



Last updated: May 2018

### License and Services Agreement

This LICENSE AND SERVICES AGREEMENT by and between Cybereason Inc., a Delaware corporation, with offices located at 200 Clarendon Street, Boston, MA 02116, USA, and its majority-owned subsidiaries (“**Licensor**”), and the entity, and its majority-owned subsidiaries (“**Licensee**”) set forth on the associated Quotation, is made and entered into as of the Effective Date (as defined in the Quotation). Licensor and Licensee are sometimes collectively referred to as the “**Parties**” and singularly as a “**Party**”.

**Whereas**, Licensor is in the business of developing, marketing and licensing the Software Platform (as defined below) designed to enable the analysis and detection of cyber-attacks, and

**Whereas**, Licensee desires to obtain from Licensor, and Licensor desires to grant to Licensee, a license to install, access and/or use the Software Platform, subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises and conditions contained in this Agreement the Parties agree as follows:

#### 1. Definitions

- 1.1. “**Agreement**” means this License and Services Agreement, any schedules and/or exhibits attached hereto, and any Quotation (as defined below).
- 1.2. “**Confidential Information**” means any nonpublic information, data, materials or know-how, whether or not marked or designated as confidential, of either Party in any form whatsoever (including oral), disclosed by or on behalf of a Party (“**Discloser**”) to the other Party (“**Recipient**”) under this Agreement. Licensor’s Confidential Information will automatically include, but not be limited to, the terms and conditions of this Agreement and information relating to the Licensor’s products (including the Software Platform). Confidential Information does not include information which Recipient can prove by Recipient’s files and records: (i) is in the possession of or known to the Recipient prior to the time of disclosure, while not in violation of any obligation of confidentiality; (ii) prior to or after the time of disclosure becomes publicly known other than as a result of any improper inaction or action of the Recipient; (iii) is made available to the Recipient by a third party not subject to a confidentiality obligation in favor of the Discloser; (iv) is developed independently by the Recipient without use of any Confidential Information of the Discloser; (v) is made available to third parties by the Discloser without restriction on the disclosure of such information; or (vi) is approved by the Discloser for release in writing.
- 1.3. “**Cybereason Server**” means a virtual appliance or software that pieces together data sent to it by the Cybereason Sensor. The Cybereason Server enriches data with known indicators of compromise to identify the elements within the environment that are malicious or suspect. This component provides the graphical user interface into the data providing visibility across the deployed sensors. This portion of the solution also leverages various mathematical algorithms to identify behavioral anomalies with machines, processes and communications. Unless otherwise specified on the applicable Quotation, the Cybereason Server is hosted by or on behalf of Cybereason.
- 1.4. “**Cybereason Sensor**” means a small applet that sits in “User Mode” on Windows machines, Apple machines, and Linux machines, as applicable, for up to the number of machines set forth on the applicable Quotation. The Cybereason Sensor’s function is to report the happenings of the machine without DLL or kernel level code insertion. The Cybereason Sensor hooks audit and debug functions to identify machine activity and report exception based activity back to the Cybereason Server. Each machine the Cybereason Sensor is active on counts as one device. One Cybereason Sensor can be deployed, retracted/removed and then redeployed.
- 1.5. “**Documentation**” means any and all documentation and material pertaining to the Software Platform, in any form, provided by Licensor to Licensee pursuant to this Agreement, including via any of Licensor’s then-current online platforms, for use in conjunction with the Software Platform, but excluding any marketing material.
- 1.6. “**DPA**” means Cybereason’s Data Processing Agreement, presently located at: <https://www.cybereason.com/DPA>
- 1.7. “**Licensor Package**” means the Software Platform, any Documentation and/or Confidential Information of Licensor.
- 1.8. “**Professional Services**” means those professional services, if any, specified in a separate statement of work entered into by the Parties, which will expressly reference this Agreement and be subject to the terms and conditions herein (each, a “**Statement of Work**”).
- 1.9. “**Quotation**” means the quotation attached as **Exhibit B** (and any subsequent quotation signed by the Parties under this Agreement), or provided by Licensor or Licensor’s authorized reseller (“**Reseller**”), as applicable, to Licensee, covering the Software Platform (including specifically the duration of the license and the number of Cybereason Sensors that are permitted to be installed) and/or Support and Maintenance and/or Security Services, if any, and the Subscription Fee and/or other fees due.
- 1.10. “**Security Services**” means the security services specified in **Exhibit C** (as applicable and as detailed in the applicable Quotation).
- 1.11. “**Software Platform**” means the edition and version of Licensor’s commercially available software specified in the Quotation (or if a version is not specified, the current version of such software on the date of this Agreement) and includes new versions that may be provided to Licensee by Licensor pursuant to this Agreement. The Software Platform may include certain software associated with that edition and installed on client computers (i.e. computers that are not normally accessible over the network by other users), and/or servers and/or cloud based services hosted by or on behalf of Cybereason, including, but not limited to the Cybereason Server and the web-based user interface. The portions of the Software Platform that are delivered hereunder are licensed in object code form only, and are not sold.



