customer's violation of the restrictions on use of the Service Offering or NetWitness' or its Affiliates' intellectual property rights, or a party's indemnity obligation stated in the Section above titled "Indemnification", and any other liability that cannot be excluded or limited by the applicable law, each party's total liability arising out of any Dispute or any matter under this Agreement, is limited to the amount Customer paid to NetWitness during the twelve months before the date that the matter or Dispute arose for the Service Offering that is the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes.

11.2 No Indirect Damages. Except for Customer's payment obligations and violation of NetWitness' or its Affiliates' intellectual property rights, neither NetWitness nor Customer has liability to the other for loss of use of the Service Offering, or loss, damage, or corruption of content or data for any reason including power outages, system failures, or other interruptions (subject to NetWitness' obligations under the applicable Service Level Agreement), or for special, consequential, exemplary, punitive, incidental, or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, or loss of use, or procurement of substitute products or services.

11.3 Regular Back-ups. Customer is solely responsible for its data. Customer must back up its data before NetWitness performs any remedial, upgrade, or other work on Customer's production systems. If applicable law prohibits exclusion of liability for lost data, then NetWitness will only be liable for the cost of the typical effort to recover the lost data from Customer's last available back-up.

11.4 Limitation Period. Except as stated in this Section 11, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within twelve months after the cause of action accrues.

11.5 Suppliers and Affiliates. The foregoing limitations shall also apply in favor of NetWitness' suppliers and Affiliates.

- 15.6** Germany. The terms in this subsection 15.6 apply only when NetWitness means RSA Security Germany GmbH:

**15.6.1** Preamble: The waiver of rights to any claim concerning enforceability shall not apply.

**15.6.2.** Section 11 (Limitation of liability): shall be replaced in its entirety with:

11. LIMITATION OF LIABILITY. For all claims of Customer for damages under or in connection with this Agreement or any quote or order, whatever the legal basis (including liability for defects, other breaches of contract and tort) may be, the following shall apply:

11.1 Unrestricted liability. In case of death or personal injury, in case of NetWitness' gross negligence or willful misconduct, and in case of claims under the German Product Liability Act (Produkthaftungsgesetz), NetWitness shall be liable to Customer according to statutory law.

11.2 Restricted Liability. In all other cases, the following shall apply:

(i) NetWitness' liability shall be limited to typical, foreseeable damages.

(ii) Unless a differing liability cap is expressly agreed otherwise, the typical foreseeable damages shall, for each damaging event, not exceed the total price paid by Customer to NetWitness for the Service Offering (calculated on an annual basis in case of ongoing Services to be provided for a period of more than one year) in relation to which such claim arises, but in any event not less than 100.000,00 EUR and not more than 1.000.000,00 EUR. The limitation of liability in this section 11.2 (ii) will not apply to (i) NetWitness' indemnification obligations under section 10.2.1 of these Terms of Service or (ii) any liability which may not be excluded by law.

(iii) NetWitness shall be liable to Customer only if NetWitness has breached a material contractual obligation (i.e. an obligation the performance of which is essential to allow the implementation of the agreement, and the compliance with which Customer usually may rely on).

(iv) NetWitness shall not be liable for any consequential or indirect damages to the extent such damages are untypical or unforeseeable. In no event shall NetWitness (including its suppliers) or Customer be liable to the other or any other person or entity for loss of use of the Service Offering, or loss, damage, or corruption of content or data for any reason including power outages, system failures, or other interruptions (subject to NetWitness' obligations under the applicable Service Level Agreement)

11.3 Guarantees. NetWitness does not give a guarantee in relation to the Service Offering (Beschaffungsgarantie) that would entail an unlimited liability of NetWitness or a liability regardless of negligence or fault pursuant to the German Civil Code, except if an unlimited liability and/or liability regardless of negligence or fault has been expressly agreed in writing. The mere use of terms like "to guarantee", "to ensure" or similar wording shall not be considered sufficient to establish such liability, but a binding contractual commitment of NetWitness that is subject to the agreed limitation of liability.

