



Cybereason Reseller Agreement (Online)

This RESELLER AGREEMENT (this “**Agreement**”) is entered into as of (the “**Effective Date**”) by and between Cybereason Inc., a Delaware corporation having a principal place of business at 200 Clarendon Street, Boston, MA 02116 (“**Company**”) and the entity (“**Reseller**”) set forth in the associated MOU (as defined below) (each a “**Party**” and collectively the “**Parties**”).

In consideration of the promises and the mutual agreements set forth herein, and intending to be legally bound, the parties hereby agree as follows:

1. Definitions

- 1.1 “**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.
- 1.2 “**Business Partner Code of Conduct**” means the Cybereason Business Partner Code of Conduct available at <https://www.cybereason.com/business-partner-code-of-conduct>.
- 1.3 “**Confidential Information**” means any nonpublic information, data, materials, intellectual property rights, trade secrets, patents, copyrights, designs, techniques, plans or know-how, whether or not marked or designated as confidential at any time, of either Party and in any form or media, including but not limited to, documentary form, oral form, visual form, or written form, or machine-readable or other electronic form, presentation or demonstration form, or computer generated, and regardless of the manner in which furnished and disclosed by or on behalf of a Party (“**Discloser**”) to the other Party (“**Recipient**”) under the Agreement. Licensor’s Confidential Information will automatically include, but not be limited to, (i) the terms and conditions of the Agreement, information relating to the Licensor’s past, present, and future research and products (including the Software Platform), related documentation or any part thereof, issues and defects discovered, workarounds, fixes, resolutions, performance capabilities, assets, liabilities, operations, methods, policies, strategies, services, customers or customer lists, agreements, developments, inventions, processes, hardware configuration information, marketing, technical, non-technical, business, financial, and other information and any derivatives and modifications thereof; (ii) all notes, memoranda, analyses, compilations, studies, surveys, reports, test results, formulae, forecasts, interpretations, transactions, and data concerning employees, consultants, officers, directors and share holders and other documentation of the Recipient, based upon, relating to, derived from, and/or incorporating, in whole or in part, Confidential Information; and (iii) the existence of this Agreement and its terms, the fact that the Parties are in discussions regarding the Purpose and the status and terms thereof. 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 “**Delivery Date**” means the requested delivery date for the Software Platform as set forth in the Purchase Order.
- 1.5 “**Documentation**” shall mean any and all documentation and material pertaining to the Software Platform, in any form, provided by Company to Reseller pursuant to this Agreement for use in conjunction with the Software Platform.
- 1.6 “**End User**” means an individual or entity that purchases a Software Platform or Service from Reseller.
- 1.7 “**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, Reseller, and/or any End Users, including but not limited to 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 Company, Reseller, Buyer, or any End User maintains regular business operations.
- 1.8 “**Intellectual Property Rights**” means all patents, patent rights, copyrights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secrets, trade secret rights and other intellectual property rights, as may now exist or hereafter come into existence, and all applications therefor and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.
- 1.9 “**Licensor Package**” shall mean the Software Platform, any Documentation and/or Confidential Information of Company.
- 1.10 “**MOU**” means the ‘Memorandum of Understanding’ relating to the Cybereason ‘Partner Lead Achievement Incentive Compensation Program’, entered into between the Parties, as the same may be amended, modified or supplemented from time to time.