- 1.12. **"Specifications"** means the functional Software Platform specifications and technical requirements specified in the Documentation.
- 1.13. **"Subscription Fee"** means the applicable fees for the use of the Software Platform, and any Security Services Fees and Professional Services Fees, as applicable, during the Subscription Period. The Subscription Fee is detailed in the applicable Quotation.
- 1.14. **"Subscription Period"** means the period of time commencing on the Subscription Start Date specified in the Quotation in respect of which the Licensee has ordered and will pay Subscription Fees in respect of its use of the Software Platform and receipt of support and maintenance services.
- 1.15. **"Support and Maintenance"** means the support and maintenance services provided by Licensor to Licensee with respect to the Software Platform during the relevant Subscription Period, which will be performed in accordance with the terms specified in **Exhibit A**.

## 2. **Subscription License**

Subject to the terms and conditions of this Agreement, including, without limitation, the payment of the relevant Subscription Fees, Licensor grants to Licensee and Licensee hereby accepts, a personal, non-exclusive, non-transferable (except as authorized herein) and non-sublicensable license during the Subscription Period, to (i) install such number of Cybereason Sensor endpoints as are specified in the Quotation on Licensee's organizational computers/workstations at Licensee's sites, (ii) grant the right to access and use the Cybereason Server to authorized personnel of Licensee, only in conjunction with the Software Platform, and (iii) use the Software Platform solely for Licensee's internal cyber-security purposes in accordance with the Documentation.

## 3. **Restrictions**

Except as otherwise specifically authorized by this Agreement, Licensee will not: (i) copy, modify, sublicense, sell, distribute, transfer, tamper with, reverse engineer, disassemble or decompile the Licensor Package, or any part thereof or otherwise attempt to derive or obtain the source code of the Software Platform or any part thereof; (ii) modify, improve or make derivative works incorporating the Software Platform or any part thereof, nor use the Software Platform or any part thereof as part of a service bureau, or to provide commercial timesharing rental or sharing arrangements to any third party; (iii) remove and/or alter any copyright notices, trademark, logo or other proprietary or restrictive notice (hereinafter, collectively **"Proprietary Notices"**) or legend affixed to, contained or included in, the Licensor Package and Licensee will reproduce and copy all such Proprietary Notices on all copies of the Licensor Package or any part thereof, made pursuant and subject to the terms of this Agreement; and/or (iv) disclose the results of any testing or benchmarking of the Software Platform to any third party.

## 4. **Title**

All title, rights and interest to the Software Platform and developments and derivatives thereof (regardless of whether such developments and derivatives were made pursuant to any request and/or Feedback by Licensee), the related Documentation, Specifications and the Licensor's Confidential Information, including all of the patents, trademarks, trade names, trade logos, copyrights, inventions, technology, design, schemes, know how, trade secrets and any other intellectual property rights pertaining to the Software Platform, the related Documentation, Specifications and Licensor's Confidential Information, or any part thereof, will be owned exclusively by Licensor. Nothing in this Agreement shall constitute a waiver of Licensor's rights under any law, or be in any way construed or interpreted as such.

## 5. **Quotations, Subscription Fees, Payment Terms, Taxes and Export Restrictions**

- 5.1 In respect of each component of the Software Platform that the Licensee wishes to license and/or Support and Maintenance and/or Security Services that Licensee wishes to purchase during the Subscription Period, Licensor or Reseller, as applicable, will issue to Licensee a Quotation. Any Quotation will be attached as **Exhibit B** or will include an express reference to this Agreement and will specify, inter alia, (i) the number of Cybereason Sensor endpoints permitted to be installed, (ii) the duration of the Subscription Period, (iii) any Support and Maintenance or Security Service, and (iv) the Subscription Fees or other fees due.
- 5.2 The Licensee will pay the relevant Subscription Fees for the Software Platform covered under the Quotation pursuant to the following payment terms: Licensor or Reseller, as applicable, will issue Licensee an invoice (referencing the Licensee Quotation Number) for all amounts due under this Agreement. Licensor or Reseller, as applicable, will submit invoices electronically via email to Licensee, or pursuant to such other instructions as provided by Licensee. Licensee will pay invoices net thirty (30) days after the date of the invoice.
- 5.3 Subscription Fees are stated exclusive of sales, value added, withholding, duties and similar taxes which will be borne by the Licensee. Any taxes or levies based on the income, revenue or profits of the Licensor will be paid by the Licensor and will not be reimbursed by or recharged to Licensee.

