



VIAKOO SERVICE TERMS AND CONDITIONS

1. Viakoo Service. Viakoo Service subscription is for the Infrastructure and Term specified in the service or subscription order (the “**Order**”) submitted by Subscriber or its authorized representative and accepted by Viakoo. The Service may be either cloud-delivered or on-premise configured, and includes such Viakoo Action Platform modules as the Order shall specify, which may include, among others, cyber vulnerability device management (firmware patching, certificate management, and password enforcement), and/or service-assurance modules (alerting, diagnostic and compliance). “**Infrastructure**” means the Subscriber’s data infrastructure system of data collection devices, application servers, data storage, monitors, and system management software under Subscriber’s ownership or control. Service parameters not otherwise specified in the Order, including frequency of alerting, polling and diagnostic refresh, are in Viakoo’s reasonable discretion.

2. Acceptance. Subscriber accepts these Terms and Conditions (this “**Agreement**”) by activating Viakoo Service. The person activating the Service represents and warrants that such person is authorized by Subscriber to do so and to accept this Agreement on Subscriber’s behalf. If Subscriber is an end user or customer of a managed services provider (“**MSP**”) which is authorized to deliver the Service as a Viakoo channel partner, MSP and its personnel may act as Subscriber’s authorized representatives. In such case, terms and conditions specified in the master agreement between Viakoo and the MSP (the “**MSPA**”) may supersede conflicting provisions in Sections 5, 6 and 12 hereof.

3. Service Software; Data Rights and Protection.

(a) Activation of the Service includes Subscriber’s installation and activation of the Viakoo proprietary service software (“**Software**”) which enables collection of Infrastructure configuration and device metadata (“**Metadata**”), synthesis of configuration and event data, link to the Viakoo knowledge base and analytical engine (which may be locally hosted in the case of on-premise configuration), and cyber vulnerability device management.

(b) Viakoo Software does not transmit, and Viakoo does not collect, transmit, process or store, any device substantive data content (payload), or any data that can be identified with any individual person (“**Personal Data**”) other than credentials of Subscriber’s personnel or representatives authorized by it to administer the subscription and/or access Viakoo service on its behalf (“**Users**”). Such credentials may include name, email address, and other User verification information, and are processed by Viakoo as Subscriber’s Confidential Information subject to Subscriber’s control. Subscriber represents and warrants to Viakoo that Subscriber has obtained all requisite consent under applicable law of all Users to retain and furnish such Personal Data to Viakoo. If Subscriber should happen to release any device substantive data

content to Viakoo inadvertently, such as in the course of any customer support call or like diagnostic activity, such content also will comprise Confidential Information of Subscriber.

(c) If Subscriber or any of its Users are or during the Term come to be within the jurisdiction of the European Union or subject to data protection laws, such as the General Data Protection Regulations of the European Union (2016/679 (“**GDPR**”), Subscriber will enter into a data protection agreement complying with GDPR Article 28 in a form reasonably acceptable to Viakoo, specifying that Viakoo acts as processor of any User Personal Data for Subscriber as the controller and may process such data in the United States.

(d) Confidential Information of Subscriber includes raw Infrastructure configuration and device Metadata. The products of data processing, analysis and synthesis by the Viakoo Software, including Viakoo graphical representations, reconstructions and archiving of the Infrastructure and device configuration, status and dynamics statistics and predictive analysis, and linking to the Viakoo knowledge base, are Viakoo proprietary information which may be made available to Subscriber and its Users as part of Viakoo Service. Viakoo accumulates and retains all proprietary and usage rights to non-Subscriber-identified, aggregated and anonymized statistical data which are products of the Viakoo Software.

