

Altaro Software Services Agreement

**IMPORTANT! READ CAREFULLY.
THE FOLLOWING IS A LEGALLY BINDING AGREEMENT**

Version: [0.07]
Date: [9th July 2020]

This Software Services Agreement, is a legal agreement between you, either an individual or an entity (“You” or “Company”) as of the date that You accept this agreement (“Effective Date”) and ALTARO LIMITED, a limited liability company organized and existing under the laws of Malta, located at Altaro Limited, Block LS3 (Digital Hub), Level 1, Malta Life Sciences Park, San Gwann Industrial Estate, San Gwann, SGN3000, Malta (Licensor, us or we) relation to the Software Services as listed in **Schedule 1** to this agreement.

BEFORE YOU SELECT THE "I ACCEPT" BUTTON AT THE BOTTOM OF THIS WINDOW, CAREFULLY READ EACH PROVISION OF THIS AGREEMENT. BY CLICKING ON THE "I ACCEPT" BUTTON AND/OR USING THE SOFTWARE SERVICES YOU WARRANT AND REPRESENT THAT:

- YOU ARE OVER THE AGE OF 18 OR YOU ARE OF THE LEGAL AGE REQUIRED IN YOUR STATE, PROVINCE, JURISDICTION OR RESIDENCE AND YOU ARE LEGALLY CAPABLE OF ENTERING INTO THIS AGREEMENT;
- YOU HAVE THE CAPACITY AND AUTHORITY TO BIND YOURSELF AND/OR THE PERSON/ENTITY IN WHOSE NAME THIS SOFTWARE SERVICE(S) IS BEING REGISTERED ON, AS APPLICABLE, TO THE TERMS AND CONDITIONS OF THIS AGREEMENT;
- ON BEHALF OF YOURSELF AND/OR AS AN AUTHORISED REPRESENTATIVE OF THE PERSON/ENTITY IN WHOSE NAME THIS SOFTWARE SERVICE(S) WAS PURCHASED, AS APPLICABLE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF ANY OF THE FOREGOING WARRANTIES AND REPRESENTATIONS DO NOT APPLY TO YOU OR IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU ARE LEGALLY BOUND TO CHOOSE THE "I DECLINE" BUTTON. IN SUCH CASE, YOU MAY NOT USE THE SOFTWARE SERVICES. ANY USE OF THE SOFTWARE SERVICES OTHER THAN PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT IS A VIOLATION OF COPYRIGHT LAWS AND CONVENTIONS.

1. Definitions. The following capitalized words shall have the meaning provided hereunder to this Software Services Agreement

“Acceptable Use Policy”	The set of practices set from time to time by Altaro establishing additional rules for using and accessing a Solution and resources made available by Altaro.
“Account”	shall refer to an End User Account and/or an Intermediary Account (as may be applicable in the respective context).
“Altaro”	Altaro Limited, a company incorporated under the Laws of Malta and bearing company registration number C 46477.
“Customer”	The entity placing an Order, or in the case of an Order placed by an Intermediary, the Intermediary and the entity on whose behalf the Order is placed.
“Terms”	The terms set out in this Software Services Agreement.
“Intellectual Property Rights”	means any trademark, service mark, trade name, copyright, patent, software license, other database, invention, trade secret, know-how (including any registrations or applications for registration of any of the foregoing) or any other similar type of proprietary intellectual or industrial property right.

“Intermediary”	An entity, organization or third party approved by Altaro and which is authorized to place an Order for and on behalf of an end-user, or otherwise requests the provision of a Solution and/or a License in relation to an end-user.
“Incident”	Any unplanned fault, failure, malfunction, performance degradation of any part of Altaro Software Services. For the avoidance of doubt, an “incident” shall not include any elements outside of Altaro’s direct control
“License”	The right to use software we own in accordance to the License Terms.
“Licensor”	shall have the same meaning assigned to the term “Altaro”.
“License Terms”	The terms and conditions under which we make our software available for you to use.
“Objectionable”	includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.
“Order”	Instructions sent by the Customer to Altaro through the Portal requesting a Software Services or the granting of a License.
“Planned Maintenance”	A period of time where Altaro requires downtime to Altaro Software Services and that it has notified its customers to implement a change control to support: <ul style="list-style-type: none"> - Ongoing Product and Operational Projects to ensure optimal performance and introduction of new features - Deploy software, hardware or operating system security updates - Periodic redundancy and security testing - Preventive maintenance
“Portal”	The application, interface or facility made available by Altaro to manage an Account and/or the Solution(s) and/or the License(s), branded Altaro Cloud Management Console.
“Privacy Policy”	The policy outlining how Altaro processes any personal data.
“Referred End User”	An end user in respect of which an Intermediary has placed an Order.
“Solution”	means any Software Services which we make available for users to use or access remotely, and/or any other services which we make available, from time to time
“Software Services”	means any Altaro Solution as defined in Schedule 1
“Solution Terms”	means the terms of use under which we make the respective Software Services available
“Support”	means the standard maintenance or support provided by Altaro or its designated agents for the Software Services as set forth in this agreement
“Terms”	means this Software Services Agreement and, where applicable, the Solution Terms and/or the License Terms of the individual Software Services.
“Unplanned Maintenance”	Is Urgent, Unplanned Emergency maintenance work that happen immediately with little notification ahead of time to protect the integrity of Altaro Software Services due to security issues, hot fixes or other unforeseen circumstances. Altaro will post the information about the unplanned maintenance to its portals soon after or during the change.

