



Master License and Services Agreement

This Master License and Services Agreement (collectively with the applicable Order(s) or Quote(s), this "Agreement") is a legal agreement between the entity entering into this Agreement ("Customer") and Cybereason Inc., a Delaware corporation with offices located at 1250 Prospect Street, Ste. 5, La Jolla CA 92037 USA ("Cybereason") (each a "Party" or collectively the "Parties"). 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 PARTNER(S), AS APPLICABLE) HEREUNDER, THE INDIVIDUAL ACCEPTING THESE TERMS ("YOU") REPRESENT THAT (I) 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 WITH 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 OR SERVICES. 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.

In consideration of the mutual promises and conditions contained in this Agreement the Parties agree as follows:

1. Certain Definitions

"Affiliate" means an entity that directly or indirectly controls, is controlled by, or is under common control with a Party. For purposes herein, "control" means ownership, directly or indirectly, of more than fifty percent (50%) of the voting shares or other equity interest in an entity. **"Cloud Services"** shall mean the online, standard web-based application services made generally available by Cybereason on a subscription basis and identified on the applicable Order or Quote. **"Cybereason Data"** means all data and information that Cybereason provides to Customer, including but not limited to the Software, technical information, Offerings, APIs, any Confidential Information of Cybereason and any third party software or information related to services included in the Offerings, and any data or contextual or correlative data generated by the Offerings and/or threat intelligence data. As between Customer and Cybereason, Cybereason retains all right, title and interest in and to Cybereason Data. For the avoidance of doubt, Cybereason Data does not include Customer Data. **"Customer Data"** includes all Customer-specific or Customer-identifiable data that Customer provides or makes available to Cybereason through the Offering. As between Customer and Cybereason, Customer retains all right, title and interest in and to Customer Data. **"DPA"** means Cybereason's Data Processing Agreement located at: <https://www.cybereason.com/DPA>, which may be amended or supplemented from time to time. **"Delivery"** means the date Cybereason provides log-in access to the Cloud Services or license keys to Customer, as applicable. **"Documentation"** means any and all documentation and material pertaining to use and technical descriptions of the Offerings provided or made available to Customer by Cybereason, including the Specifications, release notes, user guides, instructions and "help pages," which may be updated from time to time. For the avoidance of doubt, Documentation does not include any marketing materials or Cybereason logos or trademarks, use of which is subject to Cybereason's External Brand Guidelines, located at: <https://www.cybereason.com/External-Brand-Guidelines>. **"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, Partner, and/or Customer, 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, the U.S. Department of State, or the U.S. Department of Commerce, (b) the United Nations, (c) the European Union, (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, Partner, or Customer conducts or in the past have conducted business, directly or indirectly. **"Fee"** or **"Fees"** means the amounts payable for the Offerings to Cybereason or Partner, as applicable. **"Internal Use"** means access or use solely for Customer and its Affiliates for its own internal security purposes. **"Offering"** means any software and services provided by Cybereason pursuant to an Order or a Quote, including Professional Services, Cloud Services and/or Software (any of which may include a Sensor), and any related Documentation. **"Order"** means any purchase order or other ordering document accepted by Cybereason that identifies the Offering ordered by Customer. **"Partner"** means a reseller, distributor, managed services provider or any third-party entity authorized by Cybereason to market Offerings to end user customers. **"Policies"** means the policies and documents applicable to Cybereason's Offerings located at <https://www.cybereason.com/terms/policies>, which may be updated from time to time. **"Products"** mean the Cloud Services and Software. **"Professional Services"** means those professional services that may be provided by Cybereason, or on its behalf, as further described at <https://www.cybereason.com/terms/services>, which may be amended from time to time, and pursuant to the Quote, or if applicable, a SOW executed by both parties, but do not include Cloud Services. **"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 or Consolidated Sanctions 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/or 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, Venezuela, Yemen and the Regions of Crimea, Donetsk and Luhansk (Ukraine)), (v) any entity, regardless of location, that is owned or controlled by a government of any Prohibited Jurisdiction, or (vi) otherwise the targets of any Export Controls and Economic Sanctions Laws such that dealings with such individual or entity by the Company, Partner, or any Customer would be prohibited. **"Quote"** means one or more written quotation documents provided by Cybereason or a Partner, as applicable, to Customer, which specifies the details for the Order, including the Offering, number of Units, Subscription Period, pricing and renewal language, if any. **"Sensor"** means a software component that is installed on the endpoint that communicates with the Product console. **"Services"** means Cloud Services, Professional Services, Support and Maintenance and any other services which may be offered by Cybereason from



