



License and Services Agreement - General Terms and Conditions

This License and Services Agreement (as defined below) is a legal agreement between the entity entering into this Agreement (“Customer,” “Licensee” or “You”) and Cybereason Inc., a Delaware corporation with offices located at 200 Clarendon Street, Boston, Ma 02116 USA (“Cybereason” or “Licensor”). This Agreement governs access and use of Cybereason’s products and services, and any updates and modifications thereto.

BY CLICKING “I ACCEPT,” AND/OR ACCESSING OR USING THE PRODUCTS AND SERVICES MADE AVAILABLE BY CYBEREASON (OR ITS AUTHORIZED RESELLER, AS APPLICABLE) HEREUNDER, “YOU” REPRESENT THAT (i) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, (ii) YOU HAVE READ THESE TERMS AND CONDITIONS AND (iii) HEREBY AGREE ON BEHALF OF THE CUSTOMER TO COMPLY AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. . IF YOU DO NOT HAVE AUTHORITY TO BIND CUSTOMER, OR IF YOU OR CUSTOMER DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU AND CUSTOMER MAY NOT USE THE PRODUCTS.

THE “EFFECTIVE DATE” OF THIS AGREEMENT IS THE DATE CUSTOMER CLICKS “I ACCEPT,” OR AS OTHERWISE IDENTIFIED IN ANY QUOTATION, AS THE CASE MAY BE. IF YOU HAVE EXECUTED A SEPARATE AGREEMENT WITH CYBEREASON OR A CYBEREASON AUTHORIZED PARTNER SPECIFIC TO THIS TRANSACTION, THAT SEPARATE AGREEMENT WILL TAKE PRECEDENCE AS TO THE TERMS AND CONDITIONS APPLICABLE TO YOUR TRANSACTION.

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, the 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 the Agreement (as hereinafter defined).

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

1. Definitions

- 1.1 **“Agreement”** means the License and Services Agreement between Licensor and Licensee, constituted by (i) each executed Quotation (as defined below) executed with the Licensee, (ii) any schedules and/or exhibits attached to any such Quotation and (iii) these General Terms and Conditions (as hereinafter defined).
- 1.2 **“Business Day”** or **“business day”** means a day from Monday through Friday that is not a US national holiday, Massachusetts or New York state holiday or official US bank holiday.
- 1.3 **“Confidential Information”** means any nonpublic information, data, materials, intellectual property rights, trade secrets, patents, copyrights, designs, techniques, plans or know-how or any information which by its nature would be understood to be confidential, whether or not marked or designated as confidential at any time, of either Party and in any form or media disclosed by or on behalf of a Party (**“Discloser”**) to the other Party (**“Recipient”**) under the Agreement. It is understood and agreed that the Disclosing Party will not furnish to the Receiving Party any source code, information subject to export controls or “personally identifiable financial information” within the meaning of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq. or other applicable law, or other non-public personal information of any natural person, except as the Parties may expressly agree in a written supplement hereto.

Confidential Information does not include information which Recipient can prove by Recipient’s contemporaneous written files and records: (i) is lawfully in the possession of or known to the Recipient prior to the time of disclosure, without violation of any obligation of confidentiality; (ii) prior to or after the time of disclosure is or becomes publicly known other than as a result of any improper inaction or action of the Recipient; (iii) is lawfully made available to the Recipient by a third party without restriction on disclosure and without breach of a nondisclosure obligation; (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.
- 1.4 **“Contract Fees”** means the Subscription Fee for the use of the Software Platform, and any Professional Services Fees, as applicable, during the applicable Subscription Period. The Contract Fees are detailed in the applicable Quotation.
- 1.5 **“Cybereason Sensor”** means a component provided by Licensor subject to the Agreement that collects data about the events and operations occurring on each Endpoint, in the aggregate not exceeding the number of Endpoints specified as the authorized “quantity” in the Quotation.
- 1.6 **“Documentation”** means any and all documentation and material pertaining to the Software Platform, in any form, provided by Licensor to Licensee pursuant to the Agreement, including via any of Licensor’s then-current online platforms, for use in conjunction with the Software Platform, but does not include any material maintained by Licensor as marketing material however distributed.
- 1.7 **“DPA”** means Cybereason’s Data Processing Agreement, as amended or supplemented from time to time, presently located at: <https://www.cybereason.com/DPA>
- 1.8 **“Endpoint”** means a computing device that is supported by a Cybereason Sensor, including but not limited to a desktop, server, laptop, workstations and virtual desktops.