All amounts that are not paid by Licensee by the due date required by this Agreement will be subject to interest at the rate of one percent (1.5%) per month, or to the maximum rate allowed by applicable law (if lower).

## 6. **Support and Maintenance, Security Services and other Professional Services**

- 6.1 Licensor will use commercially reasonable efforts to provide Licensee with Support and Maintenance during the Subscription Period pursuant to the terms of **Exhibit A**.
- 6.2 Licensor makes available Security Services in exchange for Licensee's payment to Licensor of the agreed upon security services fee, specified in the Quotation ("**Security Services Fee**"), which shall be payable annually or as otherwise agreed upon in the Quotation.
- 6.3 In the event Licensee wishes to receive Professional Services, Licensee may request same from Licensor in writing, and: (a) the Professional Services shall be charged in accordance with the agreed upon Professional Services fee, specified in the applicable



Quotation (the "**Professional Services Fee**"); (b) the Parties will enter into a Statement of Work specifying the Professional Services to be performed; and (c) Licensee shall reasonably cooperate with Licensor in the performance of the Professional Services and provide Licensor with (as well as procure for Licensor the right to access and use) all information, materials, facilities, assistance, and equipment within its possession that are reasonably requested by Licensor in performance thereof. For Statement of Work to be valid, it must be duly signed by both Parties. To the extent of any conflict between this Agreement and the Statement of Work, this Agreement shall prevail, unless and to the extent that the Statement of Work expressly states otherwise.

#### 7. **License Compliance Verification**

Licensor reserves the right to electronically or manually inspect Licensee's Software Platform installation, including without limitation, Cybereason Sensor endpoint installation, to verify Licensee's compliance with the provisions of this Agreement and to ensure that Licensee does not exceed the number of installations of the Cybereason Sensor which are commensurate with the Subscription Fees paid to Licensor during the relevant Subscription Period. Licensor will be entitled to exercise its rights under this Section 7 once annually upon notice of ten (10) business days to Licensee. Any inspection will be conducted during Licensee's normal business hours so as not to unreasonably interfere with Licensee's business activities. If an inspection reveals that Licensee has underpaid fees due to Licensor, Licensor will invoice Licensee for such underpaid amounts based on the Subscription Fees and other fees in effect at the time such audit or inspection is completed, plus interest at the rate specified above in Section 5.3, and Licensee will make prompt payment of such amounts. If the underpaid Subscription Fees and other fees exceed the lower of (i) five percent (5%) of the Subscription Fees and other fees due to Licensor for the relevant Subscription Period; or (ii) \$25,000, then Licensee will also pay the reasonable expenses associated with such inspection, along with the amount of the underpayment. In addition, Licensee acknowledges that the Cybereason Sensor collects metadata information from each host machine including, but not limited to processes, machine, user, connections, service, file information and sends such information to the Cybereason Server. Upon Licensee's reasonable request, Licensor may enable the Cybereason Sensor to collect and upload to the Cybereason Server additional data, including but not limited to, files or logs. Notwithstanding any provision of this Agreement to the contrary, Licensor may use any data collected, provided, or otherwise made available to Licensor for its internal purposes, including but not limited to developing, delivering and enhancing Licensor's products and services, and for internal evaluation of threats, system usage, security breaches, intrusions and other similar purposes, provided that such data is in an aggregated and/or other de-identified form. To the extent that Licensor processes on Licensee's behalf any Personal Data (as defined in the DPA, as applicable) collected, provided, or otherwise made available to Licensor, the terms of the DPA, which are hereby incorporated by reference, shall apply and the parties agree to comply with such terms.