time to time. “**Special Terms**” means terms which are applicable and specific to a particular geography, Offering, or Customer type, which are located at <https://www.cybereason.com/terms/specialterms>. “**Specifications**” means the technical requirements and functional description of the Software, Cloud Services or Professional Services in the Documentation. “**Software**” means the sensor software installed on the endpoint, in the Customer’s environment or any on-premise software and/or software component of an Offering. “**SOW**” means a statement of work which sets forth the details of a Professional Services engagement and is signed by both Parties. “**Subscription**” means the right to use an Offering during each Subscription Period. “**Subscription Period**” means each period of time the Customer is authorized to use the Offering(s), as specified in the applicable Quote, including any renewals of such period. “**Support and Maintenance**” means the support and maintenance services to be provided by Cybereason as part of a Subscription in accordance with the terms specified at <https://www.cybereason.com/terms/policies>, as may be amended from time to time. “**Unit**” means a specific unit utilized for purposes of calculating the number of licenses and associated Fees as specified for the applicable Offering, which may include a computing device that is supported by a Sensor, including mobile device, desktop, server, laptop, workstations, virtual desktops, or other unit such as docker host, Kubernetes node, employee/User count (as may be determined by Active Directory or other method) or other unit as specified in the Quote or Documentation for the applicable Offering. “**User**” means Customer’s (or, as applicable, Customer’s Affiliates’) employees, independent contractors, agents, or other representatives who use or have access to the Offerings solely on behalf of and for the benefit of Customer (or Customer’s Affiliates) as authorized under this Agreement.

2. **Access and Use Rights.**

- 2.1 Subject to Customer complying with its obligations hereunder and receipt by Cybereason of the applicable Fees, Cybereason grants to Customer during the applicable Subscription Period, a limited, world-wide, non-exclusive, non-transferable (except as authorized herein) and non-sublicensable right for Customer (and upon approval, Customer’s Affiliates) to access and use the then-current version of the Products for the authorized number of Units solely for Customer’s Internal Use in accordance with the applicable Documentation. Cybereason retains all right, title and interest in and to the Offerings which is not expressly granted herein, including any trade secrets that may be included therein. Customer is fully responsible for its Affiliates and all access and use of the Offerings under its account, including any instructions it provides to Cybereason in performance of the Services or in relation to the Offerings.
- 2.2 Offerings may include “open source” software (“**Open-Source Components**”), which are subject to their respective open-source licenses. The terms of this Agreement will not apply with regards to the Open-Source Components which components shall be solely governed by the terms of other respective licenses.
- 2.3 For the avoidance of doubt, Cybereason have any one or more of its Affiliates to perform its obligations and relevant activities hereunder, which performance shall be subject to the terms and provisions of the Agreement. Cybereason is fully responsible for such performance of its Affiliates.

3. **Restrictions.**

- 3.1 Customer shall not, and shall not cause or permit others to (i) copy, modify, sublicense, sell, distribute, transfer, tamper with, reverse engineer, disassemble or decompile the Offerings or any part thereof or otherwise attempt to derive or obtain the source code of the Offerings or any part thereof; (ii) modify, improve or make derivative works incorporating the Offerings or any part thereof, nor use the Offerings or any part thereof as part of a service bureau, or to provide commercial, rental or sharing arrangements for the benefit of any third party; (iii) remove and/or alter any copyright notices, trademark, logo or other proprietary or restrictive notice or legend affixed to, contained or included in, the Offerings and/or (iv) use or provide access to the Offerings to any Cybereason competitor and/or for any purposes competitive to Cybereason; (v) use or disclose the results of any testing or benchmarking of the Offerings to any third party; (vi) use any feature of the Offering for any purpose other than in the performance of, and in accordance with, this Agreement; (vii) use the Offerings in any application that involves risk of death, personal injury, or severe property or environmental damage, or in any life support applications, devices or systems.