- 1.11 **“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 this 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.
- 1.12 **“Purchase” or “Sale”**: All references in this Agreement to the **“purchase”** or **“sale”** of the Software Platform shall mean, with respect to all parts of such Software Platform, the acquiring or granting, respectively, of a license to use such parts, and to exercise any other rights pertaining to such parts which are expressly set forth herein.
- 1.13 **“Purchase Order”** means a written order submitted by Reseller to Company pursuant to Section 7, covering the Software Platform (including specifically the information required under Section 2.2 and such other details of the property or services ordered as may be expressly agreed to by Company in its discretion; provided that, no other terms and conditions set forth in such Purchase Order, shall be binding on Company without Company's express written consent.
- 1.14 **“Reseller Discount”** means the discount specified in Exhibit A.
- 1.15 **“Reseller Subscription Fee”** shall mean the Subscription Fee less the Reseller Discount.
- 1.16 **“Service(s)”** means those professional services specified in a Purchase Order, which may include (but are not limited to) expert research in the event of an emergency, continuous expert research or security services that may be offered by Company that are applicable to the Software Platform, such as active monitoring, advanced analysis and threat hunting.
- 1.17 **“Software Platform”** means the current edition and version of Company's commercially available software as specified in Exhibit A. The Software Platform may include certain software installed on End User computers (i.e., computers that are not normally accessible over the network by other users) and/or servers and/or cloud based services, as well as a connection to an external cloud server. The Software Platform is licensed in object code form only, and is not sold.
- 1.18 **“Specifications”** means the functional Software Platform specifications and technical requirements provided to End User by Company.
- 1.19 **“Subscription Fee”** shall mean the applicable fees payable by the End User for use of the Software Platform during the Subscription Period, as detailed in Exhibit A, as may be amended from time to time by Company (including on a per-End User basis), or as specified in a Company-provided and approved Subscription Fee price quote with respect to a particular End User. For the avoidance of doubt, Subscription Fees do not include charges for Services.
- 1.20 **“Subscription Period”** shall mean the period of time specified in the Purchase Order in respect of which the End User has ordered and shall pay Subscription Fees in respect of its use of the Software Platform.
- 1.21 **“Support and Maintenance”** shall mean the support and maintenance services to be provided by Company to End User with respect to the Software Platform during the relevant Subscription Period pursuant to the End-User Agreement, as specified in the Purchase Order.
- 1.22 **“Territory”** means the countries set forth in Exhibit A.
2. **Appointment of Reseller; Resale of the Software Platform in the Territory; Purchase Orders**
- 2.1 **Resale in the Territory**. Subject to the terms and conditions of this Agreement, Company hereby grants to Reseller, under Company's Intellectual Property Rights in the Software Platform and the Licensor Package, a nonexclusive, non-sublicensable, nontransferable right to market and promote the Software Platform in the Territory and submit Purchase Orders on behalf of End Users in the Territory for the Software Platform and collect the Subscription Fees payable by such End Users in respect of the Software Platform, all subject to payment by Reseller to Company of the applicable Reseller Subscription Fees. The license granted to Reseller in this Section 2.1 shall be effective immediately and the Reseller Subscription Fee (and any fee for Services purchased by such End User) shall be deemed fully earned (i) for all Subscription Periods (including any automatic renewal Subscription Periods) with respect to each End User to whom Reseller sells a Software Platform, upon acceptance by Company of a Purchase Order for such Software Platform relating to such End User, and (ii) for the agreement of Company to provide such Services as have been purchased by such End User, as the case may be, even if a Subscription Fee or other fee for Services 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 the End User. All amounts payable to Company by Reseller or any End User shall not be subject to deduction, offset, setoff, counterclaim or reduction, recoupment or other charge.
- Company shall not be liable in any manner whatsoever in the event that an End User located within or outside the Territory, shall purchase the Software Platform or a license to use same from a reseller or any other third party that is not the Reseller, and it is clarified that Company retains the full and complete right to license, sublicense, assign, market and/or otherwise distribute, directly or indirectly through third parties, the Software Platform or any part thereof, throughout the world.
- 2.2 **Purchase Orders**. Reseller shall order the Software Platform for End Users by issuing written Purchase Orders to the Company. No Purchase Order shall provide for a Delivery Date sooner than Company's applicable lead-time for the Software Platform ordered unless approved in writing by Company. Company shall have the right, within its sole discretion, to accept or reject Purchase Orders, including without limitation Purchase Orders for leads with respect to which Company has previously accepted or approved a completed lead intake form, and no Purchase Order shall be binding upon Company unless accepted by Company in writing. Each



Purchase Order will set forth, at a minimum, the following (i) the name and address of the End User, (ii) the number or type of package of Software Platform(s) being purchased, (iii) the countries and locations where the Software Platform(s) are to be installed, (iv) the names of the persons who shall be permitted to access the Software Platform and a description of their role within the End User's organization, (v) requested Delivery Dates, (vi) requested ship to location(s), (vii) billing address, (viii) reference to this Agreement, (ix) Subscription Fees and other fees due from the End User and (x) any other reasonable information required by Company. Purchase Orders shall constitute firm purchase obligations on behalf of Reseller subject to End User's execution of the End User Agreement (as defined below). Each Purchase Order shall be subject to the written approval of Company and to Section 2.5.