“You” or “Your”	shall have the same meaning assigned to the term “Customer”.
“Your Data” or “Data”	means data, files or information, including Personal Data, accessed, used, communicated, stored, or submitted by You or Your Users, related to You or Your User’s during the use of the Software Services
“We” or “Us”	shall have the same meaning assigned to the term “Altaro”.

2. Provision of Software Services

2.1 Software Services License – Subject to Your payment of the applicable subscription fees and full compliance with this Agreement, the Licensor grants to You the following rights:

- a) A non-exclusive, non-transferable license to access, use and install (if applicable) the Software Services and Documentation during the subscription Term which this agreement accompanies
- b) You may make available, permit or provide Your users to use or access the Software Services or Documentation in whole or in part
- c) You agree that the licensor may deliver the Software Services to You with the assistance of its Affiliates, licensors and service providers
- d) During the Term, the licensor may update or modify the Software Services or provide alternative Software Services to reflect changes in, among other things, technology, security, laws, regulations, rules, patterns of system use and availability of third-party components
- e) Updates or modifications to the Software Services will not materially reduce the level of functionality, performance, security or availability of the Software Services during the Term. (Check out Service Level Availability section for additional details)

2.2 Trial or Beta Account - From time to time, We may make the Software Services available on a trial, evaluation, or beta for a specific period of time (“Trial Period”). If You are eligible to participate in the Trial Period and create a trial account, You become bound by these Terms and any other conditions and qualifications that may be included in the respective Software Services Agreement:

- a) The licensor grants You a limited, non-exclusive, non-transferable evaluation license to use the Software Services or documentation solely for evaluation prior to purchase or implementing the Software Services. You shall not use the Trial Account for production use
 - b) The Trial Period will terminate (i) upon the lapse of the Trial Period or (ii) when You purchase the respective subscription or (iii) upon notice from the licensor in its sole discretion or (iv) when You inform Us that You would like to terminate the Trial Account, by following the procedure as may be applicable from time to time. Upon the lapse of the Trial Period, and in case you have not purchased any Software Services subscription, no further access to the respective Software Services will be available
 - c) Notwithstanding any other provision contained herein or in the respective Solution Terms, the Software Services and Documentation provided pursuant to the Trial Period are provided to You “AS IS” without indemnification or warranty of any kind, express or implied
 - d) Any Service Level Availability (SLA’s) defined in our Software Services or Solution Terms shall not apply to the Trial Period
 - e) All Terms and conditions of this Software Agreement not specifically modified by clause 2.2 (above) shall apply to the Software Services under the Trial Period
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3. Term

This Agreement will begin on the Effective Date and will continue until the end of the period specified in the applicable Order (the “Initial Term”). You authorize Altaro to automatically renew the applicable Software Services upon the expiration of the Initial Term (Renewal Term, and collectively with the Initial Term, the “Term”). The Renewal Term will be the same length as the Initial Term unless otherwise specified by Altaro at the time of renewal.

3.1 Registration

- a) In order to access certain features of our Software Services (such as to be able to place an Order and access our Software Services, You shall be required to create:
 - a. An Intermediary Account if You place or intend to place an Order or otherwise request services on behalf of third parties (hereinafter an “Intermediary Account”) or
 - b. An end-user account if You are not an Intermediary (hereinafter an “End-User Account”)
- b) You are responsible for ensuring and maintaining confidentiality of Your username and password and agree to accept responsibility for all activities that occur under your Account and password. We will assume without further enquiry that anyone logging in with Your credentials is authorized to

access the Account. We highly recommend You setup Two Factor Authentication (2FA) from within the Portal. Should You suspect that Your Account has been compromised, it is Your responsibility to inform Us, and / or Reset Your password.

