Appendix II: Secunia ApS End User Terms and Conditions for CSI 7.0.

1. Definitions

As used in these Terms and Conditions, the following terms shall have the following meaning unless the context requires otherwise:

"Agreement" means the agreement whereby the Customer has purchased the Product(s) to be provided by Secunia.

"Deliverables" means the various criteria for calculating the price or limiting the rights to use the Product(s), including, without limitation, the Licence Period; the number and identity of Users and the number of IP-addresses and/or hosts. The Deliverables are set forth in the Agreement.

"Customer" means the legal entity that has purchased a license to use the Product(s).

"Customer Data" has the meaning ascribed to it in clause 7.4

"Data" relates to the meaning described in clause 7.1.

"Licence Period" means the period of time during which Secunia provides the ordered Product(s) to Customer specified in the Agreement.

"Linked Websites" means the websites as defined in clause 12.1.

"Price List" means Secunia's price list (as amended from time to time).

"Product(s)" means the product set forth in the Agreement and all other Software and Website Services provided to Customer by or on behalf of Secunia.

"Secunia" means Secunia ApS, Company/VAT no. 26833345, Rued Langgaards Vej 8, 4., 2300 Copenhagen S, Denmark.

"Software" means any software provided to Customer by Secunia.

"Terms and Conditions" means these terms and conditions as well as all other operating rules, policies and procedures and any additional conditions contained in documents that describe order-specific information (e.g. subscription prices, licence terms, and billing information).

"User" means any natural person authorised by Secunia to use the Product(s) being either an employee of Customer or a third-party consultant working for Customer at Customer's site.

"Website Services" means any online services provided by or on behalf of Secunia on secunia.com, ca.secunia.com, csi.secunia.com, or any other Secunia website, including the use of the information services from the websites

2. Scope of the Terms and Conditions and Contract Formation

2.1 These Terms and Conditions apply to the use of the Product(s).

2.2 Any use of the Product(s) is subject to the provisions as outlined in these Terms and Conditions. Any general terms and conditions or standard agreements provided by Customer that has not been agreed upon in writing by Secunia are hereby explicitly rejected.

2.3 Orders concerning Product(s) to be provided by Secunia for a fee shall become binding on Secunia upon Customer's written acceptance of these Terms and Condition.

2.4 If Customer chooses to upgrade or Customer otherwise accepts new terms for use of the Product(s), the version of the terms and conditions accepted as part of the ordering procedure shall replace the previous versions of the terms and conditions with respect to the upgraded/changed Product(s).

3. Changes to the Product(s)

3.1 Secunia reserves the right to make the changes it deems necessary including limitation to the scope, functionalities, and content of the Product(s), or part thereof, at any time in order to comply with legal requirements and/or ensuring compliance with third-party intellectual property rights.

4. Licence

4.1 Secunia grants Customer a non-exclusive and non-transferable licence to use the version of the Software specified in the Agreement, and all upgrades to CSI supplied under the Agreement, solely with and for the operation of Customer's hardware for Customer's internal business for the Licence Period. The licence is limited according to the Deliverables specified in the Agreement. The licence also includes the right to receive copies of the Software together with the necessary documentation in order to load, install, and use the Software on Customer's system in accordance with these Terms and Conditions.

4.2 Except as permitted by mandatory applicable law, as expressly authorised by these Terms and Conditions, or by Secunia in writing, Customer shall not in any form or by any means (i) copy, make error corrections, or otherwise modify, decompile, decrypt, reverse engineer, disassemble, adapt or otherwise reduce all or any portion of any Software provided as a result of the Product(s), to human-readable form; (ii) or transfer, assign, store, reproduce, sublicense, publish, rent, lease, distribute, sell, print, display, perform, or create derivative works from any part of the Product(s); or (iii) commercialise any Product(s), information or products obtained from any part of the Product(s). To the extent that any of the foregoing items include any third-party material, Customer must also obtain written permission from the applicable third party owner prior to engaging in any of the activities set forth in this clause.

4.3 Customer shall not, unless expressly authorised in writing by Secunia, reproduce, distribute, display, sell, publish, broadcast, or circulate any information or other material provided by Secunia and/or any information or other material provided as a result of the Product(s) (e.g. advisories and security updates) to any third-party, including Customer's affiliates, nor make such information or material available for any such use.