- 1.9 “**Export Controls and Economic Sanctions Laws**” means all export control, economic or financial sanctions, and trade embargo laws, regulations, orders, directives and other legal requirements applicable to Company, Licensee, or any of its Users, including those administered and enforced from time to time by (a) the U.S. government, including the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), the U.S. Department of State, or the U.S. Department of Commerce, (b) the United Nations, (c) the European Union (“EU”), (d) the state of Israel, (e) HM Treasury of the United Kingdom, or (f) the government of any other country or territory in which Licensee or its Users conduct or in the past have conducted business, directly or indirectly.
- 1.10 “**Licensee’s Sites**” means those physical locations at which Licensee’s and its employees’, independent contractors’, agents’, or other representatives’, computing devices, including but not limited to desktop, portable, mobile, “internet of things”-and other connected devices, as applicable to the Software Platform, are permitted under the Agreement to be used, consistent with the quantity of Endpoints permitted.
- 1.11 “**Licensor Package**” means the Software Platform, any Documentation and/or any Confidential Information of Licensor and of providers of any third party software included in the Software Platform.
- 1.12 “**Professional Services**” means those professional services (including security services that may be provided by Licensor, such as active monitoring, advanced analysis and threat hunting), if any, specified in a separate statement of work (each, a “**Statement of Work**”) entered into by the Parties accompanying a Quotation, which will expressly reference such Quotation, the initial Quotation, each other Quotation as applicable to the services to be rendered, and the Agreement, and be subject to the terms and conditions of each thereof). Services constituting Professional Services are external to services provided as part of the Software Platform.
- 1.13 “**Professional Services Fees**” has the meaning set forth in Section 6.2.
- 1.14 “**Prohibited Person**” means any individual or entity that is (i) on the U.S. Department of Commerce’s Denied Persons List, Entity List, Unverified List or affiliated lists, (ii) on the OFAC Specially Designated Nationals and Blocked Persons List (“**SDN List**”), (iii) on the U.S. Department of State’s Debarred List or Nonproliferation List, (iv) located, resident, or organized in jurisdictions subject to U.S. and other applicable territorial sanctions (collectively “**Prohibited Jurisdictions**”; as of the date of the General Terms and Conditions included in the Agreement, such jurisdictions include, without limitation, Cuba, Iran, Iraq, Lebanon, Libya, North Korea, Sudan, Syria, and the region of Crimea), or (v) otherwise the targets of any Export Controls and Economic Sanctions Laws.
- 1.15 “**Quotation**” means one or more written quotation documents provided by Licensor or a Reseller, as applicable, to Licensee, in each case as executed by Licensor or such Reseller, as applicable, and Licensee, specifying certain terms and conditions relating to Licensee’s use of the Software Platform, as described in greater detail in Section 5.1 hereof. The Licensee’s rights as a licensee of the Software Platform will be initiated by an initial Quotation executed by the Licensor or (subject to execution of these General Terms and Conditions by the Licensee with the Licensor) such Reseller, as applicable, and the Licensee.
- 1.16 “**Renewal**” or “**renewal**” in reference to a Subscription Period means any one or more Subscription Periods that begin subsequent to the initial Subscription Period, on the terms and subject to the conditions, specified in the Quotation or any amendment thereto, and “**renew**” as a verb has the meaning commensurate therewith.
- 1.17 “**Reseller**” means an individual or an entity authorized by Licensor to sell Subscriptions to the Software Platform directly or indirectly to end-user Licensees.
- 1.18 “**Software Platform**” means the edition and version of Licensor’s commercially available software specified in the applicable Quotation (or if a version is not specified, the current version of such software on the date of the General Terms and Conditions included in the Agreement) and includes new versions that may be provided to Licensee by Licensor pursuant to the 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, the web-based user interface and Cybereason Sensor software resident on Licensee and User machines. The portions of the Software Platform that are delivered hereunder are licensed in object code form only, and are not sold.
- 1.19 “**SOW Commencement Date**” means the date for commencement of Professional Services specified in a Statement of Work, subject to the terms and conditions of the Agreement.
- 1.20 “**Specifications**” means the functional Software Platform specifications and technical requirements specified in the Documentation.
- 1.21 “**Statement of Work**” has the meaning set forth in the definition of Professional Services.
- 1.22 “**Start Date**” means the date specified in the applicable Quotation for the commencement of a Subscription purchased by Licensee with respect to a Software Platform.
- 1.23 “**Subscription**” means the license to use the Software Platform during each Subscription Period, granted by Licensor to Licensee on the Start Date pursuant to Section 2.
- 1.24 “**Subscription Fee**” means the fee payable in accordance with Section 5 in consideration of the grant of the Subscription pursuant to Section 2 to use the Software Platform during each Subscription Period. The Subscription Fee is specified in the applicable Quotation.
- 1.25 “**Subscription Period**” means each period of time commencing on the date or dates specified in each Quotation as the Start Date in respect of which the Licensee has ordered and will pay Subscription Fees in respect of its use of the Software Platform and its receipt of Support and Maintenance. A Renewal Subscription Period is also a Subscription Period hereunder.



