



Software License and Maintenance Terms and Conditions

Please read the terms and conditions of this Agreement carefully. By installing and/or using the Software you are agreeing to acquire a licence for the Software and to engage Gallagher to provide services relating to that Software on the terms and conditions set out below as well as the Care Plan terms and conditions which can be viewed at <https://supportzone.security.gallagher.com/End-User Knowledge Centre/Gallagher Care Plan>.

If you do not agree to the terms of this Agreement, do not install and/or use the Software and contact your Gallagher distributor for further information.

General Terms and Conditions

1. Term

- 1.1 Subject to the other provisions of this Agreement, the term of this Agreement will commence on the date of installation of the Software and continue until terminated.

2. General

- 2.1 Gallagher will in accordance with the terms and conditions of this Agreement:
- grant the Software Licence to you; and
 - perform the Software Maintenance Services and, by agreement, the Services.
- 2.2 The Software Maintenance Services and the Care Plan Services will be provided to you for the first year from the date that the Software was first issued at no additional cost to you. All other Fees are as set out in clause 6.
- 2.3 Gallagher will, or will procure your Channel Partner to, provide the Product Documentation to you.

3. Software Licence

- 3.1 In consideration of the receipt of the Software Purchase Price and subject to you complying with the terms of this Agreement, you are granted a non-exclusive, non-transferable, royalty-free license to use the Software at the Site(s).
- 3.2 You acknowledge and agree that:
- You own or lease or otherwise have the right to use the Software at the Site(s).
 - You will use the Software in accordance with the Product Documentation.
 - You may only install and use one copy of the Software in live production for each Site and one copy for a test environment for the purposes of evaluating software or system updates. This license does not allow the Software to exist on more than one server and/or in more than one

instance at a time and you may not distribute or make the Software available over a network where it could be used on multiple servers at the same time. You may also make one copy of the Software stored on your server in machine-readable form for backup and security purposes, provided that the backup copy must contain all copyright or other proprietary notices.

- Subject to clause 14.6, you may not, without Gallagher's prior written consent, rent, lease, sell, redistribute or sub-license the Software or provide third parties with the Software.
 - You may not remove, obscure or alter any copyright or proprietary notice on the Software.
 - You may not, and may not enable others to, copy (except as expressly permitted by this Agreement), modify, edit, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Software or any services provided by the Software (including the Electronic Key(s)). Nothing in this Agreement will give you or any other person any right to access or use the source code of the Software.
 - You will use the Software in compliance with all applicable laws, including local laws of the country or region in which you reside or in which you obtained or use the Software.
- 3.3 You must be correctly licensed for the use of the Software at all times and must immediately notify Gallagher or your Channel Partner if the actual licensing varies without our approval. You may elect at any time to carry out a Security Health Check to identify the number of Gallagher products and your use of the Software at your Site. Separate terms and conditions will apply.