- c) We reserve the right to decline registration or suspend Your Account at any time and at our sole discretion.

3.2 Effect of Termination – Termination shall not relieve You of the obligation to pay any fees or other amounts accrued or payable to Altaro through the end of the current Term. The Solution Terms provide the effects of termination of the respective Solution. Without prejudice to any other rights, upon termination,

- a) You must cease all use of the Software Services and Documentation
- b) You acknowledge and agree that Altaro has the right to delete Your Data, including any and all copies thereof. Your Data, once deleted will not be able to be recoverable.

4 Payments and Fees

- a) In order to be able to use any of the Software Services for production use, You must:
 - a. place an Order and pay the respective Software Services subscription fees and
 - b. agree to be bound by this agreement and the respective Solution Terms.
- b) The Solution Terms and/or the License Terms shall supplement and not replace this Software Services Agreement. If there is any discrepancy between the two, the provisions of the Solution Terms or the License Terms (as applicable) shall prevail.
- c) You agree to pay the fees for the respective period in accordance to the Terms set out in the Solution Terms and/or the License Terms.
- d) We may charge interest on overdue amounts, at the highest rate permitted by applicable law.
- e) We may increase the subscription fees by giving at least 30 days' prior notice. The increase in subscription fees will be effective at the end of the respective subscription period.
- f) All orders placed will be considered final upon acceptance by Altaro
- g) If You exceed the license capacity for Your license, You will be charged additional fees which will be reflected in Your invoice.

4.1 Upgrading / Downgrading Subscription Tier

- a) If applicable to Your subscription, You may at any time, upgrade or downgrade Your software subscription to include or remove additional services subject to the Solution Terms
- b) If You upgrade an Account, You will get billed immediately for the additional fees under the upgraded Account type for the remaining Term.
- c) the amount due and owing for the upgraded Account will be pro-rated against the remaining Term.
- d) If You are an Intermediary, You may downgrade based on the Solution Terms. The new downgraded charges will be applied at the Renewal Term
- e) Downgrading Your license may cause loss of content, features or capacity as available to You under Your previous license and Altaro does not accept any liability for such loss. Please check the respective Solution Terms for Downgrading Your license

5 Restrictions

- a) The Software Services may include software components licensed to the Licensor by third parties that may provide You broader usage rights for those specific components. Such broader usage rights however, shall in no event broaden the rights granted by the Licensor to You under this agreement
- b) Notwithstanding the Terms and conditions of this Software Services agreement, all or any portion of the Software which constituted non-proprietary software provided under public licenses by third parties ("Freeware" or "Open Source"), is licensed to You subject to the Terms and conditions of the Software Services agreement accompanying such Freeware or Open Source software whether in the form of a discrete agreement, shrink wrap license or electronic license Terms accepted at the time of download. Use of the Freeware or Open Source software by You shall be governed entirely by the Terms and conditions of such license.
- c) You undertake to: (i) Use the Software Services and any software We provide pursuant to a License: (a) exclusively for Your own internal business purposes and shall not resell, make available or otherwise commercialise the Software Services (unless You are an Intermediary, and have setup an appropriate Account with Altaro); (b) solely for lawful purposes; (c) in accordance to the Acceptable Use Policy (where applicable). (ii) Ensure that no third party rights or interests are breached, infringed or violated; (iii) Ensure that the use of the Software Services We provide pursuant to a License does not transmit, input or store any data, information, content or material that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable,