- 1.26 “**Support and Maintenance**” means the support and maintenance services to be 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**.
- 1.27 “**User**” means Licensee’s (or, as applicable, Licensee’s wholly-owned subsidiaries’) employees, independent contractors, agents, or other representatives whose Endpoints are authorized for Cybereason Sensor data collection pursuant to the terms of the Agreement.

2. **Subscription and License; Services**

Subject to the terms and conditions of the Agreement, including, without limitation, the payment of the applicable Contract Fees:

(a) In consideration of payment of the applicable Subscription Fee for a Subscription Period, Licensor grants to Licensee and Licensee hereby accepts, a personal, non-exclusive, non-transferable (except as authorized herein) and non-sublicensable right, effective during each Subscription Period, to:

(i) install such number of Endpoints as are specified in the Quotation at Licensee’s Sites,

(ii) grant the right to access and use the Software Platform to Users in accordance with the Agreement, and

(iii) use the Software Platform solely for Licensee’s internal cyber-security purposes in accordance with the Agreement and the Documentation.

Licensee is hereby authorized to install Cybereason Sensors (which shall be counted against the authorized number of Licensee Cybereason Sensors) on devices, and permit the use of the Software Platform by its wholly-owned subsidiaries at physical locations, that would qualify hereunder for such installation and use if such Cybereason Sensors were installed at Licensee Sites; provided that all limitations and waivers of liability and disclaimers of warrant hereunder shall apply to such deployment and use.

The Subscription granted hereunder for each Subscription Period shall be fully effective at the commencement, and for the duration, of each Subscription Period, provided such Subscription shall terminate upon termination or expiration of the Agreement pursuant to Section 12.

(b) Licensor agrees to provide, on the terms and conditions set forth herein, Support and Maintenance with respect to the Software Platform.

(c) Licensor agrees to provide, on the terms and conditions set forth herein, such Professional Services as Licensee may acquire as specified in one or more executed Quotations and the related Statement of Work.

3. **Restrictions**

3.1 Except as otherwise specifically authorized by the 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 the Agreement; and/or (iv) disclose the results of any testing or benchmarking of the Software Platform to any third party.

3.2 In making use of the Software Platform, Licensee and its authorized Users shall comply with all applicable laws, including data protection and privacy laws and Export Controls and Economic Sanctions Laws. Licensee shall cooperate as reasonably requested by Licensor in confirming such compliance by Licensee and its authorized Users.