4.4 The Product(s) may only be used by the legal entity that has purchased a licence and no shared use with any other legal entity (including Customer's affiliates) is allowed.

4.5 Customer may not remove, conceal, or alter any copyright notices contained in the Product(s), in any information or other material provided by Secunia, and/or any information or other material provided as a result of the Product(s).

4.6 For the avoidance of doubt, Customer and any individual User may not exceed or circumvent the permitted usage as set forth in the Deliverables; e.g. by scanning, patching, or installing the Software on a larger number of hosts than specified in the Agreement or outside the entity(ies) which the Software has been licensed for, or perform any automatic or systematic internal distribution of received advisories and security updates, etc.

4.7 Customer must install and use critical updates within two (2) months of the release date and non-critical updates within twelve (12) months of the release date, subject to reasonable prior notice and availability, in order to ensure that the Product(s) remains functional and to receive support for the Product(s).

4.8 PROVIDED THAT SECUNIA GIVES CUSTOMER NOTICE OF THE DETAILS OF CUSTOMER'S BREACH OF THE AGREEMENT OR THESE TERMS AND CONDITIONS, SECUNIA MAY SUSPEND ANY PRODUCT(S) OR SERVICE WITHOUT FURTHER NOTICE OR PENALTY UNTIL SUCH BREACH IS REMEDIED.

5. Monitoring and Audit

5.1 Customer shall notify Secunia if at any time during the Licence Period one or more of the Deliverables specified in the Agreement are exceeded.

5.2 Secunia may monitor Customer's usage of the Product(s) in order to verify that the Deliverables specified in the Agreement are not exceeded.

5.3 Secunia may upon reasonable notice (which shall not be less than two (2) business days), subject to Customer's reasonable security procedures and during reasonable business hours, conduct an audit to verify that the Deliverables specified in the Agreement are complied with.

5.4 If monitoring or an audit reveals that there is more than one User using a password or the Deliverables specified in the Agreement are incorrect, the fees as set forth in the Agreement shall be recalculated accordingly. No amount shall be refunded if Secunia finds that one or more of the Deliverables are less than stated in the Agreement or if Customer does not fully utilises the rights according to the Deliverables in the Agreement. In the event that any monitoring or audit shows that the Deliverables specified in the Agreement are understated, Customer shall pay Secunia reasonable fees incurred in respect of such monitoring or audit.

6. Confidentiality

6.1 The parties acknowledge and confirm that during the term of the Agreement and forever following its termination, the parties shall treat as confidential and shall not (other than in the proper provision of the Product(s)) use or disclose to any person, firm, or company, the terms of these Terms and Conditions or any confidential information relating to the business of and belonging to the other party, nor permit its use or disclosure.

6.2 Information and materials shall not be considered confidential information for the purpose of these Terms and Conditions provided that they (i) are rightfully in the public domain at the time of the disclosure to the receiving party; (ii) were in the possession of, or known by, the receiving party prior to receipt from the disclosing party; (iii) are rightfully disclosed to the receiving party by another person not in violation of the proprietary or other rights of the disclosing party; (iv) are independently developed by the receiving party, or; (v) are required to be disclosed by law, provided that the party required to make such disclosure shall be required to make reasonable efforts, consistent with applicable law, to limit the scope and nature of such disclosure.

6.3 Any reference to Customer for marketing purposes is subject to Customer's prior written approval. Other than as described in this clause, no public announcement, press release, or circular (other than those required by law or regulation) concerning Customer using the Product(s) must be made by either party without the prior consent of the other party.

7. Data protection and security

7.1 As a part of the Product(s), Secunia will initially detect which of the applications covered by the Product(s) Customer has on its devices and then register these applications. The Product(s) only enable Secunia to register information regarding Customer's applications and the operating system on Customer's devices ("Data"), but not Customer's other data. Secunia only store information which is relevant and necessary for providing the functionalities of the purchased Product(s). The Data is non-personal data only and is generic, standardised, and originates from installed applications and the operating system on Customer's devices only, never from their configuration.