incorrect or misleading and is not in breach of the Acceptable Use Policy

- d) You shall not do or permit others to do any of the following: (i) make alterations to, or modifications of, the whole or any part of the Software Services or permit the Software Services or any part of it to be combined with, or become incorporated in, any other programs; (ii) disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software Services or attempt to do any such things except to the extent that (by virtue of Article 9(2) of the Copyright Act, Chapter 415 of the Laws of Malta) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software Services with another software program and provided that the information obtained by You during such activities: (1) is used only for the purpose of achieving inter-operability of the Software Services with another software program; (2) is not disclosed or communicated without the Licensor's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and (3) is not used to develop, create or market any software which is substantially similar to the Software Services or Solution; (iii) fail to comply with all applicable technology control or Export Restrictions (Clause 16k)
- e) If You are an Intermediary, corporation or other business entity, You shall use Your best efforts to prevent Your employees, contractors, subcontractors and agents from engaging in any of the above prohibited activities and to supervise and control the use of the Software Services by the said persons and ensure that the use of the Software Services used by such employees, subcontractors and agents are in accordance with the Terms of this agreement.
- f) The Licensor and/or its suppliers retain all rights, title and interest in and to (i) the Software Services and Documentation (including, without limitation, images, photographs, animations, video, audio, music, text and so-called "applets"), (ii) all copies, improvements, enhancements, modifications and derivative works of the Software Services or Documentation, and (iii) all patents, copyrights, trade secrets, trademarks and other intellectual property rights subsisting in the Software Services and Documentation and copies, improvements, enhancements, modifications and derivative works thereof.
- g) Using free, trial, beta or Not-For-Resale for offering commercial paid services
- h) Using the free trial to take a backup and export backup contents for archival storage purposes
- i) Signing up for multiple concurrent or sequential free Altaro Trial accounts for the purpose of avoiding charges associated with paid subscriptions
- j) Your rights to use the Software Services and Documentation shall be limited to those expressly granted in clause 2 above. All rights not expressly granted to You are retained by Licensor and/or its suppliers. You agree to refrain from any action that would diminish such rights of the Licensor or would call such rights into question. The rights granted herein are limited to the Licensor's copyright in the Software and do not include any other patents or intellectual property rights of the Licensor or third parties.
- k) Any failure to comply within clause 3 or any other term or condition contained in this agreement shall result in the automatic termination of this subscription and the reversion of the rights granted hereunder to the Licensor.

6 Intermediaries

This section shall apply solely and exclusively in relation to an Intermediary.

- a) The Intermediary warrants and undertakes that it is authorised to represent, give instructions on behalf and bind the Referred End User and, for all intents and purposes, any instructions received by the Intermediary shall bind the Intermediary and the Referred End User severally
- b) All Orders placed by the Intermediary on behalf of Referred End User(s) and related information, data and details in respect to such third party and data generated through the use of the Software Services shall be available and accessible through the Intermediary Account.
- c) Prior to placing an Order, the Intermediary shall be required to:
 - a. inform any prospective Referred End User(s) about the Terms and any other Terms applicable or incorporated by reference, and
 - b. ensure that such clients agree to be bound by such Terms.

7 End of Life

At any time and without any prior notice, We may decide to discontinue any of our Solutions. If We elect to do so, You will no longer be authorized to access and use such discontinued service. Where practicable, and prior to such discontinuation, We will endeavor to ensure that You are able to migrate any of Your data. If You paid in advance, We will refund You for the subscription period falling after the date of discontinuation.

8 Support & Maintenance

- a) If applicable to You, Altaro shall, during the Term, provide You with Technical Support. You agree to
 - a. Promptly contact Altaro with all problems with the Software Services
 - b. cooperate with and provide Altaro with all relevant information that is required to provide our Support Services;
- b) To the extent that Altaro is bound to provide support and maintenance services, it is being expressly agreed that no such service shall be provided in relation to versions prior to the one immediately preceding the latest version.
- c) If You are an End User of an Intermediary, the Intermediary shall be responsible for providing problem resolution in relation to the Software Services and any software made available by Altaro by means of a License. The Intermediary shall use reasonable endeavours to ensure that any Referred End User is using the latest version of the software made available by Altaro by means of a License.

9 Personal Data

- a) All personal information that We may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and Your rights under the GDPR.
- b) Without prejudice to the aforementioned, We shall collect, use and process personal data in accordance to the Terms of Altaro Privacy Policy (<https://www.altaro.com/cmc/privacy.php>), which is hereby being incorporated by reference.

9.1 Hosting Location

- a) Your Data may be hosted by Altaro or its authorized providers in the United States or the European Economic Area

9.2 Customer Content

- a) You and Your Users retain all rights, title and interest in and to all copyright, trademark, patent, trade secret, intellectual property and other proprietary rights in and to Your Data (“Customer Content”) but Altaro is hereby expressly granted the right to access and use the same data to provide the Services during the Term. Customer Content shall not be deemed part of any Altaro Services by virtue of being located on or processed through the Services.
- b) We shall assume without further enquiry that You have the necessary rights and authorisations that are required or necessary to be able to post, publish or otherwise distribute any Customer Content on Altaro Systems and Services. You shall be solely responsible for any of Your Customer Content that is submitted through Your Account, and the consequences of, and requirements for, distributing it.
- c) Notwithstanding anything to the contrary in these Terms, We may monitor, collect, use and store anonymous and aggregate statistics and/or data regarding use of the Software Services solely for Our business purposes (including, but not limited to, improving the Solutions and creating new features) and such anonymized and aggregate data shall not be considered Customer Content (Your Data).