- 2.3 **Support and Maintenance.** Company shall use commercially reasonable efforts to provide Support and Maintenance to the End User during the Subscription Period in accordance with Company's Support and Maintenance Policies as set forth in the End User Agreement, as may be amended from time to time in accordance with the End User Agreement.
 - 2.4 **No Returns or Refunds.** Except as expressly provided in this Agreement, and subject to the warranty provisions of this agreement or the End User Agreement, as applicable, neither Reseller nor End User shall be entitled to return and/or exchange any Software Platform, nor shall they be entitled to receive any refunds with respect to any such Software Platform, irrespective of whether or how often the services that the Software Platform provides are used by the End User. Reseller acknowledges and agrees for itself, and on behalf of each End User for which Reseller has ordered a Software Platform, that any Software Platform so ordered that was previously delivered for evaluation purposes may be used in fulfilling such End User's purchase of the Software Platform, provided that the warranties set forth herein for the Software Platform shall apply fully to such used Software Platform units.
 - 2.5 **Authority of Agreement.** The terms and conditions of this Agreement shall exclusively govern the purchase and supply of the Software Platform hereunder and the provision of any Services purchased by the End User, and shall override any conflicting, amending and/or additional terms contained in Reseller's Purchase Order or Company's quotation and/or acceptance documents, provided that in case of any conflict or inconsistency with the End User Agreement, the End User Agreement shall govern .
 - 2.6 **End User Agreement.** The Software Platform shall be licensed to the End User, and any license renewal shall be made, for the number of Endpoint installations purchased by the End User, subject and conditioned upon the End User entering into an End User Agreement with the Company as set forth in **Exhibit B** (the "End User Agreement"), as may be amended from time to time by Company in accordance with its terms and as set forth on Exhibit B. Reseller agrees with Company that each End User will execute and deliver, electronically or physically, the End User Agreement with Company, as a condition to receipt of rights to use the Software Platform. Reseller does not have the right to, and shall not, provide or grant to End Users any rights to the use of Software in excess of the rights granted by Company as set forth in, and as limited by) the End User Agreement. Reseller shall (i) obtain End User's signature on the End User Agreement as a condition to licensing the Software Platform, (ii) use all commercially reasonable efforts to ensure End User's compliance with the End User Agreement, (iii) promptly report to Company in writing any breach, or suspected breach, of the End User Agreement, and provide Company with a copy of the signed End User Agreement in each instance.
 - 2.7 **Demonstration License.** Subject to the terms and conditions of this Agreement, Company hereby grants Reseller a nonexclusive, nonsub licensable, nontransferable license to access and use the Licensor Package, only in object code format, solely for the purpose of: (i) demonstrating the Software Platform to prospective End Users, and (ii) providing training in the use of the Software Platform to Reseller's employees and End Users. The demonstration license may only be used once with respect to any potential End User, and shall expire with respect to each potential End User after thirty (30) days from its first use with respect to such potential End User. Furthermore, without derogating from any other provision hereof and notwithstanding anything contained in this Agreement to the contrary, the demonstration license is provided "AS IS" and Company shall not be liable for any damage and/or loss, of any kind whatsoever, arising from and/or related to the demonstration license.
 - 2.8 **Feedback.** Reseller shall provide prompt written notification of any suggestions, comments, complaints or other feedback about the Software Platform or the Licensor Package that are made by End Users or Reseller's prospective End Users, or that originate with Reseller, and of any problems with the Software Platform or its use of which Reseller becomes aware. Such written notification shall be the property of Company, and shall be considered Company's Confidential Information hereunder. Reseller hereby grants, on behalf of itself and its End Users and prospective End Users, to Company 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 Reseller hereby waives on its and their behalves, any moral rights in the Feedback, to the extent permitted by law.
 - 2.9 **Effectiveness of Agreement.** In the absence of an executed and delivered physical counterpart of this Agreement within thirty (30) days following the Effective Date of the MOU, this Agreement shall continue to govern subscription transactions by the Reseller from and after such Effective Date, notwithstanding any termination or suspension of the MOU in accordance with its terms.
 - 2.10 **Product Changes.** Company shall have the right to make design modifications to the Software Platform or any aspect of the Licensor Package at any time.
3. **Prices and Payment Terms**
- 3.1 **Prices.** Reseller shall pay Company the applicable Reseller Subscription Fees for the Software Platform within thirty (30) days of Company's invoice therefor. Company shall have the right to revise the Subscription Fees and the Reseller Discount set forth in **Exhibit A** upon thirty (30) days written notice to Reseller. Such revised prices shall apply to all Purchase Orders submitted after the effective date of the revision. For the avoidance of any doubt it is hereby clarified that Company shall not be required to pay any fees, or other remuneration to Reseller in consideration for any of Reseller's marketing, promotion, or other services or activities relating to the Software Platform. If the Subscription Fee applicable to an End User is payable in installments during a Subscription



Period, such installment methodology is for the convenience of the End User only, and the full amount of the Reseller Subscription Fees with respect to such End User, and charges for any Services purchased by the End User for which payment is to be made by Reseller to Company, is acknowledged as fully earned by Company's acceptance of a Purchase Order with respect to such End User and such amounts shall be payable by Reseller on the terms set forth in such accepted Purchase Order. Such Reseller Subscription Fees and fees for any such Services constitute the agreed consideration for Company's grant of the license to Reseller under Section 2.1 in respect of such End User and entrance into the End User Agreement and Company's agreement to perform such Services, respectively.

- 3.2 **Shipping and Taxes.** All prices are exclusive of shipping, insurance and installation charges, all of which are Reseller's sole responsibility. All prices are 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 taxes, duties or tariffs will be added to the price or subsequently invoiced to the Reseller. In the event Company is required to pay any such tax, duty, tariff or any such charge, Reseller will promptly reimburse Company therefor on an after-tax basis. Any taxes or levies based on the income, revenue or profits of Company will be paid by Company and will not be reimbursed by or recharged to Reseller.
- 3.3 **Payment.** Any amounts not paid when due will accrue interest at the rate of 1 1/2% per month, or the maximum amount allowed by law, if lower. Without limiting any other right or remedy available to Company, in the event that any payment is more than thirty (30) days late, Company shall have the right to suspend performance under this Agreement, upon ten days' notice to Reseller (provided no such notice shall be required if such notice is not permitted under applicable law), until all payments are made current. Each accepted Purchase Order is a separate, independent transaction, and Reseller has no right of setoff, offset, deduction, counterclaim, redemption, recoupment or other charge against other Purchase Orders or other transactions with Company. No discounts for prepayment are authorized hereunder.