7.2 Following the registration of the applications, the registered applications are continuously matched against Secunia's database to determine whether they are up-to-date or not.

7.3 Secunia uses reasonable business efforts to protect any information transmitted between Secunia and Customer, including Data and Customer Data (as defined below) transmitted during use of the Product(s). Secunia use industry standard SSL to encrypt Data and Customer Data (as defined below) transmitted between Secunia and Customer.

7.4 In case Customer provides Secunia with information regarding Customer, its employees, and its customers ("Customer Data"), Customer acknowledges that such information may be processed by Secunia in connection with the Product(s). Customer warrants that Secunia is entitled to process Customer Data and that Secunia will not be subject to any liability in regard to the processing of Customer Data.

7.5 Customer may at any time give written notice to Secunia that it does not wish Secunia to make use of Data and Customer Data. Where Customer exercises its right to prevent processing of Data and Customer Data which Secunia deems necessary for the proper functioning of the Product(s) or services, Secunia shall have the right to discontinue the delivery of the Product(s) forthwith by written notice.

7.6 If the licence is terminated, Secunia will delete the Data and Customer Data as soon as possible and no later than one month after termination of the licence.

7.7 Secunia shall provide to Customer User IDs and passwords or other secured means to access the Product(s). Both Customer and Secunia shall maintain the confidentiality of User IDs and passwords and Customer shall follow all reasonable instructions relating to the security of the Product(s).

8. Intellectual Property Rights

8.1 All intellectual property rights, including the right to patents, copyright, trademarks, or know how, including any documents or any other material provided to Customer in association with Customer's use of the Product(s) and/or arising and created under and in connection with Customer's use of the Product(s), shall remain vested in and/or automatically and immediately upon creation be vested in Secunia and/or its licensors as the case may be.

8.2 Information procured from a third-party may be the subject of rights owned by that third-party.

8.3 Customer must not use any of Secunia's trademarks in connection with activities, products, or services.

9. Disclaimer and Limitation of Liability

9.1 The Product(s) are intended to detect and disclose potential risks in Customer's system with great accuracy. HOWEVER, THE PRODUCT(S) ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES AND MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF QUALITY OR PERFORMANCE. FOR THE AVOIDANCE OF DOUBT, SECUNIA DOES NOT WARRANT THAT (A) OPERATION OF ANY OF THE PRODUCT(S) SHALL BE UNINTERRUPTED OR ERROR FREE, (B) THAT FUNCTIONS CONTAINED IN THE PRODUCT(S) SHALL OPERATE IN COMBINATIONS WHICH MAY BE SELECTED FOR USE BY CUSTOMER OR MEET CUSTOMER'S REQUIREMENTS, OR (C) THAT THE PRODUCT(S) WILL DETECT ALL VULNERABILITIES.

9.2 Customer accepts that any information provided by Secunia is general information only and is not to be deemed as advice. Secunia will use reasonable business efforts to ensure that any information provided by Secunia is accurate. HOWEVER, SECUNIA DOES NOT WARRANT THE ACCURACY, ADEQUACY, OR COMPLETENESS OF SUCH INFORMATION. ACCORDINGLY, SECUNIA DOES NOT ACCEPT RESPONSIBILITY FOR ANY LOSS SUFFERED AS A RESULT OF CUSTOMER'S USE OF OR RELIANCE ON THE INFORMATION PROVIDED BY SECUNIA WHETHER PROVIDED BY, CONTAINED IN, OR ACCESSED THROUGH THE PRODUCT(S), AS IT REMAINS CUSTOMER'S RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ANY SUCH INFORMATION.

9.3 SECUNIA SHALL IN NO EVENT BE LIABLE TO CUSTOMER (OR ANY OTHER PERSON OR ENTITY) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS AND PRODUCT(S); LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE PRODUCT(S) OR ANY LINKED PRODUCTS INCLUDING CUSTOMER'S USE THEREOF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

9.4 ALL LIABILITY OF SECUNIA, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT AND THE USE OF THE PRODUCT(S), HOWSOEVER ARISING SHALL BE LIMITED TO EUR 100,000. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E. THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