4. **Payment, Fees and Taxes**

- 4.1 Fees for Subscriptions will be invoiced upon execution of the Quote, unless otherwise agreed by the Parties in signed writing. Professional Services will be invoiced at the time such Professional Services are ordered, unless otherwise designated in the applicable Professional Services description, Quote or SOW. All pre-paid Professional Services shall be used within one (1) year from the date ordered, and any Professional Services not used are forfeited. In the event Customer procures an Offering from Cybereason directly, Customer will pay all such Fees to Cybereason net thirty (30) days from the date of the applicable invoice.
- 4.2 Cybereason, or Cybereason’s Partner, as the case may be, will issue to Customer a Quote(s). Each Quote shall be deemed to incorporate the terms of this Agreement. Payment terms shall be as set forth in the Quote.
- 4.3 All Fees are exclusive of any taxes, including sales, use, excise, value added, withholding taxes, customs duties and tariffs now or hereafter claimed or imposed by any governmental authority, and are the net amounts to be actually received by Cybereason after payment of all such taxes, duties or charges all of which shall be paid by Customer and which are in addition to the amounts to be actually received by Cybereason. In the event Cybereason is required to pay any such tax, duty or charge, Customer will promptly reimburse Cybereason for any such actual fees on an after-tax basis. All Fees are non-refundable and shall not be subject to any offsets or reductions (except as otherwise specifically provided herein). Customer is responsible for providing any applicable tax exemption certificates.

5. **Support and Maintenance**

- 5.1 As part of a Subscription, Cybereason will provide Customer with Support and Maintenance during the Subscription Period, as may be amended from time to time in accordance with the terms hereof.
- 5.2 Cybereason may release patches, bug fixes, updates, upgrades, maintenance and/or service packs (“**Updates**”) for the Software from time to time, which may be necessary to ensure the proper function and security of the Software and Cloud Services. Cybereason is not responsible for



performance, security, warranty breaches, support or issues encountered in connection with the Cloud Services or the Software that result from Customer's failure to accept and apply Updates within a reasonable timeframe.

6. **Audit**

Upon request, Customer shall certify its compliance with the terms of this Agreement. If necessary, Cybereason reserves the right (by, itself or by its representatives), to inspect Customer's records related to Customer's installation and use of the Offering and this Agreement to verify Customer's compliance with the provisions of this Agreement. Cybereason will be entitled to exercise its rights under this Section 6 as reasonable, but no more than once annually during the term of this Agreement upon ten (10) business days' notice to Customer. Any audit will be conducted during Customer's normal business hours so as not to unreasonably interfere with Customer's business activities. If an audit reveals that Customer has underpaid fees due for the Offering, Cybereason will invoice Customer for such underpaid amounts, as well as the reasonable expenses associated with such audit. Customer shall pay such invoice within thirty (30) days.

7. **Data Collection and Use**

For purposes of providing the Offerings to Customer, Customer acknowledges and agrees that Cybereason may access, process and collect the data set out in the DPA and any other data or information described in an applicable Quote or Documentation ("**Technical Data**"). Upon Customer's reasonable request, Cybereason may enable the Sensor to collect additional data or information, including but not limited to, specific files or logs. Notwithstanding any provision of this Agreement and/or the DPA to the contrary, Cybereason may use, disclose and retain any data or information collected, provided, or otherwise made available to Cybereason in the course of providing the Offerings ("**Solution Data**") for its, and/or its Sub-Processors (as defined in the DPA), internal purposes, including (i) aggregating and/or de-identifying the Solution Data, (ii) developing, analyzing, and improving Cybereason's Offerings, (iii) detecting, researching and evaluating threats, fraudulent activity, security breaches, intrusions and similar purposes and (iv) as otherwise permitted by applicable laws. Customer represents and warrants that it owns, or otherwise has all the rights to all information and Customer Data processed as part of the Offering pursuant to this Agreement.

8. **Data Privacy and Security.**

- 8.1 Cybereason will take reasonable and appropriate technical and organizational measures designed to protect Customer Data against unauthorized access, accidental loss or damage, unauthorized destruction and the introduction of viruses, Trojan horses, worms and other malicious code. The security measure provided by Cybereason shall be in accordance with Cybereason's information security policies specified on the Policies page and good industry practices relating to protection of the type of data typically collected or processed by Cybereason.
- 8.2 To the extent that Cybereason processes any Customer Personal Data (as defined in the DPA, as applicable), the terms of the DPA, which are hereby incorporated by reference, shall apply and the Parties agree to comply with such terms.