10 Intellectual Property Rights

- a) All title, rights and interest (including all Intellectual Property Rights) in the Solutions, Portal, all underlying software existing in the Solutions and the Portal and any software We provide pursuant to a License is and remains our property, or the property of our licensors. You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights, nor shall You carry out any action which may cause prejudice or detriment to our rights.
- b) Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from Altaro to the Customer.
- c) You acknowledge that the Portal and the Solutions may link to third party websites or feeds that are connected or relevant. Any such link does not imply that We endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, We exclude all responsibility or liability for those websites or feeds.

11 Limited Warranties

- a) Each party warrants that it has full power and authority to enter into, and perform its obligations under, this agreement
- b) You agree and represent that You are accepting this agreement for the purpose of trade.

12 Disclaimers

- a) Altaro shall use reasonable efforts consistent with prevailing industry standards to maintain the Solutions in a manner which minimizes errors and interruptions.
- b) The Software Services is provided to You "AS IS". THE LICENSOR DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE AND SERVICES, THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ANY SERVICES WILL CONTINUE TO BE MADE AVAILABLE, THAT THE SOFTWARE OR SERVICES WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES, OR THAT DEFECTS IN THE SOFTWARE OR SERVICES WILL BE CORRECTED. USE OF THIS SOFTWARE SERVICES MAY AFFECT THE USABILITY OF THIRD-PARTY SOFTWARE, APPLICATIONS OR THIRD-PARTY SERVICES. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE LICENSOR OR AN AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY, WHETHER EXPRESS OR IMPLIED, OR IN ANY WAY ALTER THE SCOPE OF THIS LIMITED WARRANTY.
- c) ALTARO DISCLAIMS THAT ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, SECURITY, RELIABILITY, LOSS OR CORRUPTION OF YOUR DATA, BUSINESS CONTINUITY OR ABSENCE OF DEFECT RELATING TO THE SERVICES, SOFTWARE, DOCUMENTATION, ANY OTHER PRODUCT OR SERVICES, OR RESULTS OF THE SAME PROVIDED TO YOU UNDER THIS AGREEMENT.
- d) SHOULD THE SOFTWARE SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

13 Indemnities

- a) You agree to indemnify and hold harmless Altaro and its directors, officers, shareholders, parents, subsidiaries, affiliates, partners, agents, and licensors (collectively, the "Indemnified Parties") from and against all losses, expenses, damages and costs, including reasonable attorney fees and costs, resulting from Your breach of any of the representations, warranties, and agreements made in the Terms or Your willful misconduct.

14 Limitation of Liability

- a) This clause sets out the entire financial liability of Altaro (including any liability for the acts or omissions of Altaro's employees, agents and subcontractors), arising under or in connection with the provision of the Solutions, the granting of a License or in respect of any representation, statement or tortious act or omission.
- b) Altaro shall not in any circumstances be liable whether in contract, (including for negligence or breach of statutory duty, howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for (i) any loss (whether direct or indirect) of profits, savings, business, business opportunities, revenue, turnover, reputation or goodwill, (ii) any loss or corruption (whether direct or indirect) of data or information; (iii) any loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or (iv) any indirect or consequential loss or liability.
- c) Altaro's maximum aggregate liability for all loss, damage and expense arising under the Terms or

otherwise arising as a result of the Solutions and/or a License (unless excluded) shall be limited to a sum equivalent to the amount of fees received by Altaro during the six-month period immediately preceding the claim. When an Order is placed by an Intermediary, and damages or losses are suffered by a Referred End User, Altaro's maximum aggregate liability as aforesaid shall be set at the amount received by Altaro from the Intermediary during the six-month period immediately preceding the claim in respect of the Solutions provided by Altaro and/or the grant of the License (as the case may be), directly or indirectly to the particular Referred End User which suffered losses or damages.

- d) No exclusion or limitation shall apply in respect of (i) personal injury or death, (ii) fraud or fraudulent misrepresentation and/or (iii) any other liability to the extent that the same cannot be excluded or limited by law.