#### 8. **Confidential Information**

- 8.1 Recipient agrees not to use any Confidential Information except for the purposes of exercising the Recipient's rights granted pursuant to this Agreement. Unless expressly authorized by Discloser, Recipient will not disclose any Confidential Information, other than to its employees and consultants on a need-to-know basis and who are bound in writing by confidentiality obligations no less restrictive than those contained in this Agreement, provided, that the Recipient will be responsible for any breach of the confidentiality obligations by any of its employees and consultants.
- 8.2 Disclosure may also be made if required by applicable law or proper legal, governmental or other competent authority, provided that in such case the Discloser will be notified sufficiently in advance of such requirement so that it may seek a protective order (or equivalent) with respect to such disclosure.
- 8.3 The Recipient agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information not authorized under this Agreement employing at least the highest degree of care that it utilizes to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care. The Recipient agrees to notify the Discloser in writing of any misuse or misappropriation of Confidential Information which may come to its attention.
- 8.4 The Recipient acknowledges and agrees that monetary damages would be inadequate to compensate Discloser for any breach by Recipient or any of Recipient's employees or consultants of the provisions under this Section 8, and that in addition to any other remedies that may be available at law, in equity or otherwise, Discloser will have the right to enforce this Agreement and any of its provisions by seeking an injunction, specific performance and/or other equitable relief.
- 8.5 Licensee may from time to time provide suggestions, comments or other feedback ("**Feedback**") with respect to the Licensor Package, Professional Services, Confidential Information provided by Licensee and/or other products or services of Licensor. Licensee agrees that all Feedback is and will be given entirely voluntarily. Feedback, even if designated as confidential by Licensee, will not, absent a separate written agreement, create any confidentiality obligation for or upon Licensor. Licensee hereby grants Licensor a worldwide, irrevocable, non-exclusive, royalty-free, fully-paid, perpetual, sub-licensable and transferable license to use, disclose, reproduce, distribute, publicly display, exploit and prepare derivative works of the Feedback or any part thereof, and Licensee hereby waives any moral rights in the Feedback, to the extent permitted by law.

#### 9. **Warranties and Disclaimer**

- 9.1 Licensor warrants only that during the Subscription Period, the Software Platform will materially perform in accordance with the Specifications. Licensee's exclusive remedy and Licensor's entire liability under this limited warranty will be, as determined by Licensor, to either (i) replace the non-conforming component of Software Platform free of charge, (ii) to repair free of charge, in accordance with Licensor's Support and Maintenance obligations specified in **Exhibit A**, the non-conforming component of the Software Platform so that it performs, in all material respects, in accordance with the Specifications; or (iii) reimburse Licensee on a pro-rata basis the Subscription Fees for the applicable Subscription Period paid in respect of the non-conforming component of the Software Platform, which payment shall be Licensee's sole and exclusive remedy and Licensor's sole and exclusive liability.
- 9.2 Licensor warrants that any Security Services and/or Professional Services (as applicable) will be performed in a professional and workmanlike manner.

- 9.3 The warranties specified in Section 9.1 and 9.2 above do not cover repair for damages, malfunctions, or service failures which are caused by (1) actions in respect of the Software Platform by any non-Licensor's personnel which were not approved by Licensor, (2) alteration or repair to or modification of the Software Platform, without Licensor's prior written approval, (3) the combination or integration of the Software Platform with other products, including but not limited to any systems of the Licensee, other than in accordance with Specifications, (4) failure of Licensee to install the latest version of Software Platform, (5) failure to follow Licensor's installation, operation, or maintenance instructions, (6) use of the Software Platform in violation of the Specifications or Licensor's instructions or subjection of the Software Platform to misuse, neglect, accident or abuse, or (7) any factor beyond Licensor's control, such as fire, explosion, lightning, power surges or failures, water, strikes.
- 9.4 THE EXPRESS WARRANTY SET FORTH IN THIS SECTION 9 CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE LICENSOR PACKAGE, SUPPORT AND MAINTENANCE OBLIGATIONS, SECURITY SERVICES AND PROFESSIONAL SERVICES. LICENSOR MAKES AND LICENSEE RECEIVES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE LICENSOR PACKAGE, SUPPORT AND MAINTENANCE OBLIGATIONS, SECURITY SERVICES OR PROFESSIONAL SERVICES. LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR FREE OPERATION OR NON-INTRUSION DUE TO HACKING OR OTHER SIMILAR MEANS OF UNAUTHORIZED ACCESS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## **10. LIMITATIONS ON LIABILITY**

IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF GOODWILL, REPUTATIONAL DAMAGES, WORK STOPPAGE, BUSINESS INTERRUPTION, OR REVENUES OF ANY KIND, OR FOR LOST DATA, DAMAGE TO OTHER SOFTWARE, COMPUTER FAILURE OR MALFUNCTION OR DOWNTIME, REGARDLESS OF WHETHER LICENSOR AND/OR ITS RELATED PARTIES HAS BEEN APPRAISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE CUMULATIVE LIABILITY OF LICENSOR TO LICENSEE FOR ALL CLAIMS UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THOSE RELATING TO THE LICENSOR PACKAGE, SUPPORT AND MAINTENANCE, SECURITY SERVICES AND PROFESSIONAL SERVICES, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT OR TORT, INCLUDING LIABILITY ARISING OUT OF NEGLIGENCE OR STRICT LIABILITY, WILL NOT EXCEED 100% OF THE AGGREGATE AMOUNT OF SUBSCRIPTION FEES ACTUALLY PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO EVENT GIVING RISE TO THE CLAIM.