4. Viakoo Software Rights.

(a) Viakoo grants Subscriber the right to install and run the Software in the Infrastructure for purposes of accessing the Service by its duly authorized Users during the Term. Viakoo reserves and retains all other rights, title and interest in and to the Software, any improved, updated, modified or additional modules thereof and the products thereof, and grants no other right, title or interest in or to the same except as expressly provided in this Agreement for purposes of enabling the Viakoo Service. Subscriber shall not – and shall not permit or assist any third party to – copy, reverse engineer, reverse assemble, decompile, or otherwise attempt to discover or derive the source code of, all or any portion of the Viakoo Software, or reproduce, modify, translate or create derivative works of all or any portion of the Viakoo Software. Viakoo retains the right to update, upgrade and modify the Viakoo Software and other service parameters not specified in the Order at its discretion without notice to Subscriber.

(b) At Viakoo’s sole discretion, Viakoo also may upon request grant Subscriber direct programmatic access (such as via API) to products of the Viakoo Software, which may include synthesized configuration data or event data; but in which Viakoo nevertheless retains all proprietary and usage rights.

(c) Subscription is non-exclusive and non-transferable. Subject to Section 11(a), Subscriber shall not without Viakoo’s prior express, written permission (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or

make available to any third party the Service in any way; or (ii) “frame” or “mirror” the Service or any content from it on any server or wireless or internet-based device.

5. Subscription Fees. Subject to the MSPA, if applicable,

(a) Subscription fees for the subscription period as specified in the Order must be prepaid, ordinarily for a minimum Term of 12 months, unless otherwise agreed in writing. Full payment of Subscription fees for renewal periods must be received by Viakoo on or before the start date of the renewal period. Subscription fees are for the entire subscription term or specified renewal period and are non-refundable except as provided in Section 8(b).

(b) Without prejudice to any other rights and remedies, if Viakoo’s duly rendered and undisputed invoice shall remain unpaid more than thirty (30) days past due, Viakoo may without liability to Subscriber suspend and disable Subscriber’s access to the Service, and Viakoo shall be under no obligation to provide access to the Service while the subject fees remain unpaid, regardless of whether Subscriber has made payment to any third party agent or intermediary.

(c) If any jurisdiction assesses taxes on the subscription (such as sales, use, value-added, withholding, excise, or any other taxes or government charges, but excluding taxes on the income of Viakoo), Viakoo may require Subscriber to pay the appropriate additional amounts such that Viakoo receives the full amount invoiced, without offset or deduction (or if applicable to pay the applicable taxing authority and provide Viakoo the applicable certificates and receipts promptly upon request).

6. Termination. Subject to the MSPA, if applicable, upon expiration of the subscription Term or upon Subscriber’s material violation of this Agreement, (i) Viakoo may terminate, suspend and disable Subscriber’s access to the Service without further notice or liability to Subscriber; (ii) Subscriber shall remain fully liable for any unpaid charges incurred prior to such expiration or termination; (iii) Subscriber shall immediately uninstall and remove all Viakoo Software from its Installation, cease all use of, and access to, the Service, and (to the extent reasonably possible and commercially practicable under the circumstances) delete all copies of any Viakoo passwords or access codes; (iv) Viakoo shall have no obligation to retain any Subscriber Metadata beyond 60 days after termination; and (v) this Agreement shall survive such termination.

7. Confidential Information.

(a) A party’s “**Confidential Information**” includes all non-public information that it designates as being confidential or which, under the circumstances surrounding disclosure, reasonably ought to be treated as confidential, including without limitation, its finances, know-how, trade secrets, all confidential commercial, financial, marketing, business and technical information and data, employee lists and business pricing, and the terms of this Agreement. Subscriber’s Confidential Information includes details concerning Subscriber’s Infrastructure configuration, devices and Metadata, subject to Section 3(d).

(b) Each party will retain in confidence the Confidential Information of the other and will use at least the same standard of care and diligence to protect the confidentiality thereof as that party applies to protect its own valuable confidential or proprietary information, but not in any case less than a reasonable standard of care. Neither will use the other’s Confidential Information other

than as contemplated for providing and accessing the Service under this Agreement, nor release it to any personnel or representative unless that person needs to know the Confidential Information in order to further the authorized use thereof and is legally bound to protect the same in like manner as provided in this Agreement.

