



MASTER SERVICES AGREEMENT

Last Updated: June 28th, 2024

This Master Services Agreement is entered into by and between the Cyara entity specified in Section 1.5 below, and the customer identified in the Order Form and/or Statement of Work in which this Master Services Agreement is referenced and incorporated into ("Customer"), and is effective on the latest date such Order Form and/or Statement of Work is executed ("Effective Date").

1. DEFINITIONS

- 1.1. "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. For the purposes of this definition, "control" means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- 1.2. "Agreement" means this Master Services Agreement (including all exhibits and attachments hereto), any and all Order Forms, Statements of Work, or other addenda, amendments, schedules, and other documents entered into by the parties that make reference to this Master Services Agreement, and any materials available on the Cyara website specifically incorporated by reference herein, as such materials may be updated by Cyara from time to time.
- 1.3. "Confidential Information" means all information of a disclosing party or any of its Affiliates disclosed by or on behalf of such party to the receiving party, whether orally or in writing, that is designated or identified as confidential or that a reasonable person should understand to be confidential given the nature of the information or the circumstances of disclosure, including without limitation non-public Customer Data, the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms and/or Statements of Work), business and marketing plans, technology and technical information, product designs, and business processes. Notwithstanding anything in this Agreement to the contrary, the Services, Software, and Documentation are deemed to be Confidential Information of Cyara.
- 1.4. "Customer Data" means any data, information, or material provided or submitted by Customer to the Technology Services in the course of using the Technology Services.
- 1.5. "Cyara" means the Cyara entity identified as follows based on Customer's account region: (a) if Customer is located in North, Central, or South America, Cyara, Inc., 805 Veterans Blvd, Suite 105, Redwood City, CA 94063; (b) if Customer is located in Europe, the Middle East, or Africa (excluding the United Kingdom), Cyara Ireland Ltd, North Street, Skibbereen, Co Cork, P81 H102, Ireland; (c) if Customer is located in the United Kingdom, Cyara Ltd, Brennan House, Farnborough Aerospace Centre Business Park, UK; and (d) if Customer is located in Asia or Australia, New Zealand, or other Oceania countries, Cyara Solutions Pty Ltd, 554 Burwood Road, Hawthorn, Victoria 3122, Australia.
- 1.6. "Documentation" means the Cyara product documentation relating to the operation and use of the Technology Services and Software, including technical program or interface documentation, operating instructions, update notes, and support knowledge base located at <https://support.cyara.com/hc/en-us>, as made available and updated from time to time by Cyara.
- 1.7. "Equipment" means any devices needed by Customer to connect to, access, or otherwise use the Technology Services or Software, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers, and the like.
- 1.8. "Governing Law" means, for each Cyara entity, the following laws: (a) for Cyara, Inc., the laws of the state of Delaware, USA; (b) for Cyara Ireland Ltd, the laws of Ireland; (c) for Cyara Ltd, the laws of England and Wales; and (d) for Cyara Solutions Pty Ltd, the laws of the state of Victoria, Australia.
- 1.9. "Governing Tribunal" means, for each Cyara entity, the following tribunal: (a) for Cyara, Inc., the federal or state courts located in San Mateo County, California, USA; (b) for Cyara Ireland Ltd, the courts located in

Dublin, Ireland; (c) for Cyara Ltd, the courts located in London, England; (d) for Cyara Solutions Pty Ltd, the courts located in Melbourne, Victoria, Australia.