## **11. Indemnification**

11.1 Licensor agrees to defend Licensee from and against any claim or suit initiated by a third party alleging that the Software Platform infringes upon such third party's U.S. patent rights (a "Claim"), and pay Licensee for all damages, costs and expenses (including reasonable attorney's fees) finally awarded against it by a court of competent jurisdiction or in a settlement agreement entered into in accordance with the provisions of this Agreement in connection thereto; provided, however, that (1) Licensee will have given Licensor, as soon as possible, written notice of such Claim; (2) Licensee will reasonably cooperate with Licensor in the defense and settlement thereof at Licensor's expense; and (3) Licensor will have sole control of the defense of such Claim and the settlement or compromise thereof.

11.2 Licensor's obligations specified in Section 11.1 above, will not apply to the extent that the infringement arises: (i) from the use of the Software Platform for a purpose which it was not intended, (ii) as a result of the use of the Software Platform not in compliance with the Documentation thereof, (iii) from the combination or integration of the Software Platform with other products, including but not limited to any systems of the Licensee, other than in accordance with Specifications, (iv) any modified version of the Software Platform or (v) use of a release of the Software Platform that is more than one release prior to the then current version (if use of the current version would not have caused the infringement).

11.3 In the event that an injunction is obtained or is likely to be obtained against Licensor's use or distribution of the Software Platform arising from a Claim, or if Licensor anticipates that there is a likelihood of a Claim, Licensor may in its sole discretion, either (a) procure for Licensee the right to continue using the Software Platform; or (b) replace or modify the same so that it no longer infringes, so long as the utility or performance of the Software Platform is not materially and adversely affected by such replacement or modification, or (c) where Licensor determines, at its sole discretion that the neither option under foregoing clauses (a) or (b) are commercially feasible, to terminate this Agreement and call back the Software Platform, and/or to reimburse Licensee for a pro-rata portion of any pre-paid, unused, Subscription Fees paid under this Agreement.

11.4 The remedies set forth in this Section 11 establish Licensor's entire obligation and Licensee's exclusive and entire remedy in regard to infringement, claims of infringement of any intellectual property right and other claims, including but not limited to Claims for Software Platform and/or the Licensor Package or Professional Services purchased under this Agreement.

## **12. Term and Termination**

12.1 The term of this Agreement will commence on the Effective Date and will continue in full force and effect until the end of the initial Subscription Period, unless earlier terminated in accordance with the provisions of this Section 12. Thereafter, the term of this Agreement will remain in effect during any renewal terms set forth in the Quotation (each such renewal term, also a "Subscription Period"); provided, however, that either Party may terminate this Agreement as of the end of the initial Subscription Period or any renewal Subscription Period upon thirty (30) days' notice prior to the end of the then relevant Subscription Period. For the purpose of clarification, a renewal of the Subscription Period (or any consecutive renewal term) may only take place upon both Parties' mutual written consent via a signed Quotation, and there shall be no automatic renewals under this Agreement.

12.2 Notwithstanding anything contained herein to the contrary, either Party may terminate this Agreement by written notice to the other Party, if the other Party breaches any material obligation hereunder (including without limitation, Subscription Fee payment obligations of the Licensee), which breach remains uncured for a period of thirty (30) days after receipt of written notice of breach by the breaching Party. In addition, Licensor may immediately terminate this Agreement if Licensee breaches the provisions of Sections 3, 4 or 8.

12.3 In addition to the foregoing, either Party may immediately terminate this Agreement by written notice if (i) the other



Party ceases to do business or becomes insolvent, (ii) upon institution by the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debt, (iii) upon the institution of such proceedings against the other Party, which are not dismissed or otherwise resolved in such Party's favor within sixty (60) days thereafter (iv) upon the other Party making a general assignment for the benefit of creditors.

12.4 Upon the termination or expiration of this Agreement (i) Licensee will immediately cease use of the Software Platform and will delete the Licensor Package from Licensee's systems, (ii) all of Licensee's rights hereunder will immediately terminate and Licensor will have no liability to Licensee in connection herewith, and (iii) Licensee will return all Confidential Information and embodiments thereof to Licensor.