4. **Proprietary Rights**

- 4.1 **Ownership.** Title to and ownership of the Licensor Package, and any improved, updated, modified or additional parts thereof, and all copyright, patent, trade secret, trademark and other Intellectual Property Rights embodied in the Licensor Package, shall at all times remain the property of Company or Company's licensors. The use by Reseller of such rights is authorized only for the purposes herein set forth and upon termination of this Agreement for any reason, such authorization will cease. Reseller hereby undertakes to keep the Licensor Package free and clear of all claims, liens and encumbrances and not to sell, assign, transfer, encumber or dispose of in any way any such item except as explicitly permitted under this Agreement.
- 4.2 **No Other Rights.** Reseller shall not, directly or through any person or entity, in any form or manner, copy, distribute, reproduce, incorporate, use or allow access to the Software Platform or any other aspect of the Licensor Package or modify, prepare derivative works of, decompile, reverse engineer, disassemble or otherwise attempt to derive source code or object code of the Software Platform, except as explicitly permitted under this Agreement or otherwise agreed in writing. Furthermore, Reseller shall not, directly or through any person or entity, use the Licensor Package or any part thereof as part of a service bureau, or to provide commercial timesharing rental or sharing arrangements to any third party. In making use of the Software Platform, Reseller shall comply with all applicable laws, including data protection and privacy laws, and shall not send or cause to be sent any unsolicited email ("spam"), including without limitation newsgroup postings.

Reseller shall not use, demonstrate or offer a license to the Software Platform in any application that involves risks of death, personal injury, severe property damage or critical environmental damage or in any life support applications, devices or systems, except as explicitly approved in writing by Company's Chief Executive Officer.

Use of Trade Names. Reseller may use the product names of Company and its licensors in Reseller's advertising and promotional media used for marketing the Software Platform, provided (i) that Reseller conspicuously indicates in all such media that such names are trademarks of Company and its licensors and (ii) that Reseller submits all such media to Company for prior approval in its reasonable discretion. **ANY USE OF THE CYBEREASON TRADEMARKS (AS DEFINED IN CYBEREASON'S EXTERNAL BRAND GUIDELINES) IS SUBJECT TO CYBEREASON'S EXTERNAL BRAND GUIDELINES, LOCATED AT: <https://www.cybereason.com/external-brand-guidelines>.** Reseller shall not 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 Reseller shall 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. Upon termination of this Agreement for any reason, Reseller will immediately cease all use of the Software Platform names and, at Reseller's election, destroy or deliver to Company all materials in Reseller's control or possession which bear such names, including any sales literature. Reseller will not challenge Company's ownership of its patents or any Intellectual Property Rights claimed by Company or its licensors in its trademarks, trade names or logos, or use any trademark, trade name or logo which might be confusingly similar to Company's trademark, trade name or logo.

5. **Reseller's Responsibilities**

- 5.1 **General.** Reseller will, at all times, conduct its business in a professional manner which will favorably reflect upon Company. Reseller shall at all times comply with good business practices and all applicable laws and regulations relevant to this Agreement and the subject matter hereof. Reseller shall at all times maintain whatever organization and resources that are necessary for the performance of its obligations pursuant to the terms of this Agreement.
- 5.2 **End User Operating Systems.** Reseller shall ensure that each End User has in place or will obtain the appropriate operating systems, operating environment, licenses, application server licenses, web server licenses and the hardware required for the installation and operation of the Software Platform.



- 5.3 **Sales and Marketing.** Reseller shall use commercially reasonable efforts to market and promote the Software Platform in the Territory. These efforts may include without limitation the use of mailings, telemarketing programs, advertising, seminars, other customary marketing techniques and collaboration with Company. Reseller further agrees to place Company's logo on the partner section of Reseller's corporate Website in equal to or greater position as other vendor logos if the partner supports a corporate Website.
- 5.4 **Leads and Forecasts.** For each potential End User (or "lead") developed by Reseller, Reseller will submit to Company a completed lead intake form, or as otherwise provided in Company's Partner Portal. Leads are approved or denied at the sole discretion of the Company, and Company shall have the right at its discretion to refuse to accept a Purchase Order or to work with a certain lead even if Company has previously accepted or approved a completed lead intake form from Reseller with respect to such lead. Notwithstanding submission of and action on any lead, Company retains the full and complete right to license, sublicense, assign, market and/or otherwise distribute, directly or indirectly through third parties, the Software Platform or any part thereof, throughout the world.
- 5.5 **Evaluation Units.** Reseller shall ensure that potential End Users that wish to evaluate the Software Platform shall enter into Evaluation License Agreements with the Company, with Reseller's facilitation. Reseller shall use best efforts to cause each End User that evaluates the Software Platform pursuant to the terms of the Company's Evaluation License Agreement to complete its evaluation within a thirty (30) day period, provided that such period may be extended with Company's prior written consent, after which time Company shall be entitled to deactivate such End User's evaluation license to the Software Platform.
- 5.6 **Records and Audit.** Reseller shall (i) provide truthful and complete documentation supporting, in reasonable detail, the work performed and any expenses incurred in connection with this Agreement; (ii) maintain true, accurate, and complete invoices, reports, statements, books, and other records related to work performed and any expenses incurred under this Agreement; and (iii) retain such records for a period of five (5) years following the termination of this Agreement. Reseller shall maintain an accurate and complete list of all End Users to whom Reseller markets and promotes Software Products, including the names and addresses of each End User. Reseller shall permit, during the term of this Agreement and for the five (5) years after final payment has been made under this Agreement, the Company's internal and external auditors to access any relevant books, documents, facilities, computers, papers, and records of Reseller involving transactions related to this Agreement.