15 Service Level Availability (SLA)

- a) Altaro undertakes to use commercially reasonable efforts to make Altaro Software Services available to the Customer at least 99% of the time in any calendar month ("Availability") excluding maintenance or SLA Exclusions listed below
- b) **SLA Exclusions** – This SLA and any applicable Service Levels do not apply to any performance or availability issues:
- a. Due to factors outside of Altaro's reasonable control;
 - b. That resulted from Customer's or third-party hardware, software communication links or other equipment that is not hosted on Altaro systems and Altaro has no responsibility or control over, including third party web services and APIs, DDoS attacks, Systematic Internet failures, Customer's own Internet Service Provider, Microsoft Azure and Microsoft Office 365. In these cases the relevant third party SLA applies that require action by another party outside of Altaro's control
 - c. That resulted from actions or inactions of Customer or third parties
 - d. Caused by Customer's use of the Service after Altaro advised Customer to modify its use of the Service, if Customer did not modify its use as advised
 - e. Attributed to the acts or omissions of Customer or Customer's employees, agents, contractors, or vendors or anyone gaining access to the customer's Account by means of Customer's Authorized Users' accounts or equipment;
 - f. During Evaluation, Beta, Free or Not for Re-sale subscription or licenses
 - g. Events of force majeure
- c) For the purpose of this Clause, the term "**Available**", "**Availability**" and other similar Terms shall be calculated in accordance to the following formula:

$$\text{Availability} = \frac{(\text{Total Monthly Minutes} - \text{Acceptable Outages} - \text{Downtime})}{(\text{Total Monthly Minutes} - \text{Acceptable Outages})} \times 100\%$$

- d) For the purpose of this Clause, the term "**Acceptable Outages**", shall refer to:
- a. Service unavailable due to Planned or Unplanned Maintenance work.
 - b. Altaro exercising a right to suspend the provision of services in accordance to the provisions of these Terms;
- e) For the purpose of this Clause, the term "**Downtime**", is calculated as follows based on Incident Management Prioritisation. Altaro has the right to re-classify any support requests based on their appropriate Incident Classification

Priority Level	Incident Classification	Description	Service Availability Contribution
P1 – Blocker	Major Outage	Interruption in the service that severely impacts operations whereby a majority of the customers cannot access Altaro Software Services or cannot perform Altaro Office 365 Backup operations (backups or restores) for all backed up items; no work-around available	100%
P2 – Critical	Partial Outage	Interruption in the service or partial degradation of service, impacting the service operation such as performance degradation, major product operations failing or a particular backup item failing to restore across all restore methods; no work-around available	20%
P3 – High	Degraded Performance	Interruption in service causing little or no loss of service. The impact to the operation is minor. Altaro priority for P3 issues is to provide a workaround and to include a permanent solution in the next product release based on an evaluation of the incident. E.g. a particular backup item cannot be backed up or restored in a specific restore method	0%
P4 – Normal	Support Requests	Support requests directly related to a single customer or functions and does not have direct impact to backup / restore operation or revenue to end customer. These are generally normal priority application bugs and does not include disturbances or errors in the service operation	0%

- f) Altaro shall communicate where possible at least twenty-four (24) hours in advance (or longer if practical) any requirement to conduct Planned Maintenance work that require any of the Software Services to be unavailable. Communication is done via banner messaging on Altaro Cloud Management Console (CMC) or individual product portals. Altaro will also communicate as soon as reasonably possible any Unplanned Maintenance required that will impact the availability of Altaro Software Services.
- g) Altaro shall use reasonable efforts to limit maintenance time (Planned / Unplanned) that will affect the availability of Altaro Software Services to no more than four (4) hours in any calendar month
- h) In the event that Altaro fails to meet the Service Level Availability Terms set out above for a calendar month, Altaro shall grant the Customer service credits calculated in accordance to the following table:

Availability	Service Credit
Between 97% and 98.9%	5%
Between 94% and 96.9%	10%
Between 90 % and 93.9 %	15%
Between 80 % and 89.9 %	25%
Less than 79.9%	30%

- i) Service credits shall be calculated as a percentage of the monthly fee paid by the Customer for a calendar month in which Altaro failed to meet the monthly Availability as defined in Clause 15(a)
- j) Service credits can only be applied in respect of future payments due by the Customer to Altaro.
- k) Service Credits shall only be due if claimed by the Customer within a period of ten (10) business days of the end of the respective month. All claims under this Clause must be submitted by means of opening a support ticket with Altaro or send an email sent to support@altaro.com providing the following details:
 - a. List what was affected
 - b. List the date the Downtime occurred
 - c. List an estimate of the downtime minutes
 - d. Previous ticket number of the documented support request where the service was being impacted

Altaro will confirm the information provided in the claim notice within ten (10) business days of receipt of the claim.