9. **Confidentiality**

- 9.1 "**Confidential Information**" means, any information, data or knowledge of any kind and in any form and however disclosed, presented or displayed, by a Party hereto and/or any of its Affiliates ("**Disclosing Party**") to the other Party (the "**Receiving Party**") and which is not generally available to the public, including products and services (and any related documentation), computer programs, business information, trade-secrets, methodology, know-how, marketing and other commercial/financial knowledge, techniques, specifications, plans and other proprietary information. Confidential Information shall not include information which the Receiving Party can demonstrate (a) is in or comes into the public domain without fault on the part of the Receiving Party; (b) was lawfully known to it prior to its disclosure by the Disclosing Party; (c) is disclosed to the Receiving Party by a third party without breaching of any duty of confidentiality; (d) was independently developed without reference to the Confidential Information; (e) is made available to third parties by the Disclosing Party without restriction on the disclosure of such information; or (f) is approved by the Disclosing Party for release in writing.
- 9.2 The Receiving Party will maintain the Confidential Information received from the Disclosing Party in strict confidence and will use at least the same degree of care and discretion as it uses to protect the confidentiality of its own confidential information of similar nature but not less than a reasonable degree of care. Except as expressly authorized hereunder, the Receiving Party will not disclose or use or allow others to disclose or use the Confidential Information without the prior written consent of the Disclosing Party. The Receiving Party shall only use the Confidential Information for the purposes of this Agreement ("**Purpose**") and only disclose the Confidential Information to its directors, officers, employees and any other person that the Disclosing Party has authorized the receiving Party to disclose the Confidential Information to ("**Representatives**") who need to have access to same for the Purpose, provided that each of the Representatives to whom the Confidential Information is disclosed is bound by confidentiality obligations no less restrictive than those contained herein and the Receiving Party agrees to enforce any such undertaking. Notwithstanding the above, the Receiving Party acknowledges that it will be responsible for any breach of any of the provisions of this Agreement by any of its Representatives, including after termination of their employment or engagement, as the case may be. If the Receiving Party or any of its Representatives receives a request or order for disclosure of Confidential Information from any court, tribunal, government department or agency or other official body, or if the Receiving Party believes disclosure is otherwise required under applicable law, if legally permissible, it shall promptly notify the Disclosing Party and shall cooperate with the Disclosing Party (at the Disclosing Party's expense) in seeking a protective order or other appropriate remedy. If the Receiving Party or any of its Representatives is legally compelled to disclose Confidential Information, it may disclose only the minimal amount legally required to be disclosed. The Receiving Party shall notify the Disclosing Party immediately in writing upon becoming aware that any Confidential Information has been disclosed to an unauthorized third party and assist the Disclosing Party in remedying such unauthorized disclosure. Customer may from time to time provide suggestions, comments or other feedback ("**Feedback**") with respect to the Offerings or Cybereason Data. Customer agrees that all Feedback is given voluntarily and that Cybereason owns all right, title and interest in and to such Feedback.