3.3 Licensee shall not use the Software Platform in any ultra-hazardous environments, including any application that involves risk of death, personal injury, or severe property or environmental damage, or in any life support applications, devices.

4. **Title**

All title, right and interest in and to the Software Platform and developments and derivatives thereof, the related Documentation, Specifications and the Licensor’s Confidential Information, including all intellectual property rights pertaining thereto, are owned exclusively by Licensor. Nothing in the Agreement shall constitute a waiver of Licensor’s rights under any law, or be in any way construed or interpreted as such.

5. **Quotations, Contract Fees, Payment Terms, Taxes and Late Payments**

- 5.1 In respect of each component of the Software Platform that the Licensee wishes to license and/or Support and Maintenance and/or Professional Services that Licensee wishes to purchase during the Subscription Period, Licensor or Reseller, as applicable, will issue to Licensee a Quotation (which may consist of separate Quotations for individual products and services to be covered under the Agreement), which will specify, among other things:
- (i) the Software Platform to be licensed and the number of Endpoints permitted to be installed,
 - (ii) the commencement date and duration of the Subscription Period,
 - (iii) any Renewal terms,
 - (iv) any Professional Services to be purchased by Licensee,
 - (v) the Subscription Fees and any other Contract Fees due for the initial Subscription Period and for any other period(s) identified therein, and the method of determining dates due for payment (provided that any option to pay any Subscription Fees in installments as may be specified therein is provided solely for the convenience of the Licensee, and all Subscription Fees are fully-earned upon the grant of the Subscription hereunder), and
 - (vi) if other than as set forth in the following paragraph of this Section 5.1, the Contract Fees due during any renewal Subscription Period and any other fees due during such renewal Subscription Period.

Unless otherwise specified in the related Quotation (i) the initial Subscription Period ending on the Subscription End Date stated in the applicable Quotation will be followed by successive one (1) year renewal Subscription Periods that will each commence automatically upon expiration of the prior Subscription Period, unless the Agreement is terminated in accordance with the terms herein.

Payment of each Subscription Fee and other Contract Fees and amounts due hereunder shall be as specified in Section 5.2 and the applicable Quotation.

Upon confirmation by the Parties of the terms set forth in a Quotation, such Quotation shall be duly executed, physically or by electronic means acceptable to Licensor, by each respective Party and such Quotation, together with these General Terms and Conditions and other documents, as applicable, specified in the definition of Agreement hereunder, shall constitute the Agreement as of the Start Date stated in such Quotation.

Each Quotation will expressly incorporate by reference the General Terms and Conditions.

- 5.2 The Licensee will pay the applicable Subscription Fees and other Contract Fees for the Software Platform covered under the Agreement pursuant to the following payment terms:
- (a) Licensor or Reseller, as applicable, will issue Licensee one or more invoices (referencing the Licensee Quotation Number) for all amounts due under the Agreement. The full amount of the Subscription Fees and other Contract Fees provided for hereunder is acknowledged as fully earned by Licensor's entrance into the Agreement, as the agreed consideration for the grant of the Subscription, even if a Subscription Fee or other Contract Fee is specified as payable in installments during a Subscription Period or pursuant to separate invoices, and such installment payment methodology and separate invoicing is only for the convenience of Licensee.
 - (b) Payment of invoices received by Licensee from Reseller shall be in accordance with the terms of Reseller's agreements with Licensee and the instructions set forth by Reseller in its invoice. Unless otherwise specified in the applicable Quotation, Licensee will pay to Licensor, or to its order, invoices received from Licensor, net thirty (30) days after the date of the invoice by electronic funds transfer to the payee or payees specified in accordance with the instructions set forth in the invoice to be paid or such other instructions provided to Licensee by Licensor from time to time. Licensee agrees to pay the full amount thereof, without deduction, offset, setoff, counterclaim or reduction, recoupment or other charge.
- 5.3 Contract Fees are stated exclusive of all sales, use, excise, value added, withholding and other taxes, and all customs duties and tariffs now or hereafter claimed or imposed by any governmental authority upon the sale or license of the Software Platform. Any such charges will be added to the Contract Fees or subsequently invoiced to Licensee, with any such tax, duty or tariff collected by Licensor for submission to the relevant taxing authority. In the event Licensor is required to pay any such tax, duty or charge, Licensee will promptly reimburse Licensor on an after-tax basis. 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.
- 5.4 All amounts due to Licensor that are not paid by Licensee by the due date required by the Agreement will bear interest at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowed by applicable law (if lower), payable on Licensor's demand. Without limiting any other right or remedy available to Licensor, in the event that any payment due from Licensee (including but not limited to Subscription Fee, Professional Services Fees and amounts due upon a determination of underpayment due to installation of Endpoints in excess of the authorized quantity) to Licensor, or if applicable any amount due from Licensee to Reseller, is more than thirty (30) days late, Licensor shall have the right to suspend performance under the Agreement, upon ten days' notice to Licensee and, as applicable, Reseller (provided no such notice shall be required if such notice is not permitted under applicable law), until all payments are made current. No discounts for prepayment are authorized hereunder.