- 3.4 You acknowledge that Gallagher may require, by notice to you in writing, that a Software update is installed by you if required to resolve any potential security vulnerabilities or performance issues. If you elect to not install a Software update or release, this may affect your entitlement to Software Maintenance Services.
- 3.5 You must take all necessary steps to ensure that your employees, contractors and agents comply with your obligations set out in this Agreement in relation to their use of the Software.
- 4. Third Party Products and Software**
- 4.1 Any third party products supplied by Gallagher in relation to this Agreement are not warranted or guaranteed in any way by Gallagher.
- 4.2 Third Party Software supplied by Gallagher to you under this Agreement is strictly subject to the terms and conditions in the applicable software licence agreement relating to such Third Party Software.
- 4.3 In addition, third parties may integrate other products to interface with the Software. Gallagher will not be responsible or liable for any features, content or services provided through any third party products. We do not provide any warranty regarding the compatibility or continued compatibility of third party products with the Software, except as expressly stated in our warranty policy. We make no representation or warranty, endorsement or guarantee for any third party products or any content on those applications.
- 5. Data**
- 5.1 The output of the Software (the "Data") is owned by you.
- 5.2 You acknowledge that Gallagher may collect, store and use the Data, including personal information, and any other information provided by you in connection with this Agreement for the purposes of this Agreement and you provide a royalty-free, perpetual and irrevocable licence for us to use the Data, including for ongoing development and enhancement of our Software, add on services and other related uses. This may include using personal information to contact your employees, contractors and agents regarding Software updates or other relevant information.
- 5.3 Each party must comply with applicable privacy and data laws relating to personal information. You acknowledge that you will ensure that you have obtained all necessary consents relating to Gallagher's collection, storage and use of Data and any personal information provided by you to Gallagher in accordance with this Agreement.
- 5.4 You must immediately notify us on becoming aware of any breach or potential breach of your obligations under this clause.
- 6. Fees**
- 6.1 The Fees payable by you are as follows:
- (a) for the Software Licence, the Software Purchase Price; and
- (b) for Software Maintenance Services, a non-refundable Maintenance Fee payable within 30 days of the commencement of the current Annual Maintenance Year.
- 6.2 You will pay the applicable Fees directly to Gallagher or to the Channel Partner, as applicable.
- 6.3 In the absence of specific payment terms, you will pay any other Fees payable within 30 days of the date of an invoice issued by Gallagher or the Channel Partner without deduction or set off. Please note that no additional fees are payable for the Care Plan Services and the Care Plan Services will be provided to you free of charge (provided you have paid the Maintenance Fee for that period).
- 6.4 Gallagher or the Channel Partner may increase the Maintenance Fee with effect from the commencement of the next Annual Maintenance Year. If for any reason an annual increase is missed, Gallagher reserves the right to recover such increase in a subsequent annual increase.
- 6.5 If you fail to pay the Maintenance Fee, we will cease to provide Software Maintenance Services for the applicable Annual Maintenance Year. You will also no longer be eligible to receive the Care Plan Services.
- 6.6 You may elect a renewal date for the Software (being the "Common Renewal Date") by notice in writing to Gallagher. In such circumstances, the Maintenance Fee for that Site will be calculated on a pro rata basis up to the next anniversary of the Common Renewal Date
- 7. Warranties**
- 7.1 Gallagher warrants that:
- (a) the provision of the Software and your use of the Software in accordance with this Agreement will not infringe any third party's intellectual property rights;
- (b) for a period of 90 days from the date of installation, the Software will in all material respects provide the functionality specified in the then current Product Documentation;
- (c) the Services it provides under this Agreement will conform to generally accepted industry standards for such Services (but does not warrant that such Services or resulting work product will be error free).
- 7.2 Other than the warranties set out in clause 7.1 above, Gallagher gives no warranty or representations in relation to the Software and the Services, including as to description, quality, or fitness for any particular purpose, and all such warranties expressed or implied by law, to the extent permissible by law, are excluded. Gallagher does not warrant that the functions contained in the Software will meet your business requirements or that the operation of the Software will be uninterrupted or error free.
- 7.3 If the Software does not comply with 7.1(b) above then, to the extent permitted by law, Gallagher's sole liability

will be to rectify any defect as part of the Software Maintenance Services.

8. Intellectual Property

8.1 You acknowledge and agree that Gallagher owns and exclusively retains all right, title and interest in the intellectual property rights in the Software, including copyright and all source and object codes, software and screen displays, associated packaging and documentation (including the Electronic Key(s)), trade names or trademarks (whether registered or not), patents, registered designs, Confidential Information and trade secrets and any enhancements, additions or modifications of such intellectual property rights (the “**Intellectual Property**”). This Agreement does not confer on you any rights in the Intellectual Property.

8.2 You agree that you will not at any time question, dispute or challenge Gallagher’s ownership of or rights to the Intellectual Property or assist any third party to do so.

9. Indemnity

9.1 Gallagher will indemnify you for any costs or damages awarded by a court against you arising from a breach of the warranty in clause 7.1(a) and any reasonable legal expenses incurred by you in relation to the breach, provided that you have:

- (a) used the Software in accordance with the Product Documentation and any other instructions or information provided by us or a Channel Partner;
- (b) you have not modified or altered the Software without our prior written authorisation or used the Software in conjunction with third party equipment not approved by Gallagher;
- (c) used reasonable endeavours to mitigate such expenses and have complied with your obligations as set out in this Agreement, including clause 9.2; and
- (d) promptly notified Gallagher of the claim in writing; and
- (e) provided Gallagher with all reasonable assistance requested, at Gallagher’s cost, in relation to the claim.

9.2 You agree that, if there is a third party infringement claim relating to the Intellectual Property:

- (a) Gallagher may, at its election:
 - (i) secure the rights for you to continue to use the Software; or
 - (ii) replace or modify the Software so that the Software or the use of the Software does not infringe the intellectual property rights of any other person (provided such replacement or modification does not materially impact the functionality of the Software); or
 - (iii) if the above paragraphs are not commercially reasonable, terminate this Agreement.
- (b) Gallagher will have the right to conduct the whole or any part of the defence; and

(c) you will not in any circumstances admit liability or make any agreement or settlement in relation to the claim without the prior written consent of Gallagher.