9.5 CUSTOMER ACKNOWLEDGE THAT THE LIABILITY LIMITATIONS AND EXCLUSIONS SET FORTH IN THESE TERMS AND CONDITIONS REFLECT THE ALLOCATION OF RISK AGREED TO BY THE PARTIES AND THAT SECUNIA WOULD NOT DELIVER THE PRODUCT(S) TO CUSTOMER WITHOUT THESE LIMITATIONS AND EXCLUSIONS ON ITS LIABILITY. THESE LIMITATIONS AND EXCLUSIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9.6 To the extent permitted by law, any condition, warranty or representation which would otherwise be implied into these Terms and Conditions including without limitation, any warranty or merchantability, title, non-infringement or fitness for a particular purpose or use is hereby excluded.

9.7 Nothing in clause 9 shall be construed to limit Secunia's liability under the mandatory provisions of applicable product liability rules. Any product liability is, however, disclaimed to the farthest extent possible.

10. Indemnification

10.1 Subject to the limitation in clause 9.4, Secunia shall indemnify Customer from and against any and all damages awarded by any court holding that any of the Product(s), as delivered by Secunia to Customer, infringes any intellectual property rights of any third party who is not an affiliate of Customer.

10.2 Secunia's obligations under clause 10.1 are subject to the conditions that (i) Customer provides prompt (but in no event more than 30 days) written notice of such claims, (ii) Customer provides all necessary information and authority requested or required for the defence or settlement of such action or proceeding, and (iii) Secunia has sole control over the defence and settlement of such claims. Notwithstanding anything to the contrary, Secunia shall not be responsible for any cost or expense incurred or compromise made without Secunia's prior written consent.

10.3 Secunia's obligations under clause 10.1 shall not apply to the extent that such damages are related to (i) any modification or alteration of the Product(s) by anyone other than Secunia, (ii) Customer's use of a non-current copy of the Product(s), (iii) any specifications, software, hardware or services provided by or on behalf of Customer, (iv) any combination of the Product(s) with any hardware, software, services or portion thereof that is not (x) supplied by or on behalf of Secunia, or (y) specified by Secunia to be used with the Product(s), or (v) Customer's use of the Product(s) in a manner not specified in the specifications and documentation or otherwise in violation of these Terms and Conditions.

10.4 If the Product(s) or any portion thereof, becomes, or Secunia believe is likely to become, the subject of an intellectual property claim, Secunia shall, at its option and expense, have the right to (i) procure for Customer the right to continue using the Product(s) or the portion so affected, or (ii) modify the Product(s) to avoid the intellectual property claim, (iii) substitute functionality substantially equivalent to the Product(s) at the time of such substitution, or (iv) terminate the granted license and provide to Customer a refund of any prepaid-portions of the subscription fees under the Agreement.

11. Injunctive Relief

11.1 The parties specifically recognise that any breach of these Terms and Conditions will cause irreparable injury to Secunia and that actual damages may be difficult to ascertain, and in any event, may be inadequate. Accordingly, the parties agree that in the event of any such breach, notwithstanding anything in clause 17, Secunia shall be entitled, without having to post bond, to immediate injunctive relief in addition to such other legal and equitable remedies that may be available.

12. Advertisements and Linked Web Sites

12.1 Secunia's websites may contain links to other websites ("Linked Websites"). Those links are provided for convenience only and may not remain current or maintained

12.2 Secunia is not responsible for the content or privacy practices associated with Linked Websites.

12.3 Secunia's links with Linked Websites should not be construed as an endorsement, approval, or recommendation by Secunia of the owners or operators of those Linked Websites, or of any information, graphics, materials, products, or services referred to or contained on those Linked Websites, unless and to the extent stipulated to the contrary.

12.4 The responsibility for the content of advertisements appearing on Secunia's websites (including hyperlinks to advertisers' own websites) rests solely with the advertisers. The placement of such advertisements does not constitute a recommendation or endorsement by Secunia of the advertisers' products and each advertiser is solely responsible for any representations made in connection with its advertisement.

12.5 When accepting these Terms and Conditions the Customer accepts that Secunia can contact the Customer by email with information about new products, enhancement of existing Product(s), and newsletters regarding products from Secunia. If the Customer does not wish to receive the abovementioned information, the Customer can unsubscribe via the email sent to the Customer after the acceptance of these Terms and Conditions.