11.4 Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before NetWitness performs any remedial, upgrade or other works on Customer's production systems. To the extent NetWitness' liability for loss of data is not anyway excluded under this Agreement, NetWitness shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

11.5 Limitation Period. Except for claims relating to cases of unrestricted liability set forth in section 11.1 above ("Restricted Liability") the following applies: All claims for damages based on defects of the Service Offering shall be time-barred 12 months after delivery, except if the parties have agreed on a shorter warranty period. The limitation period for all other claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.

11.6 Suppliers. The foregoing limitations shall also apply in favor of NetWitness' employees and Suppliers.

**15.6.3** Section 13.10 Governing Law: the following sentence shall be added:

To the extent permitted by law, the courts of the city of Frankfurt am Main shall be exclusively competent to rule on disputes arising out of or in connection with this Agreement.



## ATTACHMENT 1 - NETWITNESS INSIGHT SERVICE DESCRIPTION

This Service Description is a legally binding document between you (meaning the individual person or the entity that the individual represents that is subscribing to the Service Offering for its internal use and not for outright resale (“Customer”)) and NetWitness (which means (i) RSA Security LLC, if Customer is located in the United States, Mexico or South America; (ii) the local NetWitness sales affiliate if Customer is located outside United States, Mexico or South America and in a country in which NetWitness has a local sales affiliate; or (iii) RSA Security & Risk Ireland Limited or other authorized NetWitness entity as identified on the NetWitness Quote or other NetWitness ordering document if Customer is located outside United States, Mexico or South America and in a country in which NetWitness does not have a local sales affiliate). Unless NetWitness agrees otherwise in writing, this Service Description governs the Customer’s use of the Service offering except to the extent all or any portion of the Service Offering is subject to a separate written agreement set forth in a quotation issued by NetWitness.

By proceeding with the installation or use of this Service Offering or authorizing any other person to do so, you are representing to NetWitness that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of this Agreement shall govern the relationship of the parties with regard to the subject matter in this Agreement and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement. If you do not have authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement on behalf of the Customer, immediately cease any further attempt to use this Service Offering for any purpose.

This Service Description governs the performance by NetWitness of certain services, as described in the Terms of Service and further described herein, in relation to the Service Offering purchased by Customer generally known as “**NetWitness Insight**” under the Agreement. Notwithstanding anything to the contrary in the Agreement, in the event of a conflict between the terms of the Agreement and this Service Description, the terms of this Service Description shall prevail solely with respect to the subject matter hereof. Capitalized words used in this Service Description and not expressly defined herein will have the meaning stated in the Agreement.

The Service Offering (as defined below) is performed by NetWitness in an environment which segregates Customer’s Content utilizing separate directories and databases such that there is no co-mingling of Customer’s Content. Service levels and operational procedures are standardized for all customers.

### 1. SCOPE OF SERVICES.

During the Term, NetWitness will provide the services through the World Wide Web described herein (the “**Service Offering**”) to Customer in accordance with the service levels set forth in Exhibit 1 hereof in order to allow Customer to access and use the Service Offering and as further described in Exhibit 1 attached hereto. Customer’s access and use of the Service Offering will be subject to all those restrictions stated in the Agreement.

### 2. SERVICE OFFERING PACKAGES.

A. The Service Offering is offered in several package levels. Customer’s accepted order for the Service Offering will state which package is selected. Customer’s purchase will include a base package and any additional use cases, ODAs, storage, or instances as specified on the quote or ordering document.

There is no Incidental Software (as defined in the Terms of Service) in connection with the Service Offering.

B. Account Access. NetWitness will deliver to Customer an application administrator user ID, password and other account information (“**Account Access Information**” or “Login Credentials”) necessary for Customer to access the Service Offering in accordance with this Agreement. Thereafter, Customer will create and manage Account Access Information for each authorized user of the Service Offering. Customer is responsible for all activity occurring under such Account Access Information and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer’s use of the Service Offering, including those related to data privacy, international communications and the transmission of technical or personal data.