- 1.10. "Order Form" means the form evidencing the purchase of the Technology Services, specifying, among other things, the Term, the usage restrictions, the applicable fees, the billing period, and other charges as agreed to between Customer and Cyara or Customer and the Reseller, and is hereby incorporated herein by this reference.
- 1.11. "Professional Services" means the services contracted for by the Customer from Cyara to install, implement, and bring into an operational state the Software and/or the Technology Services for the Customer.
- 1.12. "Protected Health Information" has the meaning given to it in the Health Insurance Portability and Accountability Act.
- 1.13. "Reseller" means a third party authorized by Cyara to resell subscriptions to the Technology Services to Customer.
- 1.14. "Restricted Information" means Protected Health Information and Sensitive Information and such term is used solely in respect of Section 3.4 hereof.
- 1.15. "Sensitive Information" means, if applicable: (a) special categories of data as defined in Article 9 of the EU General Data Protection Regulation or other applicable privacy or data protection laws or regulations; and/or (b) an individual's first name and last name (or first initial and last name) in combination with any of the following that relate to an individual person: (i) Social Security number; (ii) driver's license number or state-issued identification card number; (iii) Customer-issued account number; or (iv) financial account number, or credit or debit card number, access code, personal identification number or password that would permit access to an individual's financial account.
- 1.16. "Technology Services" means Cyara's online customer experience management solutions and other services and associated content, as identified on an Order Form, developed, operated, and maintained by Cyara, and made accessible via <https://www.cyara.com> or another web site or IP address designated by Cyara, and any ancillary online or offline products and services provided to Customer by Cyara, to which Customer is being granted access under an Order Form.
- 1.17. "Software" means Cyara's on-premise licensed software offerings, as identified on an Order Form, to which Customer is being granted a license under an Order Form.
- 1.18. "Statement of Work" means the form evidencing the purchase by Customer of the Professional Services as agreed to between the parties.
- 1.19. "Upgrade" means a new version of the Technology Services released by Cyara that may add new and different functions to or increases the capacity of the Technology Services, and include any revisions to the Documentation and new training as a result of such upgrades. An Upgrade does not include additional functionality that Cyara makes available through the Technology Services after the Effective Date for which Cyara requires a separate charge.
- 1.20. "Usage Policy" means Cyara's standard policies governing the use of its Software and Services as published at <https://cyara.com/legal/usagepolicy/>.

2. SERVICES, SOFTWARE, AND SUPPORT

- 2.1. Provision of the Services. Cyara will make available to Customer, and Customer is authorized to use, the Technology Services during the Term as set forth in an applicable Order Form solely for its and its Affiliates' internal business purposes in accordance with the Documentation and this Agreement. If applicable, Cyara will also provide Customer with the Professional Services as set forth in an applicable Statement of Work.
- 2.2. Software License. With respect to any Software that is distributed or provided to Customer, Cyara hereby grants Customer a non-exclusive, non-transferable, non-sublicensable, revocable license to use such Software on Customer's Equipment during the Term solely for its and its Affiliates' internal business purposes in accordance with the Documentation and this Agreement.
- 2.3. Support, Uptime, & Upgrades. Cyara shall provide the support services specified in the Order Form in accordance with Cyara's Support and Service Level Agreement attached to this Agreement as Exhibit A. If

the Customer purchases its subscription to the Technology Services from a Reseller, the Reseller (and not Cyara) may have support obligations to the Customer, as set forth in the Reseller's Order Form.

- 2.4. Audit Report. Cyara shall engage at its expense, an independent accounting firm to conduct an audit of Cyara's operations with respect to the Technology Services in accordance with the Statement on Standards for Attestation Engagements No. 18 (the "SSAE 18"), and have such accounting firm issue SSAE 18, SOC 2 Type 2 reports (or substantially similar report of a successor auditing standard in the event the SSAE 18 auditing standard is no longer an industry standard) (the "Auditor's Report"), which shall cover Cyara's security policies, procedures, and controls. Upon Customer's written request, Cyara shall provide Customer and its external auditors with a current copy of such Auditor's Report, which Cyara will provide to Customer in response to Customer's requests of Cyara to complete security questionnaires and/or surveys, provided that such Auditor's Report shall be deemed Confidential Information of Cyara and shall be treated as such by Customer pursuant to Section 4. Customer may raise reasonable security-related questions to Cyara after completing its review of such Auditor's Report.
- 2.5. Administrative User. As part of the registration process, Customer will identify an administrative username and password for Customer's Cyara account.
- 2.6. Insurance. Cyara shall maintain during the Term: (a) Commercial General Liability Insurance with minimum limits of US \$1,000,000 combined single limit and combined bodily injury and property damage per occurrence and US \$2,000,000 dollars in the aggregate; (b) Commercial Automobile Liability Insurance providing coverage for owned, hired, and non-owned motor vehicles used in connection with this Agreement in an amount of not less than US \$1,000,000 per accident combined single limit for bodily injury and property damage; (c) Umbrella Liability providing excess liability coverage in the minimum amount of US \$5,000,000 per occurrence, to supplement the primary coverage provided in the policies listed above; (d) Professional Liability Insurance (Errors and Omissions Insurance), which policy also includes cyber-liability insurance for financial losses arising from destruction or corruption of data, including but not limited to privacy and data security breaches, virus transmission, unauthorized access, denial of service and loss of income from network security failures, with minimum limits of US \$5,000,000; (e) Workers Compensation Insurance covering Cyara employees pursuant to applicable state laws, and at the maximum limits statutorily required for each such state; and (f) Commercial Crime Insurance including coverage for loss or damage resulting from theft committed by the Cyara's employees, acting alone or in collusion with others, and coverage for computer crime, with a minimum per event and annual aggregate limit of US \$1,000,000. Upon written request, Cyara shall promptly furnish Customer with a certificate evidencing the coverages set forth above.
- 2.7. Subcontracting. Cyara may subcontract elements of the Technology Services and/or Professional Services, provided that Cyara remains responsible for the subcontractor's performance thereof or breach of this Agreement. Upon written request, Cyara will provide information on the subcontractors being used to provide the Technology Services and/or Professional Services to Customer.