13. Term and Termination

13.1 Without prejudice to any rights of either party Secunia may terminate the license grated:

13.1.1 immediately on written notice being given by Secunia if Customer commits a material breach of these Terms and Conditions or the Agreement.

13.2 Upon any termination of the license granted, Customer shall immediately uninstall and discontinue use of the Software affected hereby and promptly certify to Secunia that it has discontinued use of and returned or destroyed all copies of the affected Software then in its possession, including all related documentation.

14. Notices

14.1 All notices shall be in writing, and delivered by courier or registered mail, or by either facsimile or electronic mail with confirmation, to the addresses specified during the ordering/registration procedure or any other address stipulated in writing by one party to the other. Notice shall be deemed received on the date three (3) business days after being sent, if by courier or registered mail, or on the date actually received, if by facsimile or electronic mail.

15. Force Majeure and other Events Outside of Secunia´s Control

15.1 Secunia will not be liable for any failure to perform its obligations hereunder due to reasons beyond Secunia's immediate internal control, including e.g. any act of nature, fire, labour dispute, unusually severe weather, delay caused by a government intervention, failure to grant a licence or necessary permission, delay of a subcontractor or supplier in furnishing materials and products, or any other cause beyond Secunia's immediate internal control, whether these conditions make Secunia's performance impossible or merely difficult. The obligations and rights of Secunia shall be extended for a period equal to the period during which such events prevent Secunia's performance. Secunia shall use all commercially reasonable efforts to avoid or remove such cause of non-performance and to minimise the consequences thereof and shall resume performance hereunder forthwith upon removal of such cause.

16. Miscellaneous

16.1 The failure of either party to require performance at any time by the other party of any provision of the Agreement or these Terms and Conditions shall in no way affect the full right to require such performance at any time hereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of such provision.

16.2 The license granted and these Terms and Conditions are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto and such successors and assigns, any legal or equitable rights hereunder.

16.3 References in the singular shall include the plural and references in the plural shall include the singular. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation" or "but not limited to". The descriptive headings of sections are inserted for convenience only, do not constitute a part of these Terms and Conditions and shall not affect in any way the meaning or interpretation of these Terms and Conditions. The terms "hereof," "herein," "hereby" and derivative or similar words refer to these entire Terms and Conditions. References to "party" or "parties" mean Secunia and Customer unless otherwise provided.

16.4 These Terms and Conditions may not be modified or amended except by a document specifically stating that it is an amendment to these Terms and Conditions which is signed by both parties.

16.5 These Terms and Conditions and any written amendments to the foregoing satisfying the requirements of clause 16.4, constitutes the entire understanding between the parties with respect to the subject matter hereof and thereof, and supersedes all other understandings and negotiations with respect thereto.

16.6 Nothing contained in these Terms and Conditions shall be deemed or construed to create a partnership or joint venture, to create the relationships of employee/employer or principal/agent, or otherwise create any liability whatsoever of any party with respect to the indebtedness, liabilities, obligations or actions of the other party or any of its respective officers, directors, employees, stockholders, agents or representatives, or any other person or entity.

16.7 If any of the provisions in these Terms and Conditions are held to be invalid, unenforceable, or illegal for any reason, the remaining provisions shall nevertheless continue in full force.

16.8 The provisions of section 2.1, 2.2, 2.3, 2.4, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 5.3, 5.4, 6, 8, 9, 10, 11, 12, 13.2, 14, 15, 16 and 17 and shall survive the expiration or termination of the granted license for any reason whatsoever.

17. Choice of Law and Jurisdiction

17.1 The validity, interpretation, and performance of these terms and conditions shall be controlled by and construed under the laws of Denmark excluding its conflict of laws provisions. The United Nations' Convention on the International Sale of Goods shall not apply.

17.2 Any dispute arising out of or relating to these terms and conditions shall be settled exclusively by the courts of Copenhagen in accordance with its procedural rules.

18. Signature

18.1 By the signing hereof Customer confirms to have read and accepted the Terms and Conditions stated above.

Customer:

_____

Name and title of signing officer

_____

Signature

_____

Date

_____

Company (in capital letters)