### 3. CUSTOMER RESPONSIBILITIES.

Customer will provide NetWitness with the cooperation, access and detailed information reasonably necessary for NetWitness to implement and deliver the Service Offering, including, where applicable, one (1) employee who has substantial computer system, network management and project management experience satisfactory to NetWitness to act as project manager and as a liaison between NetWitness and Customer. NetWitness will be excused from its failure to perform any obligation under this Service Description to the extent such failure is caused by Customer's delay or failure to perform its responsibilities under this Agreement. Customer shall use reasonable and appropriate safeguards to protect its Customer's Content.

### 4. CUSTOMER'S CONTENT.

**A. Ownership and License to Customer's Content.** During the Term, Customer grants to NetWitness a limited, non-exclusive license to use the Customer's Content solely for all reasonable and necessary purposes contemplated by this Service Description and for NetWitness to provide the Service Offering. Customer, not NetWitness, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use of all Customer's Content. NetWitness shall not be responsible or liable for any deletion, destruction, damage, or loss of any Customer's Content that is caused by Customer.

**B. Restrictions on Storage of Regulated Data.** NetWitness shall use reasonable and appropriate administrative, technical and physical safeguards to protect the security, integrity and confidentiality of personal contact information that may be stored on the NetWitness servers, such as name, address, telephone number, and/or e-mail address. However, the Service Offering is not intended or designed to securely host or store any "personal information" that is "sensitive" by nature or deemed "sensitive" by any applicable laws or regulations (such as social security numbers, credit card data, drivers license numbers, national ID numbers, bank account numbers, and health/medical information), no such information will be stored on the Service Offering, and 2) NetWitness will have no visibility into the types of information stored on the Service Offering.

### 5. NETWITNESS OBLIGATIONS.

#### A. General.

NetWitness will supply and maintain adequate heating/cooling; electrical power; server hardware; network infrastructure and bandwidth; physical security and access controls; and professional fire detection/suppression capability necessary to provide the Service Offering.

#### B. Application Upgrades.

During the Term, NetWitness reserves the right to make modifications, including upgrades, patches, revisions or additions to the Service Offering subject to the terms set forth in Exhibit 1.

#### C. Malware Protection.

NetWitness will install and run industry standard malware protection on all systems underlying the Service Offering. Anti-malware definition files shall be updated regularly in accordance with industry standards. For the avoidance of doubt, Customer remains responsible for protecting its own systems by installing, updating, and maintaining industry standard malware protection.

#### D. Capacity.

NetWitness will provide appropriate capacity to support the Service Offering stated on Customer's accepted order.

#### E. Logging.

NetWitness will monitor and log all system access to the Service Offering to produce a forensic trail that includes, but is not limited to, web server logs, application logs, system logs, and network event logs. Such logs are NetWitness confidential information, but will be disclosed as necessary to comply with applicable law.

## EXHIBIT 1 - NETWITNESS INSIGHT - SERVICE LEVELS

This Exhibit 1 relates to the availability of the NetWitness Insight Service Offering only and does not apply to any other NetWitness Service Offering, product, software, maintenance/support or service.

### I. SERVICE LEVELS FOR PRODUCTION INSTANCE.

This Section I of Exhibit 1 applies to the Production Instance of the Service Offering, which entails the computing environment, applications, security, service level, and service level credits associated with the instance allocated by NetWitness for customers to access and use in execution of their production business processes (“Production Instance”).