10. **Warranties and Disclaimers**

- 10.1 Cybereason warrants that during the Subscription Period, the Offerings will perform, in all material respects, in accordance with the Specifications. Customer's sole and exclusive remedy and Cybereason's entire liability under this limited warranty will be for Cybereason, at its option and expense, to repair or replace the non-conforming component of an Offering so that the non-conforming component of the Offering performs, in all material respects, in accordance with the Specifications. If Cybereason determines that it is unable to repair or replace such non-conforming component, Customer may terminate the Subscription for the applicable Offering and Cybereason shall reimburse Customer on a pro-rata basis the prepaid Fees for the applicable Offering for the remainder of the Subscription Period from the date of termination.
- 10.2 Cybereason warrants that any Services (as applicable) will be performed in a professional and workmanlike manner consistent with generally accepted industry standards. Customer must notify Cybereason of any warranty claim within thirty (30) days from the date performed. Customer's sole and exclusive remedy and Cybereason's entire liability for its breach of this warranty will be for Cybereason, at its option and expense, to use commercially reasonable efforts to re-perform the non-conforming Services, or refund a portion of the pre-paid Fees attributable to the non-conforming Services.
- 10.3 The above warranties shall not apply (i) in connection with any alteration, modification or action taken in connection with an Offering by anyone other than Cybereason, (ii) for damages, malfunctions, or service failures which are caused by Customer's or its third party products or systems, (iii) the combination or integration of an Offering with other products, including any systems of the Customer, other than in accordance with the Specifications, (iv) failure of Customer or any third party to install the latest version of the Offering or use an applicable update, (v) failure to follow Cybereason's installation, operation, or maintenance instructions, (vi) use of Offerings in violation of the Specifications (vii) negligence or willful misconduct by Customer or Users, or (viii) any force majeure instance as defined below. Customer will be required to pay, at Cybereason's then current rates, for any time invested and/or work performed by Cybereason to investigate and/or remedy any issues which results from the circumstances set out in this Section 10.3.
- 10.4 Customer warrants that (i) it will not introduce into the Cloud Services any virus, worm, Trojan horse, time bomb, or other malicious or harmful code designed to affect the operation of the Cloud Services; and (ii) the performance of its obligations hereunder and delivery and use of the Cloud Services and On-Premise Software will not violate any applicable laws or regulations.
- 10.5 CUSTOMER UNDERSTANDS THAT CYBEREASON DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM CYBEREASON'S NETWORK AND OTHER PORTIONS OF THE INTERNET, AND ACCORDINGLY CYBEREASON DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITIES RESULTING FROM OR RELATED TO A FAILURE IN THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY A THIRD PARTY OTHER THAN ANY CONTRACTOR OR AGENT OF CYBEREASON HEREUNDER. CUSTOMER UNDERSTANDS AND AGREES THAT CYBEREASON DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, DISCOVER OR REMEDIATE ALL OF CUSTOMER'S OR ITS AFFILIATES' SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, AND CUSTOMER AND ITS AFFILIATES WILL NOT HOLD CYBEREASON RESPONSIBLE THEREFOR. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 10 CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE OFFERINGS. CYBEREASON MAKES AND CUSTOMER RECEIVES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE OFFERINGS. CYBEREASON 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-INFRINGEMENT DUE TO HACKING OR OTHER SIMILAR MEANS OF UNAUTHORIZED ACCESS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

11. **LIMITATIONS ON LIABILITY**

EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS OR THE MISAPPROPRIATION OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS (THE "EXCLUSIONS"), IN NO EVENT WILL EITHER PARTY, INCLUDING CYBEREASON'S PROVIDERS, BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR COSTS OF PROCUREMENT OF SUBSTITUTE OFFERINGS, LOST PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITIES, LOSS OF GOODWILL, REPUTATIONAL DAMAGES, WORK STOPPAGE, BUSINESS INTERRUPTION, OR LOST SAVINGS OR REVENUES OF ANY KIND, OR FOR LOST DATA, DAMAGE TO OTHER SOFTWARE, COMPUTER FAILURE OR MALFUNCTION OR DOWNTIME OR THIRD PARTY CLAIMS. EXCEPT FOR THE EXCLUSIONS, FRAUD OR WILLFUL MISCONDUCT, EACH PARTY'S, INCLUDING CYBEREASON'S PROVIDERS, TOTAL AND CUMULATIVE LIABILITY FOR ALL CLAIMS UNDER THIS AGREEMENT, OR FOR BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THOSE RELATING TO THE OFFERINGS, HOWEVER CAUSED AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED THE AGGREGATE AMOUNTS RECEIVED BY CYBEREASON FOR THE APPLICABLE OFFERING DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE LIMITATIONS SET FORTH IN THIS SECTION 11 SHALL APPLY EVEN IF A PARTY AND ITS RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **IP Indemnification**