6. **Delivery**

Company shall use commercially reasonable efforts to meet the Delivery Date for the Software Platform. The time period of delays and holds resulting from Reseller activity or inactivity shall automatically extend the Delivery Date by a like number of days but shall not affect the commencement and end dates of any Subscription Period. Should Company be unable to install or activate an End User's license to the Software Platform by the Delivery Date, Reseller shall be informed in writing of such inability as soon as the delay is reasonably identified by Company and Reseller shall be advised of the new activation or installation date as soon as it is available. Any partial activations or installations delivered by Company may be invoiced individually. No part of any Reseller Subscription Fee or other payment to Company hereunder shall be subject to deduction, offset, setoff, counterclaim or reduction, recoupment or other charge as a result of any such delay, hold or extension.

7. **Acceptance**

The Software Platform shall be deemed accepted upon delivery to, or to the order of, Reseller at the location specified in the applicable Purchase Order. Reseller must provide written notice to Company within thirty (30) days of delivery in the event that the Software Platform does not conform to the Purchase Order.

8. **Warranty**

- 8.1 **Warranty.** EXCEPT FOR THE WARRANTY TO THE END USER SET FORTH IN THE END USER AGREEMENT, COMPANY PROVIDES THE SOFTWARE PLATFORM AND THE LICENSOR PACKAGE AND SERVICES "AS IS" AND MAKES NO WARRANTIES WITH RESPECT TO SAME AND DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE PLATFORM AND THE LICENSOR PACKAGE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, EFFECTIVENESS, USEFULNESS, RELIABILITY OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.
- 8.2 **Limitation of Liability.** IN NO EVENT SHALL COMPANY BE LIABLE TO RESELLER, END USER OR ANY THIRD PARTY 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. COMPANY'S TOTAL AND CUMULATIVE LIABILITY FOR ALL CLAIMS UNDER THIS AGREEMENT, OR FOR BREACH OF THIS AGREEMENT, 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 COMPANY FROM RESELLER UNDER THIS AGREEMENT AS RESELLER 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 8 SHALL APPLY EVEN IF COMPANY AND ITS RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- 8.3 **Disclaimer of Other Representations.** ALL REPRESENTATIONS MADE OR AGREEMENTS EXECUTED BY RESELLER TO OR WITH ANY END USER PURSUANT TO THIS AGREEMENT SHALL BE RESELLER'S SOLE RESPONSIBILITY. FURTHERMORE, EACH SUCH AGREEMENT SHALL CONTAIN AN ACKNOWLEDGMENT BY ANY THIRD PARTY THAT IT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES



MADE BY COMPANY EXCEPT FOR THOSE WARRANTIES EXPRESSLY MADE IN THE END USER AGREEMENT BETWEEN COMPANY AND END-USER.