#### 1. DEFINITIONS.

In addition to those defined terms stated in the Service Description and the Agreement, the following terms and definitions shall apply for the purpose of this Exhibit 1, Section I:

Term	Definition
Static Production Maintenance Window	<p><u>For Customers purchasing the US Service Offering:</u> The period of time every Sunday from 12:00am CST/CDT to 4:00am CST/CDT during which maintenance is conducted on the Production Instance. The Service Offering may be unavailable in the Production Instance during this period.</p> <p><u>For Customers purchasing the APJ Service Offering:</u> The period of time every Saturday from 12:00am AEST/AEDT to 4:00am AEST/AEDT during which maintenance is conducted on the Production Instance. The Service Offering may be unavailable in the Production Instance during this period.</p> <p><u>For Customers purchasing the EMEA Service Offering:</u> The period of time every Sunday from 12:00am GMT/GMT +1 to 4:00am GMT/GMT +1 during which maintenance is conducted on the Service Offering in the Production Instance. The Service Offering may be unavailable in the Production Instance during this period.</p>
Scheduled Production Maintenance Window	Maintenance of the Production Instance that cannot be conducted during the Static Production Maintenance Window, where NetWitness has provided notice to Customer as far in advance as reasonably practical (but in no event less than five business days for non-emergency maintenance and in no event less than 24 hours for emergency maintenance) before the commencement of such maintenance, which specifies the anticipated impact of such maintenance on availability, including duration. NetWitness will use commercially reasonable efforts to minimize the impact of any Scheduled Production Maintenance Window to its customers by scheduling any such Scheduled Production Maintenance Windows during low utilization periods whenever reasonably practical.

#### 2. PRODUCTION INSTANCE INTERRUPTIONS.

- A. Measurement.** Production Downtime is measured from the NetWitness-confirmed commencement time of a Production Downtime event to the time the Production Instance is operational.
- B. Exclusions.** Unavailability of the Production Instance shall not be considered Production Downtime to the extent that it is caused by one or more of the following factors:
- (i) Customer’s failure to perform its obligations under the Agreement;
  - (ii) The written request or consent by Customer’s representative to interrupt the Production Instance;
  - (iii) Force Majeure Events which shall mean strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, pandemics, epidemics, or any other cause which is beyond the reasonable control of NetWitness. For the avoidance of doubt NetWitness makes no

representations or warranties whatsoever with respect to the availability of network connectivity between the IT systems of Customer to the Service Offering.

NetWitness shall be solely responsible for establishing the extent to which Production Downtime is caused by one or more of the above factors.

### 3. PRODUCTION INSTANCE SERVICE LEVEL STANDARD AND MEASUREMENT.

A. **General.** The Production Instance shall have 99.5% or higher availability on a monthly basis ("**Production Availability**"). Production Availability for each elapsed calendar month is calculated as follows:

M = total number of minutes in the elapsed calendar month;

Y = actual total minutes of: (a) Scheduled Production Maintenance Windows and/or (b) Static Production Maintenance Windows within the elapsed calendar month;

N = actual authorized Production Availability in minutes for the elapsed month which is calculated as follows:

$$N = [(M - Y) \times 99.5\%]$$

X = the number of minutes the Production Instance is authorized to not be available in the elapsed month and which is calculated as follows:

$$X = M - N$$

D = the number of minutes in the elapsed month that the Production Instance is not available ("Production Downtime").

If  $D > X$  Customer will qualify for a service credit as follows.

If NetWitness fails to meet the Production Availability standard in any two months within a three month rolling period (commencing from the month where the Production Availability standard first failed), then NetWitness shall issue to the Customer a service credit in an amount equal to the percentage by which NetWitness missed the Production Availability standard of the total fees received for the Service Offering for each of the months during which such failures were measured. In no event shall service credits exceed five percent (5%) of the total Fees received for the Service Offering. The Customer must request a credit from NetWitness in the event that a credit is due. The remedies specified in this Section shall be the Customer's sole and exclusive remedies for the failure of NetWitness to meet its obligations of Service Availability.

**B. Credit Request and Payment Procedures.** To receive a Service Level Credit, Customer (for logging/tracking purposes) must make a request by creating a case at <https://status.netwitness.com/>. Each request in connection with this Section I.3(B) must include the dates and times of the Production Service Interruption and must be received by NetWitness within five (5) business days after receiving the report described under Section I.4 below. If the Production Service Interruption is confirmed by NetWitness, Service Level Credits will be applied within two billing cycles after NetWitness' receipt of Customer's credit request. Credits are not refundable and can be used only towards future billing charges.