3. RESTRICTIONS AND RESPONSIBILITIES

- 3.1. Restrictions. Customer will not, directly or indirectly: (a) copy, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code, or other software components of, or the underlying structure, ideas, know-how, or algorithms relevant to, the Technology Services or any Software, Documentation, or data related to the Technology Services or Software; (b) modify, translate, or create derivative works based on the Technology Services or any Software (except to the extent expressly permitted by Cyara in writing or authorized within the Service); (c) sell, rent, license, distribute, provide access to, sublicense, or use the Technology Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; (d) remove any proprietary notices or labels; or (e) disable any access keys or encryptions included in the Technology Services of Software.
- 3.2. Usage Policy. Customer represents, covenants, and warrants that it will use the Technology Services or Software only in compliance with Cyara's Usage Policy and all applicable laws and regulations. Although Cyara has no obligation to monitor Customer's use of the Technology Services, Cyara may do so and may, in its sole discretion, prohibit any use of the Technology Services it believes may be in violation of the foregoing.

- 3.3. Equipment. Customer shall be responsible for obtaining and maintaining any Equipment and ancillary services needed to connect to, access, or otherwise use the Technology Services or Software. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords), and files, and for all uses of Customer account or the Equipment, with or without Customer's knowledge or consent.
- 3.4. Restricted Information. Customer agrees that use of the Technology Services does not require Customer to provide any Restricted Information in the Customer Data. Customer shall not (and shall use all reasonable commercial efforts to ensure that its users do not) upload, provide, or submit any Restricted Information to the Technology Services. Cyara shall have no responsibility related to Restricted Information if Customer breaches this Section 3.4.

4. CONFIDENTIALITY AND PROPRIETARY RIGHTS

- 4.1. Confidentiality Obligations. The parties acknowledge that certain Confidential Information may be disclosed by one party to the other party in connection with this Agreement. The receiving party shall not use any Confidential Information of the disclosing party for any purpose other than in the performance of its obligations or the exercise of its rights under this Agreement, and shall not disclose any Confidential Information to any third party, except to its Affiliates, employees, contractors, advisors, and consultants who have a need to know such Confidential Information for the receiving party to perform its obligations or exercise its rights under this Agreement and who are legally required to protect such Confidential Information on terms at least as restrictive as those contained herein. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). The foregoing obligations shall not apply to any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party without restriction prior to its disclosure by the disclosing party and without breach of any obligation owed to the disclosing party; (iii) was independently developed by the receiving party without either use of or reference to any Confidential Information or breach of any obligation owed to the disclosing party; (iv) is received from a third party without restriction and without breach of any obligation owed to the disclosing party; or (v) is disclosed with the disclosing party's prior written consent. The receiving party shall be allowed to disclose the disclosing party's Confidential Information if required by law, court order, or governmental or regulatory authority, provided that it provides the disclosing party with reasonable prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest or limit such disclosure and/or obtain confidential treatment of it, and any information so disclosed shall continue to be treated as Confidential Information for all other purposes.
- 4.2. Confidentiality Remedies. Except as expressly provided in this Agreement, if the receiving party discloses or uses (or threatens to disclose or use) any Confidential Information of the disclosing party in breach of the confidentiality obligation set forth in Section 4.1, the disclosing party shall have the right, in addition to any other remedies available to it, to seek temporary, preliminary, and permanent injunctive relief to enjoin such acts, without any requirement to file a bond, it being specifically acknowledged by the parties that any other available remedies may be inadequate.
- 4.3. Cyara's Intellectual Property Rights. As between Cyara and Customer, all right, title, and interest in and to (a) the Technology Services, Documentation, and Software (including all rights therein, and all derivatives, translations, modifications, and enhancements thereof), (b) any software, applications, inventions, or other technology developed in connection with the Professional Services or support services, and (c) all copyrights, patents, trademarks, service marks, trade secrets, designs, trade dress, moral rights, mask works, publicity rights, database rights, and other intellectual property and proprietary rights related to any of the foregoing, are, and shall remain, owned exclusively by Cyara, notwithstanding any other provision in this Agreement, Order Form, or Statement of Work to the contrary. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Technology Services, Documentation, or Software. The Cyara name, logo, and product names are trademarks of Cyara, and no right or license is granted to use them. All rights not expressly granted to Customer hereunder are reserved by Cyara. Cyara alone shall own all rights, title, and interest in and to any suggestions, enhancement requests, feedback, or recommendations ("Feedback") provided by Customer or any third party relating to the Technology Services, Documentation,

or Software, as well as any derivative works, modifications, or improvements to the foregoing based on the Feedback.