6. **Support and Maintenance; 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**, as may be amended from time to time in accordance with the terms hereof.
- 6.2 In the event Licensee wishes to receive Professional Services, Professional Services shall be charged in accordance with the agreed upon Professional Services fees specified in the applicable Quotation (the “**Professional Services Fees**”); (b) the Parties will enter into a Statement of Work (attached to and incorporated by reference in a Quotation) specifying the Professional Services to be performed and the SOW Commencement Date; and (c) Licensee shall reasonably cooperate, at Licensee’s expense, 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), at Licensee’s expense, all information, materials, facilities, assistance, and equipment within its possession that are reasonably requested by Licensor in performance thereof.

For any Statement of Work to be valid the Quotation to which such Statement of Work is attached must be duly signed by both Parties. Prior to commencement of the Professional Services specified in the Statement of Work, all Contract Fees due for payment by Licensee prior to the related SOW Commencement Date, in accordance with the payment terms specified herein and in any Quotation, shall have been paid. Professional Services Fees will be payable as invoiced by Licensor to Licensee, and will constitute a part of the Contract Fees payable hereunder. To the extent of any conflict between the General Terms and Conditions included in the Agreement and the Statement of Work, these General Terms and Conditions shall prevail, unless and to the extent that the Statement of Work expressly states otherwise.

- 6.3 Licensor shall be entitled, at its discretion, to cause any one or more of its subsidiaries or affiliates to perform any Support and Maintenance and/or Professional Services required hereunder, which performance shall be in accordance with and subject to the terms and provisions of the Agreement, and shall be accepted hereunder by Licensee as though performed by Licensor.

7. **Subscription Compliance Verification; Data Acquisition and Use**

7.1 Licensor reserves the right to access and electronically inspect (which may be conducted by its representatives, including internal or external auditors) Licensee’s Software Platform installation, including without limitation, Endpoint installation, and Licensee’s books, documents, facilities, computers, papers and records related to the Software Platform and the Agreement, to verify Licensee’s compliance with the provisions of the Agreement and to ensure that Licensee does not exceed the number of installations of Endpoints which are commensurate with the Subscription Fees paid to Licensor during the relevant Subscription Period. Licensee agrees to permit the access contemplated in this Section 7.1. Licensor will be entitled to exercise its rights under this Section 7.1 once annually during the term of the Agreement upon ten (10) business days’ notice to Licensee (provided that Licensor may exercise such rights more often at its discretion, upon two (2) business days’ notice, while Licensee is in default under the Agreement), and once annually for a period of five (5) years after expiration or termination of the Agreement. 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 5.4, and Licensee will make prompt payment of such amounts. If such inspection established that Subscription Fees or other Contract Fees have been underpaid then Licensee will also pay the reasonable expenses associated with such inspection, along with the amount of the underpayment (and interest on such underpayment under Section 5.3).