12.5 Sections 1 (Definitions), 3 (Restrictions), 4 (Title), 5.2-5.3 (Quotations, Subscription Fees, Payment Terms, Taxes and Export Restrictions), 7 (License Compliance Verification), 8 (Confidential Information), 9.3 (Warranties and Disclaimer), 10 (Limitations on Liability), 11 (Indemnification), 12.4- 12.5 (Term and Termination) and 13 (Miscellaneous), and all payment obligations incurred prior to the termination of this Agreement, will survive termination of this Agreement.

### 13. Miscellaneous

13.1 Notices. All notices and other communications required or permitted to be given under this Agreement ("**Notices**") will be in writing (or if expressly authorized in this Agreement, will be in e-mail form to all e-mail addresses specified on the associated Quotation), will reference this Agreement and associated Quotation, and will be addressed to the Party's address as set forth on the associated Quotation, or to such other address that a Party provides as required by this Section 13.1. A Notice will be deemed given when (i) delivered personally; (ii) sent by confirmed facsimile or e-mail (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier for overnight delivery with written verification of receipt.

13.2 Force Majeure. Neither Party will be responsible for any failure to perform its obligations (other than payment obligations) under this Agreement due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event ("**Force Majeure**").

13.3 Authorization; Non Assignment. Each Party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed. Each Party further represents that entering this Agreement will not constitute a breach of any binding document of incorporation, agreement, contract, understanding and/or obligation. In addition, each of Licensee and Licensor represents that it is acting on its own behalf, and not as an agent for or on behalf of any third party, in entering into this Agreement, and further agrees that it may not assign its rights or obligations under this Agreement otherwise than provided under this Agreement, without the prior written consent of the other Party, except that Licensor will be entitled to assign all its rights and obligations in the event of (i) a merger (in which Licensor is not the surviving entity), and (ii) sale of all or substantially all of shares or the assets of Licensor.

13.4 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. In no event will any third party have any rights in relation to this Agreement or any right to enforce the terms hereof.

13.5 Publicity. Notwithstanding Section 8 above, Licensor may state on its website, and may state in Licensor's sales and investment oriented presentations, the fact that Licensee is a customer of Licensor for Software Platform and may utilize Licensee's trademark on Licensor's Website.

13.6 Headings; Amendment; Waiver. Any headings are for convenience purposes only and will not be employed in interpreting and construction of this Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any previous agreements, understandings and arrangements relating to the license of the Software Platform to Licensee. This Agreement may not be modified, amended, altered or supplemented except by a written agreement executed by both Parties. If any of the provisions of this Agreement, or any portions thereof, are held to be invalid under any applicable law, the invalid part or provision will be replaced with a provision which accomplishes, to the fullest extent possible, the original purpose of such part or provision in a valid manner, and the balance of this Agreement will remain in full force and effect. Neither Party will, by mere lapse of time, without giving written notice thereof, be deemed to have waived any breach by the other Party of any terms or provisions of this Agreement; and the waiver by either Party of any such breach will not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

13.7 Governing Law and Jurisdiction. This Agreement, and any dispute arising hereunder, will be governed by the laws of the Commonwealth of Massachusetts, without giving effect to any principles of conflicts of laws thereof, and will be subject to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts. The provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

13.8 Independent Contractors. The Parties will at all times be independent contractors with respect to each other and neither Party will purport to bind the other. No partnership, joint venture, employer-employee relationship or any other relationship between the Parties hereto is contemplated or created hereby.

13.9 Export Compliance; Use Restrictions. Certain technology and software components of the Licensor Package may be subject to U.S. and other applicable export control laws and economic sanctions laws. Licensee will comply strictly with all such laws and regulations as they relate to such technology and software and access and use of the Licensor Package. In addition, Licensee will not, and will cause its users to not, access or use any portion of the Licensor Package if Licensee or any user is located in any U.S. embargoed countries, as designated by applicable U.S. export control and economic sanctions laws or regulations promulgated thereunder (collectively referred to as the "**Prohibited Jurisdictions**"), and neither Licensee nor any of its users will provide access to any portion of the Licensor Package to any government, entity or individual located in the Prohibited Jurisdictions, any individual identified on the Bureau of Industry and Security's Denied Persons List or the Office of Foreign Assets Control's Specially Designated Nationals List, or to any individual identified on the U.S. Treasury Department's list of Specially Designated Nationals And Blocked Persons List or the U.S. Department of Commerce Denied Persons List or Entity List or any other restricted party lists, or to any entity or individual listed on any other U.S. or other applicable sanctions lists, or to any entity or individual with knowledge or reason to know that any portion of the Licensor Package will be used for nuclear,



chemical, or biological weapons proliferation, or for missile-development purposes. As used herein, "Export Control Laws" means all import, export and transfer of products, software, technical data, services and technologies laws in each of the jurisdictions in which the Licensor does or in the past has done business, directly or indirectly.