- 4.4. Customer Data. As between Customer and Cyara, Customer exclusively owns all rights, title, and interest in and to all Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of and right to use all Customer Data, and hereby represents, warrants, and covenants that that it has and will continue to have all rights and consents necessary to allow Cyara to use all such Customer Data as contemplated by this Agreement. Customer hereby grants to Cyara a royalty-free, fully-paid, non-exclusive, non-transferable (except as set forth in Section 10.5), sub-licensable, worldwide right and license to reproduce, use, copy, process, transfer, transmit, display, and store Customer Data solely for the purposes of performing Cyara's obligations under this Agreement and any other activities expressly agreed to by Customer.
- 4.5. Breach Notification. Unless notification is restricted by law, Cyara shall report to Customer's support contacts designated in Cyara's customer support portal any unauthorized acquisition, access, use, disclosure, or destruction of Customer Data ("Breach") promptly without undue delay after Cyara determines that a Breach has occurred. Customer has sole control over the content of Customer Data that it enters into the Technology Services and is responsible for determining whether to notify impacted individuals and the applicable regulatory bodies or enforcement commissions and for providing such notice.
- 4.6. Use of Service Data. Cyara shall have the right to collect and analyze data and other information relating to the provision, use, and performance of various aspects of the Technology Services or Software and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Cyara will be free (during and after the Term) to (a) use such information and data to develop, support, operate, improve, and enhance the Technology Services and Software and for other development, diagnostic, and corrective purposes in connection with the Technology Services, Software, and other Cyara offerings, and (b) disclose such data solely in aggregate or other anonymized form.

5. PAYMENT OF FEES

- 5.1. Fees. Cyara or the Reseller charges and collects in advance for use of the Technology Services, Professional Services, and/or Software. All payment obligations are non-cancellable and all amounts paid are nonrefundable except as otherwise specified in this Agreement. Cyara or the Reseller will issue one or more invoices to Customer as specified in the Order Form and Customer agrees to pay such amounts not subject to a good faith dispute when and as specified in the Order Form. Customer agrees to pay Cyara or the Reseller in the currency specified on the Order Form, or if no currency is specified, payment shall be in U.S. dollars. Customer's payment shall be via wire transfer or automated clearing house (ACH) direct deposit to Cyara's bank account. Customer shall be responsible for any fees or expenses charged to Cyara by Customer's payment providers or third party invoice processors. Cyara's and Reseller's fees are exclusive of all taxes, levies, duties, or similar assessments of any nature imposed by taxing authorities, such as sales, use, value-added, withholding, or similar taxes ("Taxes"), and Customer shall be responsible for payment of all such Taxes, excluding only Taxes based solely on Cyara's income. Customer agrees to provide Cyara or the applicable Reseller with complete and accurate billing and contact information. This information includes legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact. Customer agrees to update this information promptly upon any change to it. If Customer believes its invoice is incorrect, Customer must contact Cyara or the Reseller, as applicable, in writing within ninety (90) days of the invoice date to be eligible to receive an adjustment or credit; otherwise such dispute shall be waived. If Customer's use of the Technology Services exceeds the quantities described on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided therein. If any such undisputed invoice is more than thirty (30) days overdue, Cyara may, without limiting its other rights and remedies, suspend Customer's access to the Technology Services until such undisputed invoice is paid in full. Cyara shall provide at least ten (10) days' prior written notice to Customer of the payment delinquency before exercising any suspension right. Cyara reserves the right to change the fees or applicable charges, and to institute new charges and fees, effective at the end of the initial Term or then-current renewal Term, upon thirty (30) days prior notice to Customer (which may be sent by email).