- 12.1 Cybereason agrees to defend and indemnify Customer and its officers, directors and employees from and against any claim or suit initiated by a third party alleging that the Offerings infringe upon such third party's intellectual property right (a "Claim"), and pay Customer for all resulting 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 in connection thereto; provided, that (1) Customer gives Cybereason prompt written notice of such Claim; (2) Customer reasonably cooperates with Cybereason in the defense and settlement thereof, at Cybereason's expense; (3) Cybereason has sole control of the defense of such Claim and the settlement thereof, provide however that Cybereason will not settle any claim in a manner that requires Customer to admit liability without Customer's prior written consent. Cybereason's obligations specified in this Section 12, will not apply to the extent that the infringement arises: (i) from the use of the Offering for a purpose for which it was not intended, (ii) as a result of the use of the Offering not in compliance with the Documentation thereof, (iii) from the combination or integration of the Offering with other products, including any third party systems, other than in accordance with Specifications, (iv) in connection with any modified version of the Offering other than as Delivered, which was not modified by Cybereason, (v) in connection with use of a version that is more than one release prior to the then current version of the Offering (if use of the current version would not have caused the infringement) or (vi) from use of the Offering or any portion thereof by a user not authorized for such use hereunder.

12.2 If Cybereason anticipates that there is a likelihood of a Claim or an injunction, Cybereason may in its sole discretion, either (a) procure for Customer the right to continue using the Offering; or (b) replace or modify the same so that it no longer infringes, or (c) where Cybereason determines, at its sole discretion that neither option under foregoing clauses (a) or (b) is commercially feasible, to terminate this Agreement and reimburse Customer for a pro-rata portion of any pre-paid, unused, Fees for the applicable Offering under this Agreement.

12.3 The remedies set forth in this Section 12 establish Cybereason's entire obligation and Customer's sole and exclusive remedy in regard to any actual or potential third-party infringement Claim.

13. **Term and Termination and Suspension**

13.1 This Agreement will continue in full force and effect so long as there is an active Offering, subject to early termination as provided in this Section 13.

13.2 Either Party may terminate this Agreement by written notice to the other Party if the other Party breaches any material obligation hereunder, which breach remains uncured for thirty (30) days after receipt of written notice of breach by the breaching Party.

13.3 Cybereason may immediately suspend performance of this Agreement upon delayed payment of more than fifteen (15) days. Further, Cybereason may immediately suspend or terminate this Agreement without liability or penalty if suspension is reasonably necessary to prevent harm to Cybereason, its customers, partners or vendors. Cybereason will use reasonable efforts to provide notice and context of such suspension. If due to Customer's breach, Cybereason reserves the right to charge fees for restoration of the Offering.

13.4 Either Party may immediately terminate this 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 addition, Cybereason may immediately terminate this Agreement if Customer breaches Section 14.11 or if Customer or any of its affiliates, owners, partners, officers, directors, employees, or any other persons acting for or on its behalf is or becomes a Prohibited Person.

13.5 Upon the termination or expiration of this Agreement for any reason (i) Customer will immediately cease use of the Offering and will delete Cybereason Data related to the Offerings from Customer's systems, (ii) all of Customer's rights hereunder will immediately terminate and Cybereason will have no liability to Customer in connection herewith, (iii) Customer will pay all amounts due but unpaid hereunder to Cybereason, and (iv) Customer will destroy or return all Confidential Information and embodiments thereof to Cybereason.

14. **Miscellaneous**

14.1 **Survival.** Sections 3, 6, 9, 10.5, 11, 12.3, 14.1, 14.2, 14.10, 14.12, and 14.13, and all payment obligations incurred prior to the termination or expiration of this Agreement will survive such termination or expiration.

14.2 **Notices.** All notices under this Agreement will be in writing, will reference this Agreement, and will be addressed to (i) Cybereason, at the address set forth above, and (ii) to Customer, at the address set forth in the Quote, or to such other address that a Party previously designates for such purpose. All notices will be effective: (i) when personally delivered, (ii) on the reported delivery date if sent by a recognized international or overnight courier, or (iii) five (5) business days after being sent by registered or certified mail (or ten (10) days for international mail).

14.3 **Force Majeure.** Neither Party will be responsible for any failure to perform its obligations (other than payment obligations) under this Agreement attributable in whole or in part to the other Party's fault or negligence and/or to any cause beyond its reasonable control, including but not limited to acts of God, government actions, war, or civil disturbance. .

14.4 **Assignment.** Neither Party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party; provided, that either Party may assign this Agreement and any of its rights or obligations hereunder to any of its Affiliates or in the event of a merger, sale, acquisition, amalgamation, change of control, corporate restructuring, or sale of all or substantially all of its assets and/or stock, or any similar transaction without such prior written consent. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the Parties' respective successors and permitted assigns.