- l) The Parties agree that the service credits shall be the sole remedy available in relation to the Service Level Availability
- m) Service Credits can only be applied against one (1) Software Service Product for one (1) specific Incident, where if Altaro experiences an outage on Altaro Cloud Management console that impacts the accessibility of Altaro VM Backup and Altaro Office 365 Backup, that Incident is classified as one
- n) For the avoidance of doubt the following is an example of Availability calculation:

During the month of January, Altaro Office 365 Backup had 100 minutes of "Acceptable outages" and 280 mins of "Downtime" of which 180 mins where "P1 Incidents" and 100 mins of P2 "Incidents"

Using the Availability formula defined in Clause 14(b)

Total Monthly Minutes ("T") = 31 (January) * 24hrs * 60 mins = 44,640mins
 "Acceptable Outages" within the month of January ("M") = 100 mins
 Downtime within the month of January ("D") = 280 mins of which:
 - P1 "Incidents" within the month of January = 180 mins x 100% = 180 mins
 - P2 "Incidents" within the month of January = 100 mins x 20% = 20 mins
 Therefore, for the month of January, total Downtime towards SLA = 200mins

Availability for January ("A") = (44,640 - 100 - 200) / (44,640 - 100) * 100 = 99.55%

16. General

- a) Force Majeure - In no event shall Altaro be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.
- b) Assignment - We may transfer and assign our obligations and rights under the Terms (and any Order placed) to a third party. If this occurs, You will be informed by Us in writing. Your rights under these Terms will not be affected and our obligations under these Terms of Sale will be transferred to the third party who will remain bound by them. You may not transfer or assign Your obligations and rights under these Terms (and any Order placed) without our express written permission.
- c) Successors & Assigns - The Terms shall be binding upon and ensure to the benefit of the Parties and their respective successors and permitted assignees, and references to a Party shall include its successors and permitted assignees.

- d) Rights and Remedies - Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.
- e) Notices - All notices required to be sent pursuant to the Terms may be sent through electronic means, including emails or notifications sent by Altaro to the Customer through the Portal. You consent to receive such notifications by electronic means and acknowledge that such notifications shall be valid as if provided in writing or sent by post.
- f) Severance - If any one or more of the provisions contained in the Terms (or part thereof) or any document executed in connection herewith shall be deemed to be invalid, illegal or unenforceable in any respect by any court or administrative body then the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- g) No Right of Set Off - All payments to be made hereunder pursuant to the Terms shall be made free and clear of, and without any deductions for or on account of, any set-off or counterclaim.
- h) Waiver - The rights of a Party may be waived by such Party only in writing and specifically; the conduct of any one of the Parties shall not be deemed a waiver of any of its rights pursuant to the Terms and/or as a waiver or consent on its part as to any breach or failure to meet any of the Terms or as an amendment hereto. A waiver by a Party in respect of a breach by the other Party of its obligations shall not be construed as a justification or excuse for a further breach of its obligations.
- i) Governing Law - The Terms, the use of the Solutions and Portal, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Malta.
- j) Jurisdiction - Each party irrevocably agrees that the courts of Malta shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- k) Export Restrictions - You agree to comply with all applicable export control laws, including the EU Common Foreign and Security Policy, the United States Export Administration Act, or any other export laws or regulations. By using the Software Services and Documentation, You represent and take full and sole responsibility that i) You are not located in or under the control of or a national or resident of any country or on any list which prohibit the exportation of the Software Services ii) to any person or entity who You know or have reason to know will utilize the Software Services or portion therefore in the design, development, production or use of nuclear, chemical or biological materials, facilities or weapons or iii) to any person or entity who has been prohibited from participating in U.S. by any federal agency of the U.S. government or EU export restrictions
- l) Changes to the Terms - From time to time, Altaro may change or modify this Software Services Agreement ("Terms"). We will endeavor to give You advance warning of such changes and We will notify You of the modified Terms by (i) sending You an email or other notification or (ii) placing a notice on our Portal. Unless otherwise expressly stated, the revised Terms shall be effective as of the date of posting of the revised Terms. Any modifications to the Terms will supersede the prior version.