- 5.2. Late Payment. Amounts unpaid more than thirty (30) days after they are due are subject to a finance charge of one and one-half percent (1.5%) per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

6. TERM AND TERMINATION

- 6.1. Term. Subject to earlier termination as provided below, this Agreement begins on the Effective Date and continues for the initial period specified in the Order Form (or for so long as Cyara is providing the Services), and shall thereafter be automatically renewed for additional periods of the same duration as this initial period (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current Term.
- 6.2. Termination. In addition to any other remedies it may have, either party may terminate this Agreement upon thirty (30) days' written notice if the other party materially breaches any of the terms or conditions of this Agreement and such breach is not cured during the notice period. Upon any termination or expiration of this Agreement: (a) all licenses and rights granted under this Agreement will immediately terminate; (b) Customer will immediately cease use of the Technology Services or Software; (c) each party will return or destroy all Confidential Information in its possession or control; and (d) Cyara will make all Customer Data available to Customer for electronic retrieval through the Technology Services portal for a period of thirty (30) days thereafter, during which this Agreement will continue in full force and effect solely to the extent necessary to allow Customer to retrieve Customer Data from the Technology Services. The terms of this Agreement and any Order Form which by their nature should survive after termination or expiration of this Agreement will survive such termination or expiration, including without limitation accrued rights to payment, confidentiality obligations, warranty disclaimers, indemnification obligations, and limitations of liability.
- 6.3. Auto-Renewal. The Order Form shall automatically renew for the same time period as the original Order Form at the greater of 3.0% or the percent increase in the U.S. National Consumer Price Index for All Urban Consumers ("CPI") as published within 6-12 months prior to the start date of the Renewal Term by the United States Bureau of Labor Statistics, unless Customer provides advance notice of non-renewal. Notice shall be in writing to legal@cyara.com and provided at least thirty (30) days prior to the expiration of the then current Order Form.

7. WARRANTY AND DISCLAIMER

- 7.1. Cyara's Obligations. Cyara warrants that during the Term Customer's production instances of the Technology Services shall operate in substantial conformity with the applicable Documentation.
- 7.2. Procedure. To submit a warranty claim under Section 7.1, Customer shall reference Section 7.1 and submit a support request to resolve the non-conformity as provided in the Subscription Schedule within thirty (30) days of the date on which Customer first notices the non-conformity. Cyara's sole liability and Customer's sole and exclusive remedy for any breach of this warranty will be for Cyara, at no charge to Customer, to use commercially reasonable efforts to correct the reported non-conformity. Notwithstanding the foregoing, this warranty shall not apply to any non-conformity due to any modification of or defect in the Service that is made or caused by someone other than Cyara (or someone acting at Cyara's direction), use of the Technology Services by the Customer in violation of this Agreement or the Documentation, or the combination of the Technology Services with products not specified in the Documentation or otherwise expressly approved by Cyara in writing.
- 7.3. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CYARA DOES NOT MAKE ANY OTHER REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE TECHNOLOGY SERVICES, PROFESSIONAL SERVICES, SOFTWARE, UPDATES, DOCUMENTATION, SUPPORT, AND/OR ANY OTHER CYARA SERVICES PROVIDED OR OFFERED HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE TECHNOLOGY SERVICES, PROFESSIONAL SERVICES, AND SOFTWARE ARE PROVIDED STRICTLY ON AN "AS IS" BASIS AND ALL CONDITIONS, REPRESENTATIONS, AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF

DEALING. OR COURSE OF PERFORMANCE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. INDEMNIFICATION

- 8.1. Cyara's Obligations. Subject to Section 8.3, Cyara shall defend, indemnify, and hold harmless Customer, its Affiliates, and their respective officers, directors, employees, contractors, and agents against any third party suit, claim, or demand (each a "Claim") that alleges the Technology Services or Software used in accordance with this Agreement and the applicable Order Form infringe any issued patent, copyright, or trademark or misappropriate any trade secret of, such third party, and pay any court-ordered award of damages or settlement amount, including without limitation any expense, liability, loss, damage, cost or reasonable attorneys' fees, each to the extent payable to such third party, to the extent arising from such Claims. Notwithstanding the foregoing, if Cyara believes, in its sole discretion, that Customer's use of all or any portion of the Technology Services or Software is likely to be enjoined by reason of any Claim, then Cyara may, at its expense and in its sole discretion: (a) procure for Customer the right to continue using the Technology Services or Software; (b) replace the applicable portion of the Technology Services or Software with other products having substantially equivalent functions that are not subject to any such Claim; or (c) modify the applicable portion of the Technology Services or Software so that there is no longer any infringement, provided that such modification does not materially and adversely affect the functional capabilities of the Technology Services or Software as set out herein or in the applicable Order Form. If none of the foregoing is available on commercially reasonable terms in Cyara's sole judgment, Cyara may terminate the affected Technology Services or Software and refund to Customer the fees paid by Customer covering the remaining portion of the then-current Term for the affected Technology Services or Software after the date of termination. The foregoing indemnification obligations of Cyara shall not apply: (v) if the Technology Services or Software is modified by any party other than Cyara (or someone acting at Cyara's direction), but solely to the extent the alleged infringement is related to such modification; (w) if the Technology Services or Software is combined with other non-Cyara products, applications, or processes not authorized in writing by Cyara, but solely to the extent the alleged infringement is related to such combination; (x) to the extent the Claim arises in connection with any unauthorized use of the Technology Services or Software, or use that is not in compliance with any applicable laws, regulations, and/or Documentation; (y) to any third party products, processes, or materials that are not provided by Cyara; or (z) to any Claims arising as a result of the content of the Customer Data. THIS SECTION 8.1 SETS FORTH CYARA'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.
- 8.2. Customer's Obligations. Subject to Section 8.3, Customer shall defend, indemnify and hold harmless Cyara, its Affiliates, and their respective officers, directors, employees, contractors, and agents against any Claim that arises from the Customer Data or Customer's violation of the Usage Policy, and pay any court-ordered award of damages or settlement amount, including without limitation any expense, liability, loss, damage, cost, or reasonable attorneys' fees, each to the extent payable to such third party, to the extent arising from such Claims.
- 8.3. Process. Each party's indemnity obligations are subject to the following: (a) the indemnified party shall promptly notify the indemnifying party in writing of the Claim (provided, however, that the failure to give the indemnifying party prompt written notice shall not limit its indemnification obligations except to the extent that it is materially prejudiced by such failure); (b) the indemnifying party shall have sole control of the defense and all related settlement negotiations with respect to any Claims (provided that the indemnifying party may not settle any Claim that requires the indemnified party to admit any civil or criminal liability or incur any financial or other obligation without the indemnified party's consent, which consent shall not be unreasonably withheld); and (c) the indemnified party shall cooperate fully to the extent reasonably necessary at the indemnifying party's cost in such defense and settlement. The indemnified party may employ separate counsel and participate in the defense of the Claim at its sole expense.

9. LIMITATION OF LIABILITY

- 9.1. LIMITATIONS OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY'S TOTAL AND AGGREGATED LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE

TECHNOLOGY SERVICES, PROFESSIONAL SERVICES, OR SOFTWARE PROVIDED HEREUNDER, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY UNDER THIS AGREEMENT. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S OBLIGATION TO PAY FEES LEGALLY OWED UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY ARISING FROM CUSTOMER'S BREACH OF SECTION 3.1, EITHER PARTY'S BREACH OF CONFIDENTIALITY UNDER SECTION 4, OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.

- 9.2. EXCLUSION OF DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION, OR OTHER SIMILAR DAMAGES OF ANY TYPE OR KIND (INCLUDING WITHOUT LIMITATION LOSS OF REVENUE, PROFITS, USE, GOODWILL, OR OTHER ECONOMIC ADVANTAGE), REGARDLESS OF THE CAUSE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TECHNOLOGY SERVICES, PROFESSIONAL SERVICES, OR SOFTWARE PROVIDED HEREUNDER, EVEN IF THE PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A PARTY'S REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.

10. MISCELLANEOUS

- 10.1. No Contingencies. Customer agrees that its purchase of the Technology Services, Professional Services, and/or Software is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Cyara with respect to future functionality or features.
- 10.2. Relationship. The parties are independent contractors, and nothing in this Agreement creates a relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's written consent. There are no third-party beneficiaries under this Agreement.
- 10.3. Compliance with Laws and Export Control. Each party shall comply with all applicable laws and government regulations, including the export laws and regulations of the United States and other applicable jurisdictions, in connection with providing and using the Technology Services, Professional Services, and/or Software. Without limiting the foregoing, (a) each party represents that it is not named on any government list of persons or entities prohibited from receiving exports, and (b) Customer shall not, and shall ensure that users do not, violate any export embargo, prohibition, restriction, or other similar law in connection with this Agreement.
- 10.4. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (excluding Customer's failure to pay amounts owed when due), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, cyber-attacks, failure of energy sources or transport network, acts of God, export bans, sanctions and other government actions, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical, or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics, or similar events, natural disasters or extreme adverse weather conditions (each a "Force Majeure Event"). The party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event.
- 10.5. Assignment. Neither party may assign this Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to any of its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in