(c) Section 7(b) shall not impair the recipient’s right to use and disclose otherwise Confidential Information that: (i) the recipient possessed without an obligation of confidence before receiving it from the disclosing party; (ii) the recipient developed or had developed for it independently without violation of Section 6(b); (iii) the recipient obtains from a third party who has no obligation of confidence as to it; (iv) becomes publicly available through no breach of this Agreement; or (v) the recipient is required to disclose by order of a court or by a government body or agency or by the listing rules of any stock exchange, provided that if a party is required by law, government regulation, court order or listing rules to disclose any Confidential Information of the other, the party under legal obligation will give the owner of the Confidential Information advance notice to the extent legally permitted and as promptly as reasonably feasible in order to allow the owner an opportunity to seek a protective order or take other reasonable action in light of the circumstances to protect its Confidential Information.

(d) Each party acknowledges that the unauthorized disclosure or use of other’s Confidential Information may result in substantial damage to which cannot be quantified and therefore agrees that the owner thereof may seek and obtain equitable relief such as an injunction or specific performance, in addition to monetary damages and all other remedies available at law or equity, as a remedy for any such breach of this Agreement; and each waives any requirement for the securing or posting of any bond in connection with such remedy.

8. Warranties.

(a) Viakoo warrants that the Service as deployed by Viakoo will not contain or inject into Subscriber’s Installation any virus, time-bomb, trojan horse, worm or other harmful or disabling code, or facilitate unauthorized access to Subscriber’s Installation or interfere with its normal operation. Viakoo does not warrant that, after deployment of the Service, Subscriber’s Installation will remain permanently immune from and unaffected by extrinsic attacks, interruptions, errors, defects, malware or other potentially harmful components not originating from the Service.

(b) Viakoo warrants that the Service and Software do not infringe, violate or misappropriate any intellectual property rights of any third party. Viakoo will, at its own cost, indemnify, defend and hold harmless Subscriber, its officers, directors and personnel (the “**Indemnified Parties**”), with counsel of Viakoo’s selection, against the claim of any third party that the Service or the Software infringe or violate the rights of the third party under any valid United States patent or copyright (a “**Claim**”), provided, that the Indemnified Parties shall give Viakoo prompt notice of the Claim and any written communications received in connection with it, and reasonable cooperation in the investigation, preparation and defense of the Claim. The Indemnified Parties shall have the right to participate in defense of the Claim with counsel of their own selection at their own expense. Viakoo shall not enter into any settlement of a Claim binding upon Subscriber without Subscriber’s consent, which shall not be unreasonably withheld. If Viakoo reasonably anticipates that the Claim may result in injunction

prohibiting Viakoo from providing the Service or deploying the Software pursuant to this Agreement and any subscription in effect, Viakoo shall, at its discretion, either (i) procure the legal right to do so, or (ii) modify the Service and/or Software so as to make them non-infringing, or (iii) cancel the subscription and refund to Subscriber the pro rata portion of prepaid subscription fees for the unused portion of the subscription period. The foregoing states the sole obligation of Viakoo and remedy of the Indemnified Parties in connection with any Claim.

(c) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 8, VIAKOO SERVICE AND SOFTWARE ARE PROVIDED ON AN "**AS IS**" BASIS. VIAKOO MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PERFORMANCE OF THE VIAKOO SERVICE OR SOFTWARE, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH VIAKOO EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOR ANY REPRESENTATION OR GUARANTEE OF ANY KIND WHETHER EXPRESS OR IMPLIED AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR THE INFORMATION OBTAINED BY THE SUBSCRIBER THROUGH IT.