13.10 U.S. Government Restricted Rights. Licensor provides the Licensor Package, including related software and technology, for federal government end use as a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Licensor Package, including related software and technology, are provided to the end user with only those rights as provided under the terms and conditions of this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Licensor to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**List of Exhibits**

Exhibit A: Support and Maintenance

Exhibit B: Quotation

Exhibit C: Security Services



Cybereason Inc.

**Exhibit A – Support and Maintenance**

**1. General.**

"**Business Day**" means a day from Monday through Friday that is not a US national holiday, Massachusetts state holiday or official US bank holiday.

"**Error**" means any failure of the Software Platform to conform in any material respect to the Specifications.

"**Error Correction**" means either a modification or addition that, when made or added to the Software Platform, brings the Software Platform into material conformity with the Specifications, or a procedure or routine that, when observed in the regular operation of the Software Platform, avoids the practical adverse effect of such nonconformity.

"**Incident**" means a real time interaction with a Licensor support representative.

"**Workaround**" means a temporary corrective action to restore the applicable Software Platform to operation or to diminish or avoid the effect of the Error; provided that such Workaround will not materially impact the normal operational status of Licensee.

Capitalized terms used and not defined herein will bear the definitions assigned thereto in the License and Services Agreement to which this **Exhibit A** is attached.

**2. Scope of Support.**

Subject to payment of the relevant Subscription Fees under the Quotation, during the Subscription Period Licensor will provide the following support for the Software Platform for five named Licensee contacts:

*Error Correction.* Licensor will use commercially reasonable diligence to correct verifiable and reproducible Errors reported to Licensor in accordance with Licensor's standard reporting procedures as will be in effect and notified from time to time. The Error Correction, when completed, may be provided in the form of a Workaround, consisting of sufficient programming and operating instructions to implement the Error Correction.

*Telephone Hot-Line.* Licensor will maintain a 24x7 telephone hot-line that permits Licensee to report Errors and seek assistance in the use and functionality of the Software Platform. Telephone calls will be handled in the order received.

*E-mail Support.* Licensor will maintain an e-mail response system that permits Licensee to report problems and seek assistance in use of the Software Platform via e-mail. Email support is currently only available to named contacts that wish to open an Incident via support@cybereason.com. Licensor's support representatives will respond to these questions on a commercially reasonable efforts basis.

*Updates.* Licensor may, from time to time, issue updates of the Software Platform containing Error Corrections. Licensor will provide reasonable documentation to assist Licensee's installation and operation of each new update. Because updates may be cumulative, an update may only be useful if Licensee has obtained and installed all prior applicable updates.

Licensor will use commercially reasonable diligence to enforce a system of response-time standards, based on severity of Incidents/Errors as follows:

| Severity Level    | Description   |
|-------------------|---|
| 1 - Critical      | Software Platform is down or there is a critical impact on Licensee's business operation due to Error(s) in the Software Platform   |
| 2 - Serious       | Use of the Software Platform is severely degraded or significant aspects of Licensee's business operation are being negatively impacted by the Error(s) in the Software Platform. |
| 3 - Low Impact    | Error or loss of functionality in the Software Platform that results in a minor impact to Licensee's business operation   |
| 4 - Informational | No Software Platform Error. Licensee requires assistance with regard to the Software Platform's technology, product capabilities, installation and configuration.                 |

| Severity Level    | Response Time          | Error Correction Goal  |
|-------------------|------------------------|------------------------|
| 1 - Critical      | < 1 hour               | 7 Business days        |
| 2 - Serious       | < 4 hours              | 30 Business Days       |
| 3 - Low Impact    | Within 2 Business Days | Next major update      |
| 4 - Informational | As soon as practicable | As soon as practicable |

**3. Exceptions.**

The Licensor is not obliged to provide support where the relevant Error or problem arises as a result of:

- a. the misuse, improper use, alteration, or damage of the Software Platform or use thereof in an environment that is not in



accordance with the Documentation;

- b. any modifications of the Software Platform not made or authorized by Licensor;
- c. the combination of the Software Platform with other programs or equipment not approved by Licensor; or
- d. any accident or disaster affecting the Software Platform, including fire, flood, lightning or vandalism, or any other event not under the control of Licensor,
- e. Errors in any version of the Software Platform other than the most recent version, provided that Licensor will continue to support the last two immediately superseded versions.

**4. Staff.**

Licensor will maintain trained staff capable of rendering the support set forth in this Agreement.