7.2 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 and file information and sends such information to the Software Platform. Upon Licensee’s reasonable request, Licensor may enable the Cybereason Sensor to collect and upload to the Software Platform additional data, including but not limited to, files or logs. Notwithstanding any provision of the 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 and performing the Recipient’s obligations pursuant to the Agreement. Unless expressly authorized by Discloser, Recipient will not disclose any Confidential Information, other than to its employees, officers, directors and consultants on a need-to-know basis and who are bound in writing by confidentiality obligations no less restrictive than those contained in the Agreement, provided, that the Recipient will be responsible for any breach of the confidentiality obligations by any of its employees, directors and consultants. Neither party shall disclose any of the terms of the Agreement to any third party without the prior written consent of the other party; provided, however, that Licensor may disclose (a) Confidential Information of Discloser (i) in confidence, to its accountants, attorneys, financial advisors, and actual and potential investors, financing parties or payment transferees who are bound by confidentiality obligations no less restrictive than those contained in the Agreement, (ii) in connection with the enforcement of the Agreement or rights under the Agreement, (iii) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction solely for use in the due diligence investigation in connection with such transaction, or (vi) if Licensor believes it is or may be subject to legal obligation to disclose Confidential Information to any governmental agency, and (b) any Confidential Information of Licensor in its sole discretion.



- 8.2 If Recipient receives a request or order for disclosure of Confidential Information from any court, tribunal, government department or agency or other official body, it shall promptly notify the Discloser and shall cooperate with Discloser (at the Discloser's expense) in seeking a protective order or other appropriate remedy. If, in the absence of a protective order or other remedy, Recipient is legally compelled to disclose Confidential Information, it may disclose only that portion of the Confidential Information which is legally required to be disclosed.
- 8.3 The Recipient acknowledges and agrees that monetary damages may 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 seek to enforce the Agreement and any of its provisions by seeking an injunction, specific performance and/or other equitable relief without being required to post a bond or other security or to provide proof of actual damages or the inability to establish damages.
- 8.4 Licensee may from time to time provide suggestions, comments, complaints or other feedback ("**Feedback**") with respect to the Licensor Package, Professional Services, Confidential Information provided by Licensor and/or other products or services of Licensor. Licensee agrees that all Feedback is and will be given entirely voluntarily. Licensee hereby agrees that Licensor owns all right title and interest in and to Feedback.

9. **Warranties and Disclaimer**

- 9.1 Licensor warrants only that during the Subscription Period, the Software Platform will perform, in all material respects, in accordance with the Specifications. Licensee's exclusive remedy and Licensor's entire liability under this limited warranty will be, as determined by Licensor, for Licensor to (i) replace the non-conforming component of Software Platform free of charge, (ii) 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 grant of the license to the Software Platform hereunder for the applicable Subscription Period paid in respect of the non-conforming component of the Software Platform, which payment, if elected by Licensor, shall be Licensee's sole and exclusive remedy and Licensor's sole and exclusive liability with respect to such nonconformity.
- 9.2 Licensor warrants that any 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 liability or repair for damages, malfunctions, or service failures which are caused by (1) actions in respect of the Software Platform by any non-Licensor 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, (7) negligence or willful misconduct by Licensee or Users, or (8) 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 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 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**

EXCEPT FOR LICENSEE'S MISAPPROPRIATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS, TO THE EXTENT PERMITTED BY APPLICABLE LAW IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, LOSS OF BUSINESS OR 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. EXCEPT FOR LICENSOR'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS IN SECTION 11 OR WILLFUL MISCONDUCT, LICENSOR'S TOTAL AND CUMULATIVE LIABILITY FOR ALL CLAIMS UNDER THE AGREEMENT, OR FOR BREACH OF THE AGREEMENT, INCLUDING WITHOUT LIMITATION THOSE RELATING TO THE LICENSOR PACKAGE, SUPPORT AND MAINTENANCE AND PROFESSIONAL SERVICES, HOWEVER CAUSED AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED 100% OF THE AGGREGATE AMOUNT RECEIVED BY LICENSOR FROM LICENSEE UNDER THE AGREEMENT AS SUBSCRIPTION FEES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE LIMITATIONS SET FORTH IN THIS SECTION 10 SHALL APPLY EVEN IF LICENSOR AND ITS RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