breach of this Section 10.5 shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 10.6. Publicity. Cyara will not reveal the details of Customer use of the Technology Services, Professional Services, and/or Software in any marketing materials or press releases without the express written permission of Customer. Cyara has the right to identify Customer among a listing of customers on Cyara's website and in its marketing materials.
- 10.7. Notice. Except as provided elsewhere in this document, either party may give notice by written communication, sent to the other party's address set forth in the Order Form (or such other address as may be given in writing by a party in accordance with this Section 10.7, and will be deemed to have been received (a) if given by hand, immediately upon receipt, (b) if given by overnight courier services delivered by a nationally recognized courier, the first business day following dispatch, (c) if given by registered or certified mail, postage prepaid and return receipt requested, the third business day following dispatch, or (d) if given by email, immediately upon being sent, except that notices relating to termination or any claims (including without limitation breach, warranty, or indemnity) may not be given via email.
- 10.8. Governing Law and Jurisdiction. This Agreement shall be governed by the applicable Governing Law, without regard to its conflict of law provisions. The parties agree that all lawsuits, claims, and other legal action arising out of or related to this Agreement, including without limitation any question regarding its existence, validity, interpretation, performance, breach, or termination, will be brought exclusively in the applicable Governing Tribunal. In the event of any such legal action, the substantially prevailing party shall be entitled to an award for its reasonable attorneys' fees and other costs and expenses relating thereto.
- 10.9. Entirety. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. The parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties, and supersedes and cancels all previous written and oral agreements, communications and other understandings, relating to the subject matter of this Agreement. Cyara may modify the terms contained in this Agreement, as well as the Support and Service Level Agreement and Usage Policy, at any time by posting the applicable updated version on Cyara's website or by otherwise notifying Customer as described in Section 10.7. The modified terms will become effective upon posting or, if Cyara notifies Customer as described in Section 10.7, as stated in the notice provided. By continuing to use the Technology Services or Software after the effective date of any such modifications, Customer agrees to be bound by the modified terms. It is also Customer's responsibility to check the Cyara website regularly for any such modifications.

SUPPORT AND SERVICE LEVEL AGREEMENT

Cyara will provide Customer the following support and service levels based on the support services, if any, described in the applicable Order Form and the Master Service Agreement or similar such agreement (the "Agreement"). This Support and Service Level Agreement is incorporated into the Agreement by reference.

1. ISSUE RESOLUTION REPORTING AND TRACKING

Customer will create a Support Ticket for each Error that Customer encounters. For purposes of this Support and Service Level Agreement, "Error" means failure of the Technology Services, in the form provided or modified by Cyara, to substantially conform to the Documentation. The Support Ticket or escalations shall be communicated in accordance with the table below:

Escalation Level	Escalation Time	Contact Name and Title	Contact Information
New ticket	Open Problem Report	Cyara Customer Response	Cyara Service: support@cyara.com https://support.cyara.com Botium Service: support@botium.ai https://support.botium.ai
Escalation	If no response during Response Service Level	Cyara Customer Response Hotline	US +1 855 843 4662 UK +44 808 164 4453 AUS +61 1800 953154

Cyara will assign all Support Tickets one of four Severity Levels, dependent on the problems caused by the Error. Cyara may re-assign a Severity Level assigned by Customer when it submitted the Support Ticket to reflect the Severity Levels set forth below.

The Severity Levels are classified in accordance with the table below:

Severity Level	Impact on End Users	Characteristics
1	Critical	The Technology Services are not available or major functionality of the Technology Services is not available or operable, causing critical impact to business operations, and no Workaround exists
2	High	The Technology Services are available, but access to some material portions is unavailable or there is some degradation of the functionality of the Technology Services, impacting significant aspects of business operations, and no reasonable Workaround exists
3	Medium	Minor issues with the Technology Services with no significant impact to business operations
4	Low/None	Service inquiries or administrative assistance requests

For purposes of the foregoing, "Workaround" means a set of procedures that Customer may follow to circumvent or mitigate the impact of the Error, notwithstanding that the Error still exists.

2. CUSTOMER RESPONSIBILITIES

Customer contacts tasked with contacting Cyara support services are expected to fulfill the following responsibilities:

- A. Have a technical understanding of the technology, and the Technology Services, and are adequately trained to use the Technology Services
- B. Provide timely and accurate responses to Cyara's requests or recommendations
- C. Provide an accurate description of the issue or request, including, but not limited to:
 1. A complete problem or question description
 2. Details on the operating environment, including any recent changes
 3. Gather and validate log files, recordings, network traces, configuration files, and operating system crash files
- D. Provide a type and a Severity Level for each Support Ticket, as well as a detailed business impact for Severity Level 2 or Severity Level 1 Support Tickets
- E. If applicable, provide the time and date at which the Error was encountered
- F. Provide a summary of the initial diagnostic procedures undertaken and the results of such procedures, if any

Cyara will provide Customer with access to a list of all unresolved Support Tickets, including any actions taken by the Cyara support team to resolve such Support Tickets.