9. **Compliance with Export Controls, Etc.**

- 9.1 **Export Controls and Economic Sanctions.** Reseller acknowledges that any obligation of the Company to provide or to license the Software Platform and Documentation and the related intellectual property under this Agreement shall be subject in all respects to all Export Controls and Economic Sanctions Laws, and any use or transfer of the Software Platform and Documentation or the related intellectual property must be authorized under the Export Controls and Economic Sanctions Laws. Reseller agrees that Reseller will not use, distribute, transfer, or transmit the Software Platform or the related intellectual property in violation of the Export Controls and Economic Sanctions Laws. If requested by Company, Reseller also agrees to sign written assurances and other export-related documents as may be required for Company to comply with U.S. export regulations. Reseller further represents and warrants that neither Reseller nor Reseller's equity holders, partners, officers, directors, employees, representatives, affiliates, subcontractors, other agents and End Users are Prohibited Persons. Reseller expressly agrees that, without the prior written authorization of Company and the U.S. Government, Reseller shall not, and shall cause its End Users not to (a) directly or indirectly acquire, export, re-export, divert, ship or transfer Company's Software Platform or any related intellectual property or direct product thereof to or for the benefit of any Prohibited Person, or (b) directly or indirectly disclose any data derived from Company's Software Platform or any related intellectual property or direct product thereof to or for the benefit of any Prohibited Person when such disclosure is restricted or prohibited by Export Controls and Economic Sanctions Laws. Reseller further agrees that none of the Software Platform will be used for nuclear activities, chemical/biological weapons, or missile projects unless authorized by the U.S. Government. Reseller agrees to comply strictly with all Export Controls and Economic Sanctions Laws and assumes sole responsibility for obtaining licenses to export or re-export the Software Platform as may be required under Export Controls and Economic Sanctions Laws. Certain products with encryption functions may be subject to additional restrictions, including restrictions on distribution to government End Users outside the EU license free zone. This provision shall survive the expiration or termination of this Agreement.
- 9.2 **Import Controls.** Reseller is solely responsible for compliance with any import or use restrictions in the Territory. This provision shall survive the expiration or termination of this Agreement.
- 9.3 **Authorizations.** Reseller shall, at its own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations required under applicable law, regulation or order required for Reseller to perform its obligations under this Agreement.

10. **Representations, Warranties and Certain Covenants of Reseller**

- 10.1 **Anti-Bribery and Anti-Corruption.** In conformity with the United States Foreign Corrupt Practices Act, the United Kingdom's Bribery Act 2010, and similar anti-corruption laws of other nations (collectively, "**Anti-Bribery Laws**"), Reseller represents, warrants and covenants that it shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government, foreign or domestic, (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist Company in obtaining or retaining any business, or securing any improper business advantage. Reseller also represents that it has instituted policies and procedures designed to ensure, and which are reasonably expected to ensure, compliance with all applicable Anti-Bribery Laws. Reseller further represents that Reseller has reviewed Company's Business Partner Code of Conduct and that Reseller, including any of its equity holders, partners, officers, directors, employees, and representatives, will comply with Company's Business Partner Code of Conduct in connection with its work on behalf of Company. Reseller represents that it shall immediately notify Company should it learn of or have reason to know of any request for payment or other action that is inconsistent with the provisions of this Section or Company's Business Partner Code of Conduct.
- 10.2 **Training.** Reseller represents, warrants and covenants that it shall promptly complete Company's Anti-Bribery and Anti-Corruption training, and shall complete any future training, as required by Company.
- 10.3 **Cooperation with Background Inquiries.** Reseller acknowledges that from time to time during the term of this Agreement Company may in its discretion obtain and review information regarding Reseller's business practices and history and conduct customary background checks with respect to Reseller, and Reseller will cooperate as reasonably requested by Company with all such inquiries.
- 10.4 **Compliance with Applicable Laws.** Reseller represents, warrants and covenants that it shall comply with all laws and regulations, whether foreign or domestic, applicable to Reseller with respect to the promotion, marketing, sale, import or export of the Licensor Package.

11. **Mutual Representations and Warranties**

Each party represents and warrants to the other that it has been duly registered and (if an entity rather than an individual) organized in accordance with all applicable laws, it has received all necessary governmental authorizations to enter into and perform its obligations under this Agreement, if not an individual its entry into and performance under this Agreement has been duly authorized by all necessary corporate or other entity action, its entry into and performance of this Agreement will not violate any applicable laws or any other agreements to which it is bound, and this Agreement constitutes its legal, valid and binding agreement, enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally and the application of general principles of equity (regardless of whether considered in a proceeding at law or in equity).



12. **Indemnification by Reseller**

Reseller shall be liable for damages or remedies as provided by law, and shall defend, indemnify and hold Company harmless from any liability, judgment, fine, loss, damage, claim or expense arising out of any breach by Reseller of any of Reseller's representations or warranties set forth herein or relating to or arising from Reseller's performance or its failure to comply with its obligations under this Agreement, or any changes, additions or modifications made to the Licensor Package by Reseller.

13. **Confidentiality**

13.1 Company and Reseller each agree to not use any Confidential Information except for the purposes of exercising the Recipient's rights granted and performing the Recipient's obligations pursuant to this 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 this 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 this 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 this Agreement, (ii) in connection with the enforcement of this Agreement or rights under this Agreement or (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 and (b) any Confidential Information of Licensor in its sole discretion.

13.2 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. Disclosure may also be made to arbitrators in any dispute resolution proceeding pursuant to Section 16.6, and the Discloser may seek a protective undertaking from such arbitrators. Reseller may not publish any results relating to the Software Platform and/or the Licensor Package.

13.3 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.

13.4 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 13, 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 without being required to post a bond or other security or to provide proof of actual damages or the inability to establish damages.

13.5 Reseller may from time to time provide Feedback with respect to the Licensor Package, Professional Services, Confidential Information provided by Licensor and/or other products or services of Licensor. Reseller 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. Reseller reaffirms its grant of a license to Licensor relating to Feedback pursuant to Section 2.8.