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 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 the 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) in connection with any modified version of the Software Platform, (v) in connection with 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) or (vi) from use of the Licensor Package or any portion thereof by a User not authorized for such use hereunder.
- 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 neither option under foregoing clauses (a) or (b) is commercially feasible, to terminate the 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 the 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 the Software Platform and/or the Licensor Package or Professional Services purchased under the Agreement.

12. Term and Termination

- 12.1 The term of the Agreement will commence on the Effective Date and will continue in full force and effect so long as there is an active Subscription Period under the terms of any Quotation, subject to early termination as provided in this Section 12. Any renewal Subscription Period or renewal Subscription Periods specified in a Quotation, shall be subject to Section 5.1 hereof. Any renewal Subscription Period that is not specified in a Quotation as an automatic renewal may only take place upon both Parties' mutual written consent via a signed Quotation.
- 12.2 Except as set forth in a Quotation, either Party may terminate the Agreement as of the end of the initial Subscription Period or any renewal Subscription Period, if such Subscription Period would be followed by an automatic renewal period, upon thirty (30) days' notice prior to the end of the applicable Subscription Period; provided that in any such case, no Contract Fees paid or payable in connection with any Subscription Period (including any automatic renewal Subscription Period) hereunder shall be subject to repayment or credit in whole or in part in connection with any such termination, nor relieve Licensee of its obligations to make all payments due hereunder (including the full amount of Contract Fees for any automatic renewal Subscription Periods determined in accordance with Section 5 hereof without regard to such earlier termination) without deduction, offset, setoff, counterclaim or reduction, recoupment or other charge.
- 12.3 Notwithstanding anything contained herein to the contrary, either Party may terminate the Agreement by written notice to the other Party, if the other Party breaches any material obligation hereunder (other than any payment obligation of Licensee), which breach remains uncured for a period of thirty (30) days after receipt of written notice of breach by the breaching Party. Licensee's breach of any payment obligation hereunder constitutes a default on the date the payment is due and Licensor shall have the right to terminate the Agreement immediately or suspend performance as provided herein. In addition, Licensor may immediately terminate the Agreement if Licensee breaches or is not compliance with the provisions of Sections 3, 4, 8 or 13.9. In any such case, no Contract Fees paid hereunder, shall be subject to repayment or credit in whole or in part in connection with any such termination, nor relieve Licensee of its obligations to make all payments due hereunder without deduction, offset, setoff, counterclaim or reduction, recoupment or other charge.
- 12.4 In addition to the foregoing, either Party may immediately terminate the Agreement by written notice to the other 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 or (iv) upon the other Party making a general assignment for the benefit of creditors. In any such case, no Contract Fees paid hereunder shall be subject to repayment or credit in whole or in part in connection with any such termination, nor relieve Licensee of its obligations to make all payments due hereunder without deduction, offset, setoff, counterclaim or reduction, recoupment or other charge.
- 12.5 Upon the termination or expiration of the Agreement for any reason (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, (iii) Licensee will pay all amounts due but unpaid hereunder to Licensor, and (iii) Licensee will return all Confidential Information and embodiments thereof to Licensor, at Licensee's expense.
- 12.6 Sections 1 (Definitions), 3 (Restrictions), 4 (Title), 5 (Quotations, Contract Fees, Payment Terms, Taxes and Late Payments), 7 (Subscription 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 or expiration of the, will survive such termination or expiration.