### 4. SERVICE LEVEL REPORTING.

Customers can review the Production Service Level currently at <https://status.netwitness.com/>. NetWitness shall measure and report on minutes of Potential Production Uptime, Production Downtime, and Production Availability for the Service Offering in the Production Environment.

### 5. GENERAL OBLIGATIONS.

NetWitness will use reasonable commercial efforts consistent with generally accepted industry standards and best practices of leading companies in the critical data storage and security industry to: (i) protect the Production Instance and supporting infrastructure controlled or maintained by NetWitness; (ii) monitor the Production Instance and supporting infrastructure controlled or maintained by NetWitness for problems; (iii) identify root causes; (iv) correct problems; and (v) minimize recurrences of missed Production Service Levels for which it is responsible. Notwithstanding anything to the contrary in this Section I of Exhibit 1, should a Force Majeure Event result in a Production Service Interruption and a Non-Production Service Interruption (as defined in Section II of Exhibit 1), NetWitness will focus its efforts on restoring availability of the Service Offering first to the Production Environment, and then to the Non-Production Environment.

## II. MAINTENANCE WINDOWS FOR NON-PRODUCTION INSTANCE.

This Section II of Exhibit 1 applies to the Non-Production Instance of the Service Offering, which entails the computing environment, applications, and security associated with the instance(s) allocated by NetWitness for customers to access and use in execution of their business development and/or testing processes (“Non-Production Instance”).

### 1. DEFINITIONS.

In addition to those defined terms stated in the Service Description and the Agreement, the following terms and definitions shall apply for the purpose of this Exhibit 1, Section II:

Term	Definition
Static Non-Production Maintenance Window	<p><u>For Customers purchasing the US Service Offering:</u> The period of time every Sunday from 12:00am CST/CDT to 4:00am CST/CDT, during which maintenance is conducted on the Service Offering in the Non-Production Instance. The Service Offering may be unavailable in the Non-Production Instance during this period.</p> <p><u>For Customers purchasing the APJ Service Offering:</u> The period of time every Saturday from 12:00am AEST/AEDT to 4:00am AEST/AEDT during which maintenance is conducted on the Service Offering in the Non-Production Instance. The Service Offering may be unavailable in the Non-Production Instance during this period.</p> <p><u>For Customers purchasing the EMEA Service Offering:</u> The period of time every Sunday from 12:00am GMT/GMT +1 to 4:00am GMT/GMT +1 during which maintenance is conducted on the Service Offering in the Non-Production Instance. The Service Offering may be unavailable in the Non-Production Instance during this period</p>
Scheduled Non-Production Maintenance Window	Maintenance of the Service Offering in the Non-Production Environment conducted at any time during the week that cannot be conducted during the Static Non-Production Maintenance Window, where NetWitness has provided notice to Customer as far in advance as reasonably practical before the commencement of such maintenance, which specifies the anticipated impact of such maintenance on availability, including duration.

### 2. NON-PRODUCTION INSTANCE AT-RISK SERVICE OFFERING.

Customer acknowledges that Service Offering in the Non-Production Environment are at-risk services given that they are in support of Customer development, user acceptance testing, pre-production staging, and preview(s) of upcoming Service Offering changes to the Production Environment as defined in Exhibit 1, Section I. As such, Service Offering provided in the Non-Production Environment are not eligible for credits on future charges as a result of any failure to meet or exceed the requirements of this Section II.

## **EXHIBIT 2 - INFORMATION SECURITY FOR NETWITNESS INSIGHT**

### **1. ADHERENCE TO STANDARDS OF PROTECTION.**

NetWitness will apply commercially reasonable efforts to carry out the following procedures to protect Customer's Content. In fulfilling its obligations under this Exhibit, NetWitness may, from time to time, utilize methods or procedures ("Processes") similar to and substantially conforming to certain terms herein. NetWitness shall ensure that any such Processes are no less rigorous in their protection to Customer than the standards reflected in this Exhibit's terms set forth below and shall provide safeguards no less protective than those of the original terms of this Exhibit in all material respects.