17. Acceptable Use Policy (AUP)

- a) This Acceptable Use Policy (hereinafter "AUP") is designed to protect the quality and integrity of the Service and in doing so ensure all Altaro customers receive fair and equitable access to the Service.
- b) The AUP is subject to the Terms. Words not defined in this AUP shall have the same meaning provided to them in the Terms.

17.1 Fair Use Limits - To ensure that all Customers use the Software Services in an efficient and reliable manner, We have set up a Fair Use Limits per Software Service. Please refer to each individual Solution Terms for the appropriate Fair Use of that Software Service

17.2 No security or network violations - You may not use Altaro Software Services to violate the security or integrity of any network, computer or communication systems, software application or network or computing device including those of Altaro (each a "System"). Prohibited activities include:

- a) **Denial of Service (DoS)** - where it will result in the target system responding slowly or cannot respond to legitimate traffic becoming ineffective
- b) **Intentional interference** - interfering with the proper functioning of any System, including any deliberate attempt to overload a system
- c) **Unauthorised Access** - Accessing or using any System without permission, including attempting to probe, scan or test the vulnerability of a System or to breach any security or authentication measures used by a Systems
- d) **Avoiding System Restrictions** - using manual or electronic means to avoid any fair use limitations placed on Altaro Systems, such as access and storage restrictions
- e) **Monitoring** of data or traffic on Altaro Systems without permission including **Crawling** of a System that impairs or disrupts the System being monitored or crawled
- f) **Falsification of Origin** - Forcing TCP-IP packet headers, source IP addresses, email headers or any part of a message describing its origin or route
- g) **Excessive restore requests** abusing egress or other legitimate requests that may inhibit other users from utilizing or enjoying the service
- h) **Email** - You will not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission
- i) **Harvest** or otherwise collect information about others, including email addresses, without their consent
- j) **Scrape** or reverse engineering through automation or manual tools or methodologies to access, acquire or copy any portion of the Software Service, or obtain any materials, documents or information through any means not purposely made available online by Altaro

17.3 Illegal Use

In general, the AUP prohibits uses and activities involving the Software Services that are:

- k) In any way that violates any applicable deferral, state, local and international law or regulation, including without limitation any laws regarding the **export of data or software** to and from the EU, US or any other countries
- l) **To send, receive, upload, download, process, use or re-use** any material which does not comply with these Terms
- m) **Illegal, harmful, fraudulent** - any activities that violate the rights of others, may be harmful to others, Altaro Operations or Reputation, including offering or disseminating fraudulent goods, services, schemes or promotions, child pornography, make-money-fast schemes, phishing or any other illegal conduct that promotes or assist any unlawful act and that diminish the use and enjoyment of the Service by others, or is otherwise objectionable
- n) **Infringing Content** - content that infringes any Patents, Trademarks, Trade Secrets, Copyright, Intellectual Property or Proprietary rights of others
- o) **Offensive Content** - content that is defamatory, obscene, indecent, hateful, discriminatory, abusive, invasion of privacy or otherwise objectionable, including content that constitutes child pornography, bestiality or depicts non-consensual sex acts
- p) **Harmful Content** - content or other computer technology that may damage, interfere with, surreptitiously intercept or expropriate any system, program or data including viruses, worms, trojan horses or logic bombs.

17.4 Notification

Although We will endeavor to notify all Customers who We deem to be in breach of the AUP as soon as reasonably practicable, this may not always be possible, or We may not do so before We adopt any of the measures listed hereunder.

Any notification will be made by any means that We consider suitable, including emails, notifications through our Portal or otherwise contacting You through the contact details You provided to us previously.

17.5 Protective Measures

Without limiting any action that We are allowed to adopt in accordance to the Terms, We may also adopt any one or more of the following, in relation to any Customer considered by Us to be in breach of the AUP:

- a) **Charging** - We may charge You a surcharge if You exceed the Fair Use of that particular Solution. Please refer to the Solution Terms for the relevant charges

- b) *Termination of Account* – We reserve the right to terminate any Account of a Customer that We consider acted in breach of the AUP, or stop backing up the backup item which has exceeded the Fair Use Limit
 - c) *Other* – We may also adopt such technical measures as We consider appropriate to guarantee network stability such as reducing certain feature of the Service, or the frequency of the Snapshots taken during a Day.
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Schedule 1

This Software Services agreement applies to the following products (the “Licensed Software”):

- Altaro Cloud Management Console (CMC)
- Altaro VM Backup Console
- Altaro Office 365 Backup Console
- Altaro Endpoint Backup Console