9.3 You agree to indemnify and hold Gallagher harmless from any loss, damage, claim or demand, whatsoever that it may suffer in connection with or arising out of the negligence or non-compliance with this Agreement by you or your directors, officers, employees, contractors or agents.

10. Exclusion of Liability

10.1 To the extent permitted by law, if Gallagher becomes liable for any amount under or in relation to this Agreement, its total liability is limited to:

- (a) during the first year, an amount equivalent to the sum of the Software Purchase Price; and
- (b) for subsequent periods, the amount equivalent to the sum of the Maintenance Fee paid by you in the 12 months immediately preceding the event giving rise to the claim.

10.2 Gallagher will not in any circumstances be liable to you or to your directors, officers, employees, contractors or agents for any loss or damage caused by:

- (a) your use of the Software other than the latest release of the Software;
- (b) any Third Party Software or third party products;
- (c) any failure or defect in any hardware or equipment (other than Gallagher hardware, which is subject to Gallagher’s warranty terms and conditions);
- (d) accidental errors or other matters beyond Gallagher’s reasonable control (including the operation and security of your internet).

10.3 The limitations on liability in this clause 10 do not apply in relation to liability relating to any wilful act or omission or fraud by Gallagher.

10.4 Notwithstanding any provision of this Agreement, neither party will have any liability or responsibility to the other party for any indirect or consequential loss whether or not a party had been made aware of the possibility of such loss. Gallagher will not be liable in any circumstances for any loss of profits, business, revenue, goodwill or anticipated savings, loss of use or production or loss or corruption of data relating to this Agreement.

10.5 No action arising out of this Agreement may be brought by either party more than 12 months from the date of a party becoming aware of the event causing loss.

11. Confidentiality

11.1 Each party will:

- (a) keep the Confidential Information of the other party (the “**Disclosing Party**”) strictly confidential and not disclose the Confidential Information to third parties, except as expressly provided in this clause 11;
- (b) only disclose Confidential Information to its employees, consultants or professional advisers

- (and, in the case of Gallagher, its Channel Partners) for a proper purpose; and
- (c) take reasonable security measures to keep the other party's Confidential Information confidential.
- 11.2 The restrictions in this clause do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation. If you are required to disclose Gallagher's Confidential Information under this clause, you must provide as much notice as practicable to Gallagher and must comply with Gallagher's reasonable requests regarding such requirement.
- 11.3 Upon termination of this Agreement, the receiving party of Confidential Information will, at the disclosing party's request, return all Confidential Information provided to it under this Agreement.
- 11.4 You agree that Gallagher may use your licensing of the Software (including using your Site and organisation name) for marketing and promotional purposes, unless you advise Gallagher in writing and such notice is sent to sales@security.gallagher.com or Security Marketing, Gallagher Group Limited, 181 Kahikatea Drive, Hamilton, New Zealand. Neither party may otherwise advertise or publicly announce any matter relating to this Agreement without the prior written consent of the other party.
- 12. Termination**
- 12.1 Either party may terminate this Agreement immediately by notice in writing if:
- the other party commits a material breach of this Agreement that is incapable of remedy;
 - the other party commits a material breach of this Agreement capable of remedy (which includes a failure to pay) and fails to remedy that breach within 30 days of written notice of the breach by the non-defaulting party;
 - the other party becomes subject to an Insolvency Event.
- 12.2 If this Agreement is terminated as a result of material breach or an Insolvency Event by you, all outstanding Fees will be immediately due and payable by you to Gallagher.
- 12.3 Gallagher may terminate this Agreement by giving written notice to you if it ceases to offer the Software as a Gallagher product. In such circumstances, Gallagher will endeavour to provide at least 3 months' written notice to you.
- 12.4 If this Agreement terminates, you must cease, and must ensure your directors, officers, employees, contractors and agents cease, all use of the Software, Product Documentation and Services, remove all copies of the Software from your equipment and promptly return to Gallagher all copies of the Product Documentation and any other information made available to you by Gallagher or the Channel Partner. The Software License will terminate upon termination of this Agreement.
- 12.5 Either party may terminate the Software Maintenance Services without cause by giving not less than 30 days' notice in writing prior to and to take effect at the end of each Annual Maintenance Year. You will be entitled to continue to use the Software following termination under this clause 12.5. If you elect to terminate the Software Maintenance Services, Gallagher will have no obligation to refund any Maintenance Fees already paid by you.
- 12.6 Clauses 5, 7 to 12 and 14.8 of this Agreement shall survive any such termination.
- 13. Force Majeure**
- 13.1 Neither party will be liable to the other party for a failure to perform its obligations under this Agreement, other than payment obligations, to the extent that such performance is prevented by a Force Majeure Event.
- 14. General**
- 14.1 If you wish to send a notice to Gallagher under this Agreement, Gallagher's notice details are as follows:
- Gallagher Group Limited
181 Kahikatea Drive
Hamilton
New Zealand
Attention: General Counsel / COO - Security
Email: legal@gallagher.com / sales@security.gallagher.com
- 14.2 This Agreement constitutes the entire agreement between you and Gallagher relating to the Software Licence and provision of the Services and supersedes any prior arrangement or understanding, whether written or oral, relating to the subject matter of this Agreement.
- 14.3 The failure by either party to require strict performance by the other of any of the provisions of this Agreement shall not waive or diminish the rights of that party under this Agreement.
- 14.4 If any provision of this Agreement is declared invalid, the remaining provisions of this Agreement will continue to apply.
- 14.5 Gallagher may assign or novate any or all of its rights or obligations by providing you with 30 days' prior notice of any such assignment or novation.
- 14.6 If you sell or cease leasing the Site, you will be responsible to novate your rights and obligations under this Agreement to the new owner or lessee of the Site(s). We consent to the novation of this Agreement to the new owner or lessee of the Site.
- 14.7 No amendment or modification of this Agreement will be binding unless signed by an authorised representative of each party. Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this Agreement will prevail.
- 14.8 This Agreement will be governed by the laws of New Zealand and under the exclusive jurisdiction of the courts of New Zealand.