3. SUPPORT SERVICES

Cyara will supply the following support services:

- A. Commercially reasonable efforts to respond to and resolve Support Tickets.
- B. Periodic updates of the Technology Services, including corrections to resolve Support Tickets, fixes of minor bugs, and enhancements.
- C. Appropriately skilled and available technical support and resources to solve problems relating to the installation, commissioning and, operations of the Technology Services .
- D. Assist in the recovery of the Technology Services from actual or potential outage conditions, degradation situations, and/or situations where customer service, system maintainability, or system operability have the potential of being adversely affected.

Cyara will use commercially reasonable efforts to address Support Tickets based on the Severity Level set forth in the following table:

Service Level Measure	Severity 1	Severity 2	Severity 3	Severity 4
Initial Response Time	4 hours	6 hours	8 hours	1 business day
Restoration	24 hours	48 hours	4 business days	N/A
Updates	4 hours	Daily	None	None
Working hours	24x7	12x7	8x5	8x5

4. SUPPORT SERVICE EXCEPTIONS

Cyara will not be responsible for Error resolution to the extent that the Error is directly attributable to any:

- A. Use of the Technology Services other than in accordance with the provisions of the Agreement or Documentation
- B. Errors that are a result of Customer actions contrary to or without Cyara's guidance or documentation
- C. Changes to the operating system or environment which adversely affects the Technology Services
- D. Interconnection of the Technology Services with other software not approved or supported by Cyara
- E. Modification of the database structure designed to be used by the Technology Services
- F. Introduction or manipulation of data in the Cyara database by any means other than the use of the Technology Services
- G. Customer not willing to provide the information required to investigate the Error

If Customer purchases the Technology Services from a Reseller, the Reseller (and not Cyara) may have support obligations to Customer.

5. SERVICE LEVEL AGREEMENT

- A. If service outages result in a failure of any production instance of the Technology Services to meet an uptime availability requirement of 99.8% over any given calendar month ("Uptime SLA"), Customer's sole and exclusive remedy shall be a service credit equal to the greater of:
- (1) Ten percent (10%) of the subscription fees for the Technology Services set forth in the applicable Order Form for that calendar month; or
 - (2) The actual unavailability rate for that calendar month (as an example, if the Technology Services have an uptime availability of 85% during a calendar month, then the service credit shall be fifteen percent (15%) of the applicable subscription fees for that calendar month).
- B. The following events ("Excused Downtime") shall be excluded in calculating the Uptime SLA:
- (1) Planned maintenance windows, which is the timeframe that Cyara has scheduled to apply infrastructure or service updates to the Technology Services for which Cyara will send a notification to impacted users at least five (5) business days before the start of the maintenance windows.
 - (2) Emergency maintenance required to address an exigent situation with the Technology Services that if not addressed on an emergency basis could result in material harm to the Technology Services. Cyara shall provide advance notice of emergency maintenance via the Support Portal to the extent practicable.
 - (3) Any unavailability caused by circumstances beyond Cyara's reasonable control, including without limitation, unavailability due to Customer's or its users' acts or omissions, a Force Majeure Event (as defined in the Agreement), Internet service provider failures, or delays, failure, or malfunction of equipment or systems not belonging to or controlled by Cyara.
- C. Uptime SLA is calculated as follows:

$\frac{(x - y - z)}{(x - z)} \times 100$	x = total number of minutes in a calendar month y = downtime that is not excluded z = Excused Downtime (as defined above)
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- D. In order to receive any applicable service credit, Customer must request it in writing to Cyara within thirty (30) days of the end of the month in which the Uptime SLA was not met, including identifying the period Customer's production instance of the Service was not available. Cyara shall apply the service credit during Customer's next billing cycle unless the service credit is reasonably disputed by Cyara, in which case Customer and Cyara shall work together in good faith to resolve such dispute in a timely manner. The total amount of service credit for any month may not exceed the applicable monthly subscription fee for the affected Technology Services and has no cash value (unless a service credit is owed at the termination or expiration of this Agreement without a renewal order, in which case such service credit shall be paid to Customer within ninety (90) days of the end of the then-current Term).