#### **A. Definitions.**

- (i) "Firewall" is an integrated collection of security measures used to prevent unauthorized electronic access to a networked computer system.
- (ii) "Encryption" is a process by which data is transformed from its original format (called "plain text") into a form (called "ciphertext") that conceals the data's original meaning to prevent it from being known or used. "Intrusion Detection Process" (or "IDP") is a method of reviewing system events and Processes in near real time and, without unreasonable delay, alerting management to known patterns of behavior that indicate an intrusion is occurring or is likely to take place soon.
- (iii) "Security Incident" means any loss of, or unauthorized or unlawful access to, acquisition of, use of, or disclosure of, Customer's Content within the possession (e.g., the physical or IT environment) of NetWitness or any Authorized Person.
- (iv) "Authorized Persons" means NetWitness' employees, contractors, or other agents who need to access Customer's Content to enable NetWitness to perform its obligations under the Agreement, and who are bound by confidentiality and other obligations sufficient to protect Customer's Content in accordance with the terms and conditions of the Agreement.

#### **B. Breach Notification and Remediation.**

In the event NetWitness becomes aware of a Security Incident, NetWitness shall, in the most expedient time possible under the circumstances, notify Customer of the Security Incident and shall, subject to applicable laws, regulations, or a governmental request, provide Customer with details to the extent available about the Security Incident, including how it occurred and how NetWitness will address the Security Incident. In the event of a Security Incident, NetWitness and Customer shall cooperate in good faith to resolve any privacy or data security issues involving Customer's Content, and to make any legally required notifications to individuals affected by the Security Incident. In the event of an actual Security Incident involving NetWitness' systems or network, NetWitness shall:

- (i) Breach Notification. Within seventy-two (72) hours after the Security Incident notify Customer of the approximate date and time of the Security Incident and a summary of known, relevant facts and actions taken to rectify the Processes and address the Security Incident's effects.
- (ii) Breach Remediation. Promptly implement reasonable measures necessary to address the security of NetWitness' systems and the security of Customer's Content. If such measures include temporarily restricting access to any information, network or systems comprising the Service Offering in order to mitigate against further breaches, NetWitness shall promptly notify Customer of the restricted access, in advance of such restriction when possible but in all cases as soon as possible under the circumstances. NetWitness shall cooperate in good faith with Customer to allow Customer to verify NetWitness' compliance with its obligations under this clause.

#### **C. Independent Control Attestation and Testing.**

NetWitness shall employ independent third party oversight as follows:

- (i) Attestation. Upon Customer request and no more than once annually, NetWitness shall make good faith answers to an industry standard security questionnaire.
- (ii) Penetration Testing. At least annually and at its own expense, NetWitness shall engage a third party testing NetWitness for network penetration testing of the infrastructure and systems used to provide the Service Offering.

#### D. **Data Security.**

NetWitness shall use commercially reasonable efforts to carry out the following procedures to manage Customer's Content as follows:

- (i) Managing Customer's Content. If Customer discloses Customer's Content to NetWitness or if NetWitness accesses Customer's content as permitted by the Agreement, Customer's Content shall be handled in a commercially responsible manner.
- (ii) Encryption of Information. Industry-standard encryption techniques (for example, public encryption algorithms such as, RC5, IDEA, RSA and AES) shall be used at cipher strengths no less than 256-bit or equivalent for applicable Customer's Content. NetWitness shall use industry standard authentication practices to authenticate parties and secure messages and/or communications involving Customer's Content.
- (iii) Cryptographic Key Management. NetWitness shall ensure secure handling of cryptographic keys in accordance with industry best practices.
- (iv) Data Access; Transmission. NetWitness shall make NetWitness-controlled applications and systems used to process or store Customer's Content accessible only by those whose job responsibilities require such access.
- (v) Event Logging. For systems directly providing the Service Offering to Customer, NetWitness shall maintain logs of key events that may affect the confidentiality, integrity, and/or availability of the Service Offering to Customer and that may assist in the identification or investigation of material incidents and/or security breaches occurring in relation to NetWitness systems. The logs shall be retained for at least 90 days and protected against unauthorized changes (including, amending or deleting a log).