14. **Term and Termination**

14.1 **Term.** This Agreement is effective on the Effective Date and, unless terminated as provided in this Agreement, shall remain in effect for one (1) year; provided that the parties may renew this Agreement for successive one (1) year terms by mutual agreement. The termination or expiration of this Agreement, nor the termination, suspension of the terms of the MOU, shall not affect the obligations of either party to the other party pursuant to any Purchase Order previously executed hereunder, and the terms and conditions of this Agreement shall continue to apply to such Purchase Order as if this Agreement had not expired or been terminated or the MOU had not terminated or been suspended.

14.2 **Termination for Cause.** If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party shall have the right to terminate this Agreement at any time. Reseller's breach of any payment obligation constitutes a default on the date the payment is due and Company shall have the right to terminate this Agreement and the MOU immediately or suspend performance hereunder and thereunder. Either party may terminate this Agreement and the MOU, effective immediately, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors that, in the case of an involuntary proceeding, is not dismissed within sixty (60) days. Company may terminate this Agreement or any other agreement with Reseller without any further obligation if Reseller, or its equity holders, partners, officers, directors, employees, representatives, affiliates, subcontractors, or other agents, take any action which in Company's sole discretion potentially violates any provision of this Agreement.

15. **Effect of Termination**

15.1 **Effect of Termination.** Upon the termination or expiration of this Agreement (i) Reseller shall immediately cease use of the Software Platform and shall delete the Licensor Package from Reseller's systems and shall no longer access Company's systems in any manner (including cloud based applications), (ii) all of Reseller's rights hereunder, including with respect to the Software Platform and the



Licensors Package, shall immediately terminate, provided that each license already granted to an End User with respect to the Software Platform shall survive in accordance with its terms, subject to termination in accordance with its terms under the applicable End User Agreement and (iii) the parties will treat all Confidential Information of the other party hereto as stated in Section 13 of this agreement.

- 15.2 **Limitation of Liability.** In the event of termination by either party in accordance with any of the provisions of this Agreement, neither party shall be liable to the other, because of such termination, for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of either party. Termination shall not, however, relieve either party of any obligations incurred prior to the termination, including, without limitation, the obligation of Reseller to pay Company for Software Platforms or Services purchased prior to such termination. No Reseller Subscription Fees or fees for Services paid hereunder shall be subject to repayment or credit in whole or in part in connection with any such termination, nor relieve Reseller of its obligations to make all payments due hereunder to Company without deduction, offset, setoff, counterclaim or reduction, recoupment or other charge.
- 15.3 **Survival.** The provisions of Sections 1, 2(d), 2(h), 4, 5(f), 8, 9, 12, 13, 15 and 16 of this Agreement, and all payment obligations incurred during the term of this Agreement, shall survive the expiration or termination of this Agreement for any reason. The provisions of Section 13 shall survive the expiration or termination of this Agreement for five (5) years. All other rights and obligations of the parties shall cease upon termination of this Agreement.

16. **Miscellaneous**

- 16.1 **Severability.** If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement.
- 16.2 **Waiver.** The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement.
- 16.3 **No Joint Venture or Agency.** Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. No party is authorized to act as agent for the other party hereunder except as expressly stated in this Agreement.
- 16.4 **Notices.** All notices required or permitted under this Agreement will be in writing and will be deemed received when (a) delivered personally; (b) when sent by confirmed telex, facsimile or e-mail (followed by the actual document in air mail/air courier); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six (6) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery or, for international courier packages, two (2) days after deposit with a commercial express courier specifying 2-day delivery, with written verification of receipt.
- 16.5 **Assignment.** Reseller shall not assign or transfer this Agreement or the MOU or any rights or obligations under this Agreement or the MOU, without the prior written consent of Company. Company or any successor may assign or transfer, in whole or in part, any or all of its rights under this Agreement from time to time (including but not limited to assignment or transfer by way of merger, consolidation or sale of assets or shares, and assignment or transfer to a third party or to a subsidiary) without the consent of Reseller or any End User. Reseller will follow the reasonable instruction of Company with respect to payment and performance of any rights assigned by Company to any such assignees or transferees, and will deliver (and cause each End User to deliver) such documentation and confirmations and cooperate with Company as is reasonably requested in connection with the implementation of any such assignment or transfer. Any assignment or transfer of this Agreement or the MOU made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement and the MOU shall be binding on and inure to the benefit of the Parties' respective successors and permitted assigns.
- 16.6 **Governing Law and Venue; Dispute Resolution.**

(a) Any action arising from or related to this Agreement or the MOU will be governed by the laws of the State of New York, excluding any choice of law rules that would require the application of laws other than those of the State of New York, and except as to matters submitted to binding arbitration as required below, will be subject to the exclusive jurisdiction of the federal and state courts located in the State of New York. Each Party hereby submits to the jurisdiction of such courts for purposes of enforcement of this Agreement and, subject to Section 16.6(b), resolution of any dispute hereunder. Service of process in any proceeding in such courts may be made by any means permissible under the rules thereof. The Parties hereby waive any claim of *forum non conveniens*. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, if applicable, will not apply to this Agreement or the MOU.