**5. Documentation.**

If the Documentation does not provide adequate or correct instructions in order to enable Licensee to make proper use of any facility or function of the Software Platform, then Licensee will so notify the Licensor who will correct the defect and provide Licensee with appropriate amendments to the Documentation.

**6. Licensee Cooperation.**

Licensee must promptly notify Licensor following the discovery of any Error. Further, upon discovery of an Error, Licensee agrees, if requested by Licensor, to submit to Licensor a listing of output and any other data that Licensor may require to reproduce the Error and the operating conditions under which the Error occurred or was discovered. In addition, Licensee is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software Platform and to obtain maintenance and support services from Licensor. Licensor will not be responsible for delays caused by events or circumstances beyond Licensor's reasonable control.





**Cybereason Inc.**

**Exhibit B – Quotation**

**Cybereason Quote or Quote by and between Licensee and Reseller (as applicable)**



**Cybereason Inc.**

**Exhibit C – Security Services**

**Security Services:** Cybereason Active Monitoring, Advanced Analysis, and Threat Hunting (if specified in the applicable Quotation).

**Monitoring:** Cybereason Active Monitoring is a service that actively monitors and analyzes malicious activity in Licensee's environment. When confirmed malicious activity occurs, Cybereason notifies Licensee and provides guidance on how to eliminate the threat. This Security Service is subject to the terms of the License and Services Agreement entered into between Cybereason and the Licensee, to which this Exhibit C is attached.

This service specifically includes:

- \* Monitoring - Cybereason will monitor Covered Systems for events and analyze malicious activity in the Licensee's environment on a 24x7 basis.
- \* Notification of Malicious Activity – If Cybereason's analysts confirm the malicious activity (i.e., analysts determine that the event is not a false positive or otherwise not required to be reported), Cybereason will provide notification within 60 minutes.
- \* Notification of Intrusion – If Cybereason's analysts confirm an intrusion (i.e., analysts determine that the malicious activity is not incidental and it is either sophisticated or targeted), Cybereason will provide an emergency notification within 15 minutes.
- \* Course of Action - When confirmed malicious activity occurs, Cybereason will provide a recommended course of action within 24 hours.

"Covered System" – Licensee's machines having a Cybereason Sensor deployed on such machines.

**Advanced Analysis:** Cybereason Advanced Analysis will provide more in-depth investigation performed by Cybereason analysts for potentially more serious and complex issues, when analyzing malicious activity and supporting data does not provide sufficient information to determine the best course of action. This includes:

- \* Deep Investigation – As necessary, Cybereason will perform in-depth analysis of data gathered by the Cybereason platform and additional artifacts from Licensee's environment, as applicable, to determine the scope and impact of suspected issues. This might be triggered by Active Monitoring activities or by Licensee's in-house equivalents and specialists.
- \* Threat Analysis – As necessary, Cybereason analysts will cross-reference malicious activity found against threat intelligence gathered from a combination of intelligence sources (such as in-house research, open source intelligence, and data from partners) to provide context about the threat to Licensee's environment.
- \* Malware Analysis – As necessary, Cybereason analysts will perform analysis of any suspected malicious tools discovered as part of the investigative process, and may use several technologies (e.g., sandboxing), dedicated testing environments and other code analysis tools.
- \* Detailed Intrusion Report – As necessary, Cybereason will provide a detailed report of all the findings from investigative activities and recommendations for next steps, which may include bringing in more expertise for emergency response and breach support.

**Threat Hunting:** If specified in the applicable Quotation, Cybereason will proactively hunt for adversaries to determine if there is potential malicious activity occurring within Licensee's environment. If Cybereason discovers potential malicious activity occurring within Licensee's environment, Cybereason will triage initial findings and expand investigation scope based on any confirmed suspicious indicators, behaviors, or attack patterns, provide insight into the methodologies used by the adversary, and provide recommendations to improve Licensee's defenses.

**Advanced Analysis Charges:** As specified in the applicable Quotation, for up to the number of hours per month of Advanced Analysis during the service term as specified in the applicable Quotation. The Advanced Analysis Charges are non-refundable, and any hours of deep investigation, threat analysis, malware analysis, and detailed intrusion reports that are not used during each month of the service term shall be forfeited. Licensor will not conduct Advanced Analysis for greater than the number of hours specified in the applicable Quotation, unless requested by Licensee.

**Threat Hunting Charges:** As specified in the applicable Quotation for up to the number of hunts each year during the service term as specified in the applicable Quotation. Any Threat Hunts not used during each year of the service term shall be forfeited.

Capitalized terms used and not defined herein will bear the definitions assigned thereto in the License and Services Agreement to which this **Exhibit C** is attached.