13. **Miscellaneous**

- 13.1 **Notices.** All notices and other communications required or permitted to be given under the Agreement (“**Notices**”) will be in writing (which may be in e-mail form), will reference the Agreement, and will be addressed to the Party’s address (whether physical or in e-mail form) as set forth on the Quotation.
- 13.2 **Force Majeure.** Neither Party will be responsible for any failure to perform its obligations (other than payment obligations) under the Agreement attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, government actions, war, civil disturbance, insurrection, riots, terrorism, sabotage, labor shortages or disputes, failure or delay in delivery by suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or the other Party’s fault or negligence or any other force majeure event (“**Force Majeure**”).
- 13.3 **Authorization; Assignment.** Each Party represents that it has the full power and authority to enter into the Agreement and to convey the rights herein conveyed. Each Party further represents that entering into the Agreement will not constitute a breach of any binding document or agreement. 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 the Agreement, and further agrees that it may not assign its rights or obligations under the Agreement otherwise than as provided under the Agreement, without the prior written consent of the other Party, except that either will be entitled and is authorized to (provided not to a competitor of Licensor) assign, transfer or otherwise dispose of from time to time: (a) all its rights and obligations in the event of (i) a merger (in which Licensor is not the surviving entity) or (ii) sale of all or substantially all of its shares or the assets of Licensor, (b) any or all of its rights and obligations to a wholly-owned subsidiary of Licensor or (c) any or all of its rights to payments hereunder, and Licensee will follow the reasonable instructions of Licensor with respect to payment and performance of the rights assigned to any such assignees or transferees. Any assignment or transfer of the Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, the Agreement shall be binding on and inure to the benefit of the Parties’ respective successors and permitted assigns.
- 13.4 **No Third-Party Beneficiaries.** The Agreement is intended solely for the benefit of the Parties. In no event will any third party have any rights in relation to the Agreement or any right to enforce the terms hereof, subject to Section 13.3.
- 13.5 **Publicity.** Notwithstanding Section 8 above, Licensor may state on its website, and may state in Licensor’s sales and investment and financing oriented presentations, the fact that Licensee is a customer of Licensor for the Software Platform and may utilize Licensee’s trademark on Licensor’s Website.
- 13.6 **Headings; No Additional Commitments; Amendment; Waiver.**
- (a) Any headings are for convenience purposes only and will not be employed in interpreting and construction of the Agreement.
 - (b) The 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. Except as expressly set forth in the Agreement, Licensor has no obligation or commitment to provide to Licensee or any of its Users any software, any service, any update, revision or new release of any software included in the Licensor Package, or any documentation materials that are not contained in the Documentation included in the Licensor Package.
 - (c) The Agreement may not be modified, amended, altered or supplemented except by a written agreement executed by both Parties.
 - (d) If any of the provisions of the 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 the 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 the 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 Venue; Dispute Resolution.** This Agreement is to be construed in accordance with and governed by the laws of the applicable jurisdiction, as set forth in the table below (the “Applicable Jurisdiction”) without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced only in the courts of the Applicable Jurisdiction and each Party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such legal suit, action or proceeding.



Region in which Company's Address is Located	Applicable Jurisdiction
Europe/Middle East (EMEA)	London, England
Asia/Pacific (APAC) and India	Singapore, Republic of Singapore
North America/Central & Latin America (NA/CALA)	New York, NY, USA

IF RELEVANT TO THE APPLICABLE JURISDICTION, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING 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, agency, 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 applicable Export Controls and Economic Sanctions Laws. Licensee will comply strictly with all Export Controls and Economic Sanctions Laws as they relate to such technology and software, including access and use of the Licensor Package. In addition, Licensee represents and warrants that Licensee and its Users are not Prohibited Persons. 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 or becomes a Prohibited Person, including without limitation due to Licensee's or any User's temporary or permanent location, residence, or organization in a Prohibited Jurisdiction, and neither Licensee nor any of its Users will provide access to any portion of the Licensor Package to any Prohibited Persons, including any government of, or entity or individual located, resident or organized in, the Prohibited Jurisdictions, 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.
- 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 the 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.



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 or New York 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 – General Terms and Conditions to which this **Exhibit A** is attached.

2. Scope of Support.

Subject to payment of the relevant Subscription Fees under the Quotation, during any 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 the 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.