15. Definitions and Interpretation

15.1 In this Agreement, unless the context requires otherwise:

Agreement means this agreement, including all Schedules.

Annual Maintenance Year or Maintenance Period means the period of one year (or such period as agreed by Gallagher in writing) commencing on:

- (a) the date that is one year from the date that the Software was first issued; or
- (b) if you have elected a Common Renewal Date, the Common Renewal Date; and
- (c) each subsequent anniversary of the above applicable date.

Care Plan means the 'Gallagher Care Plan', as may be updated from time to time and as detailed at <https://security.gallagher.com/gallagher-care-plan>.

Care Plan Services means those Care Plan Services described in Schedule 1.

Channel Partner means Gallagher's distributor engaged in respect of the Site(s).

Common Renewal Date has the meaning given to that term in clause 6.6.

Confidential Information means any and all information, regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this Agreement, excluding where:

- (a) the information is publicly available or rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
- (b) the information was developed by the receiving party independently of the information disclosed by the disclosing party.

For the avoidance of doubt, the terms of this Agreement are Confidential Information of Gallagher.

Electronic Key means the unique license file provided by Gallagher or a Channel Partner to you that unlocks the Software at the Site(s).

Fees means all applicable fees payable by you under this Agreement.

Force Majeure Event means any event reasonably beyond the control of a party.

Intellectual Property has the meaning given to that term in clause 8.1.

Maintenance Fee means the annual fee payable for the Software Maintenance Services as notified to you by Gallagher or a Channel Partner in writing from time to time.

Product Documentation means the Gallagher Command Center User Guide (3E2732), as may be updated from time to time.

Site Contact means the end user site contact e-mail captured within the 'New Site Configuration Form', as may be updated from time to time by notice to us or to your Channel Partner.

Services means, as applicable, the services provided by Gallagher from time to time under this Agreement (excluding the License and Software Maintenance Services).

Site(s) means the physical sites at which the Software is installed.

Security Health Check means the Gallagher tool available to assess your Gallagher security system.

Software means the Gallagher Command Centre and optional licensed software features/interfaces for which Gallagher has provided you an Electronic Key, including the software which can be downloaded by you to selected Gallagher hardware devices and any applications provided by Gallagher from time to time.

Software Licence means the licence to use the Software granted under this Agreement as set out in clause 3.

Software Maintenance Services means those maintenance services described in Schedule 1.

Software Purchase Price means the purchase price paid to the Channel Partner for this Software installed at the relevant Site(s).

Third Party Software means software provided by Gallagher for which the licence is granted by a third party.

You means your organisation and includes your successors and approved assigns.

15.2 In this Agreement, unless the context requires otherwise:

- (a) clause and other headings are for ease of reference only and do not affect the interpretation hereof;
- (b) the singular includes the plural and vice versa and words importing one gender include the other genders;
- (c) a reference to a clause or a Schedule is to a clause or Schedule of this Agreement;
- (d) including does not imply any limitations;
- (e) a reference to any document, including this Agreement, includes a reference to that document as amended or replaced;
- (f) any reference to "approval", "consent", "authorisation" or any other similar terms means the approval, consent or authorisation of Gallagher at its sole and absolute discretion.