(b) Any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, or under any applicable law, now existing or hereafter arising under or in connection with, or in any way pertaining to, this Agreement or the MOU (each, a "Dispute") will be resolved expeditiously, amicably, and at the level within each Party's organization most knowledgeable about the Dispute. If, within ten (10) Business Days (as may be extended by mutual agreement) after delivery by a Party of a written notice to the other Party, senior representatives of each Party are unable to reach a resolution of the Dispute, such Dispute will be resolved by binding arbitration administered by, and in accordance with the Commercial Arbitration Rules of, the American Arbitration Association, or such other administrator and rules as agreed by the Parties. If there is any inconsistency between the terms of this Agreement and any such rules, the terms in this Agreement will control. The arbitration will be conducted at a mutually-agreed upon location in the jurisdiction whose laws govern this Agreement, or as selected by the



administrator if no agreement can be reached (“**Arbitration Location**”). All Disputes submitted to arbitration will be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code). All statutes of limitation applicable to any Dispute will apply to any arbitration proceeding. All discovery activities will be expressly limited to matters directly relevant to the Dispute being arbitrated. A judgment upon any award rendered in an arbitration may be entered in any court having jurisdiction. The Parties hereby waive any claim of *forum non conveniens* in any such court. The Parties do not intend for these procedures to supplant the routine handling of inquiries and requests, as applicable, for Support and Maintenance through informal contact with customer service representatives or other designated personnel of the Parties. Throughout the Dispute resolution process, each Party will continue to perform its obligations under this Agreement unless terminated in accordance with its terms. Any Dispute may be decided by a single arbitrator mutually appointed by the Parties, provided that If the Parties are unable to agree on a single arbitrator within (10) days of first demand for arbitration, the Dispute will be decided by majority vote of a panel of three arbitrators, with each Party to appoint one arbitrator and the party-appointed arbitrators to appoint the third arbitrator. Arbitrators shall be independent of any Party. To the maximum extent practicable, the arbitrators and the Parties will take all action required to conclude any arbitration proceeding within one hundred eighty (180) days of the filing of the Dispute. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a Party required in the ordinary course of its business, by applicable law, or to the extent necessary to exercise judicial review rights as set forth herein. In all Disputes, the Parties shall each bear their own respective legal counsel fees and expenses (including, if applicable, of in-house counsel), fees and expenses of experts and other witnesses and the expenses of a Party in presenting its case.

(c) Notwithstanding Sections 16.6(a) (except in respect of governing law) and 16.6(b), either Party may bring an action for injunctive or equitable relief in any forum having jurisdiction in the event of an alleged breach of such Party’s proprietary information or if necessary to prevent serious loss or injury to that Party or others.

(d) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE MOU, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY), AND WHETHER OR NOT IN CONNECTION WITH AN ARBITRATION. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND EACH OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 16.6(d).

- 16.7 Force Majeure. Neither party shall be responsible for any failure to perform or delay in performance of 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**”).
- 16.8 Third Party Beneficiaries. Each of Company’s licensors of software included in the Software Package shall be entitled to enforce, on a non-exclusive basis, the rights of Company under this Agreement that are for the benefit of such licensor as if such licensor was a party to this Agreement. Company is a third party beneficiary of, and is entitled to enforce, any limitations on rights under and use of each Software Package sold or otherwise provided by Reseller to any End User. For the avoidance of doubt, this Section does not limit or condition the rights in relation to this Agreement or any right to enforce the terms hereof, of assignees and transferees permitted under Section 16.5.
- 16.9 Entire Agreement and Modifications. This Agreement (including each Purchase Order, each Company quotation document and any documents incorporated herein or therein by reference), together with the MOU and the Addendum thereto, constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior communications, transactions, and understandings, whether oral or written, with respect to the subject matter hereof and constitute the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification, addition or deletion, or waiver of any of the terms and conditions of this Agreement, the MOU or the Addendum thereto shall be binding on either party unless made in a non-preprinted agreement clearly understood by both parties to be a modification or waiver, and signed by a duly authorized representative of each party, provided that the End User Agreement may be amended, modified or supplemented by Company as provided under Section 2.6 and on Exhibit B.



Cybereason Inc.

Exhibit A

"Products": As determined by the Company, and as amended from time to time.

"Territory": As determined by the Company, and as amended from time to time.

"Duration": As determined by the Company, and as amended from time to time.

"Subscription Fee (Price List)": As determined by the Company, and as amended from time to time.

"Professional Services": As determined by the Company, and as amended from time to time.



Exhibit B – Cybereason End User Agreement

Form of Cybereason End User Agreement to be used as of date of any accepted Purchase Order is the form available at <https://www.cybereason.com/license-agreement>.