#### E. **Computer & Network Security.**

NetWitness shall use commercially reasonable efforts to carry out the following procedures to protect Customer's Content:

- (i) Server Security. Computer systems comprising the Service Offering shall be dedicated solely to the provision of the Service Offering and not used by NetWitness for development and/or testing unless required to fulfill obligations within this Agreement.
- (ii) Internal Network Segment Security. Data entering the Service Offering's network from external sources shall pass through Firewalls to enforce secure connections between internal and external systems.
- (iii) External Network Segment Security. The Service Offering's connections to the Internet shall have appropriate security measures and controls applied.
- (iv) Network and Systems Monitoring. NetWitness shall actively monitor its networks and systems used to provide the Service Offering to detect deviation from access control policies and actual or attempted intrusions or other unauthorized acts.
- (v) User Authentication. NetWitness shall implement Processes designed to authenticate the identity of its system users through the following means:
  - i. User IDs. Each user of a system containing Customer's Content shall be assigned a unique identification code ("User ID").
  - ii. Passwords. Each user of a system containing Customer's Content shall use a unique password whose length, complexity, and age should be governed in accordance with industry best practices.
  - iii. Deactivation. User IDs for NetWitness Personnel with access to Customer's Content shall be deactivated promptly upon changes in job responsibilities that render such access unnecessary and during termination of employment.
- (vi) Account Access. NetWitness shall provide account access to NetWitness Personnel on a least-privilege, need to know basis.

#### F. **System Development.**

- (i) Development Methodology and Installation Process.
  - i. Secure Development Methodology. NetWitness shall ensure that development activities for NetWitness-developed software used in the provision of the Service Offering are carried out in accordance with industry standard practices.

- ii. Documented Deployment Process. NetWitness shall ensure that new systems and changes to existing systems used in the provision of the Service Offering are deployed in accordance with a documented process.
- (ii) Testing Process. NetWitness shall ensure that all reasonable elements of a system (i.e. application software packages, system software, hardware and services, etc.) shall be tested at all relevant stages of the systems development lifecycle before applicable system changes are promoted to the production environment.
- (iii) Customer's Content in Test Environments. NetWitness shall ensure that Customer's Content is not used within NetWitness test environments without Customer's prior written approval.
- (iv) Secure Coding Practices. NetWitness shall have secure development practices for itself and require the same of its subcontractors, including the definition, testing, deployment, and review of security requirements.

**G. General Security.**

- (i) Point of Contact. NetWitness shall designate an account manager with whom Customer may coordinate as an escalation point beyond typical Service Offering customer support avenues available to Customer.
- (ii) Data Center Facilities. The Service Offering shall be housed in secure areas and protected by perimeter security such as barrier access controls (e.g., the use of guards and entry badges) that provide a physical environment secure from unauthorized access, damage, and interference.
- (iii) Change and Patch Management. NetWitness shall use commercially reasonable efforts to ensure that changes (including but not limited to emergency fixes, application patches, firmware updates, and similar) to its applications and infrastructure associated with the Service Offering are tested, reviewed, approved, and applied using an industry standard change management process that accounts for risks to NetWitness, its customers, and other such factors as NetWitness deems relevant.
- (iv) NetWitness Personnel.
  - i. Background Screening. NetWitness shall perform background checks in accordance with NetWitness screening policies on all NetWitness employees and consultants who are or will be supporting the Service Offering under this Agreement, to the extent permitted by applicable law.
  - ii. Training. NetWitness Personnel involved in the provision of the Service Offering shall receive appropriate ongoing security awareness training. Such security awareness training shall be provided to NetWitness Personnel being given access to Customer's Content.