Schedule 1 - Services

1. **Software Maintenance Services**
 - 1.1 **Software Maintenance Services:** Subject to clause 1.2, Gallagher will in respect of Software for the duration of the Maintenance Period:
 - (a) implement any updates (major or minor) of the Software and Product Documentation; and
 - (b) log and manage any Software defects reported by you or a Channel Partner to Gallagher and use reasonable endeavours to correct any defects; and
 - (c) provide other related services as advised to you from time to time, (“Software Maintenance Services”).
 - 1.2 **Conditions:** The provision of Software Maintenance Services to your Site/s is conditional on:
 - (a) you having a currently supported release of the Software installed at all of your Sites (where “supported release” means versions and platforms per the Supported Command Centre Versions and Operating Platforms (3E4818);
 - (b) the Software being in the form in which it was supplied and/or updated and/or upgraded by Gallagher;
 - (c) the Software having been and being used at all times in a proper manner and in accordance with the instructions and manuals supplied by Gallagher;
 - (d) the non-refundable Maintenance Fee being paid for the relevant Maintenance Period.

If we have not received payment of the Maintenance Fee within 120 days following the commencement of the next Maintenance Period, we will notify your nominated Site Contact of the services cancellation.
 - 1.3 **Rights Reserved:** Notwithstanding clauses 1.1 to 1.2 above:
 - (a) Gallagher reserves the right to release new optional features and interfaces to the Software as new chargeable products that you may elect to purchase.
 - (b) Gallagher may in its sole discretion withdraw optional feature(s) and interface(s) for whatever reason by giving notice to you. This notice may be made to you during any current Maintenance Period. Software Maintenance Services for the feature(s) and interface(s) notified under this clause will cease from the expiry of the then current Maintenance Period (unless it is not feasible for Gallagher to continue to provide Software Maintenance Services).
 - 1.4 **Term:** Software Maintenance will be provided for the Maintenance Period and will be automatically renewed for a further period of not less than 12 months on the expiry of a Maintenance Period, subject to payment of the relevant Maintenance Fee or notice under clause 12.5. The Maintenance Period can be longer than 12 months (in multiples of 12 months) only by agreement in writing by Gallagher.
 - 1.5 **Reinstatement:** If you terminate the Software Maintenance Service and you subsequently wish to reinstate those Software Maintenance Services, a renewal fee will be payable and will be calculated as the Maintenance Fee for the then current Annual Maintenance Year calculated at the then current rate, plus the Maintenance Fee that would otherwise have been payable for the entire period from the termination by you.
2. **Care Plan Services**
 - 2.1 **Care Plan Services:** Subject to clause 2.2 to 2.5, Gallagher will, for the duration of the Maintenance Period, also provide you with Care Plan Services for no additional fee. The Care Plan Services offered as well as the Care Plan terms and conditions are accessible and detailed at <https://supportzone.security.gallagher.com/End-User-Knowledge-Centre/Gallagher-Care-Plan>.
 - 2.2 **Conditions:** The provision of Care Plan Services to your Site/s is conditional on the conditions noted at clause 1.2 above and subject to clause 1.4 to 1.5. For the avoidance of doubt, the conditions noted at clause 1.2 are repeated in this clause 2.2.
 - 2.3 **Rights Reserved:** Notwithstanding clauses 2.1 and 2.2 above, Gallagher may in its sole discretion withdraw the Care Plan Services without reason by giving notice to you. This notice may be made to you at any time during any current Maintenance Period.
 - 2.4 **Term:** Care Plan will be provided for the Maintenance Period provided there is active Software Maintenance and the Maintenance Fee has been paid for the relevant Maintenance Period. The Care Plan will be automatically renewed for a further period of not less than 12 months on the expiry of a Maintenance Period, subject to payment of the relevant Maintenance Fee or notice under clause 12.5. The Maintenance Period can be longer than 12 months (in multiples of 12 months) only by agreement in writing by Gallagher.
 - 2.5 **Reinstatement:** Access to the Care Plan will terminate if you terminate the Software Maintenance Service. Access to the Care Plan will only be provided if you subsequently wish to reinstate the Software Maintenance Services, a renewal fee will be payable and will be calculated as the Maintenance Fee for the then current Annual Maintenance Year calculated at the then current rate, plus the Maintenance Fee that would otherwise have been payable for the entire period from the termination by you.

3. **Other Services**

- 3.1 Gallagher may provide other Services to you relating to the Software for a fee to be agreed between the parties.
- 3.2 Customisations, integrations and interfaces are not included in this Agreement. Additions of these items will be addressed in a separate agreement (including any customised software maintenance) and may incur additional Fees.