9. Limitation of Liability. VIAKOO SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES RELATED TO THE VIAKOO SERVICE OR SOFTWARE OR SUBSCRIBER'S INFRASTRUCTURE OR DATA, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS, OR DAMAGES ARISING FROM LOSS OF USE, LOSS OF CONTENT OR DATA OR ANY ACTUAL OR ANTICIPATED DAMAGES, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH DAMAGES MAY BE BASED, AND EVEN IF VIAKOO AND/OR SUBSCRIBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN THE CASE OF VIAKOO'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7, INDEMNIFICATION OBLIGATIONS AS STATED IN SECTION 8(B), AND PERSONAL INJURY OR DEATH ARISING FROM VIAKOO'S WILLFUL MISCONDUCT, IN NO EVENT SHALL VIAKOO'S LIABILITY TO SUBSCRIBER FOR DAMAGES HEREUNDER EXCEED THE AMOUNTS PAID BY SUBSCRIBER TO VIAKOO HEREUNDER FOR THE SUBSCRIPTION PERIOD THEN IN EFFECT.

10. Notice. The parties may give written notice required or permitted hereunder via electronic mail (deemed effective upon email response or confirmation by the recipient), by nationally recognized overnight delivery service (deemed effective upon delivery in the records of the service), or by first class mail, postage prepaid (deemed effective five (5) days after the postmark date), in each case to the address indicated in the Order or subsequent address provided to the other party by notice hereunder. Viakoo may give service notices to Subscriber by means of postings on the Viakoo Service portal.

11. Assignment; Export.

(a) Subscriber shall not assign the subscription or its rights under this Agreement without Viakoo's prior written consent except to an entity which acquires or succeeds to all or substantially all of Subscriber's business or assets, whether by merger, sale of

assets, or otherwise, and which assumes and agrees in writing to be bound by all of Subscriber's obligations hereunder. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the successor and assigns of the parties hereto.

(b) Export or re-export of any component or device bearing any embodiment of Viakoo Software outside the United States is not authorized except as specifically authorized and permitted by the laws and regulations of the United States and those of all other applicable jurisdictions.

(c) An assignment, export or re-export in violation of this Section 11 shall terminate the subscription.

12. Dispute Resolution. Subject to the MSPA, if applicable,

(a) This Agreement shall be governed by the laws of the State of California, U.S.A., without regard to conflict of laws principles. Venue for resolution of disputes arising under this Agreement, including the interpretation and enforceability of any provision hereof, shall be in the state and federal courts of competent jurisdiction in Santa Clara County, California, to the jurisdiction of which all parties hereto agree to submit.

(b) The prevailing party in any judicial proceeding, lawsuit or claim brought by one party against the other in connection with this Agreement shall be entitled to recover its reasonable fees and costs, including without limitation attorneys' fees, expert witness fees, consultant fees, and related costs and expenses.

13. Integrated Agreement. This Agreement, together with the Order and the MSPA, if applicable, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all existing or prior agreements and communications, whether written or oral, relating to the subject matter hereof. The MSPA, if applicable, and the parties' mutually executed Order (which may be executed and accepted electronically) will prevail in the case of any conflict with this Agreement. Viakoo may update or modify this Agreement upon notice to Subscriber via the Viakoo Service portal. If Subscriber notifies Viakoo of its objection to the modifications within 30 days, the subscription will remain subject to the Agreement as in effect without the modification until the end of the subscription period then in effect, but the Agreement as modified will govern any renewal subscription period. Any other deviation from or modification, supplement or amendment of this Agreement must be set forth in a separate written addendum duly accepted by Subscriber and Viakoo. A party's failure to enforce and provision of this Agreement shall not constitute its waiver or impairment thereof or of its right to avail itself of remedies for breach thereof. A waiver may only occur by express written permission of an authorized officer of the party to whom the duty is owed. No person who is not a party to this Agreement has any right to enforce any rights or remedies hereunder. Any provision of this Agreement held or determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable in any jurisdiction shall be deemed separate, distinct and independent, and shall be ineffective to the extent of the court's holding or determination, without invalidating the remaining provisions of this Agreement in that jurisdiction.