14.5 **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties. In no event will any third party have any rights in relation to this Agreement or any right to enforce the terms hereof. Notwithstanding the foregoing, if for any reason the general terms of this Agreement are put in place for purposes of an agreement between Customer and Partner, Cybereason shall be a third party beneficiary to such agreement.



- 14.6 **Publicity.** Notwithstanding Section 9 hereof, Cybereason may state on its website and in its sales and investment and financing-oriented presentations, the fact that Customer is a Cybereason Customer and may utilize Customer's trademark on Cybereason's website, subject to Customer's trademark and brand guidelines.
- 14.7 **Evaluations, Betas and Optional Tools.** Cybereason may in its sole discretion grant Customer in writing the right to evaluate the Offerings in accordance with the terms of this Agreement ("**Evaluation**"), to test out products prior to general availability ("**Beta**"), or early access to products which may be part of a soft availability launch with or without the right to participate in a design partnership ("**Early Access**"). Notwithstanding anything to the contrary in this Agreement, the following terms apply to Evaluations and Betas: (i) Offerings may be used on no more than 250 Units for a period of thirty (30) days after the Effective Date (unless otherwise stipulated in an associated Quote or agreed in a writing signed by Cybereason) solely for internal purposes to assess the performance and suitability of the Offerings, (ii) Cybereason disclaims all liabilities and warranties of any kind, and the Offerings are provided "AS IS", (iii) Customer agrees to defend, indemnify and hold harmless Cybereason for any allegations or claims related to Customer's evaluation of the Offering. Additionally, Cybereason may make available optional tools or software that is for convenience and which is not required for the Products ("**Optional Tools**"). Optional Tools are provided "as is," and Cybereason expressly disclaims all liabilities and warranties of any kind for such Optional Tools. Notwithstanding anything to the contrary, in no event shall Cybereason's liability for any reason in relation to an Evaluation, Beta, Early Access or Optional Tools exceed \$100.
- 14.8 **Third Party Products.** Customer may request and Cybereason and/or its Partner(s) may agree to procure for Customer software and hardware products from third parties for resale to Customer ("**Third Party Products**"). Unless otherwise agreed between the Parties in writing, Cybereason assumes no responsibility for such Third Party Products and they are not resold under this Agreement but rather are subject to the terms and conditions of the third party supplier's license and other end user terms associated with such Third Party Products.
- 14.9 **No Additional Commitments; Amendment; Waiver.**
- (a) This Agreement (including any terms incorporated herein) constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any previous agreements, understandings and arrangements relating to the same. Any contradictory or pre-printed terms and conditions or purchase order terms that Customer may provide in connection with an Order shall be deemed null and void.
- (b) This Agreement may not be modified except by a written agreement executed by both Parties, except as expressly permitted herein. Notwithstanding the foregoing, Customer acknowledges and agrees that Cybereason has the right to update the Offerings from time to time.
- (c) If any of the provisions of this Agreement are held to be invalid under any applicable law, the invalid part will be replaced with a provision which accomplishes, to the fullest extent possible, the original purpose of such part or provision in a valid manner, and the balance of this Agreement will remain in full force and effect. No failure or delay in exercising any right in relation to a breach shall operate as a waiver of such right, 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.
- 14.10 **Governing Law; Jurisdiction; Jury Waiver.** 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 Customer's Address is Located	Applicable Jurisdiction
Europe/Middle East and Africa (EMEA)	London, England
Asia/Pacific (APAC) and India (excluding Japan)	Singapore, Republic of Singapore
North America/Central & Latin America (NA/CALA)	New York, NY, USA
Japan	Tokyo, Japan

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.

- 14.11 **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.



- 14.12 Compliance with Laws; Use Restrictions. Customer and its authorized Users will comply strictly with all applicable laws, including all data protection laws, privacy laws, anti-corruption and Export Controls and Economic Sanctions Laws as they relate to such technology and software, including access, use, transfer, transmission, export or reexport of the Offerings. In addition, Customer represents and warrants that (i) neither Customer nor any of its affiliates, owners, partners, officers, directors, employees, or any other persons acting for or on its behalf is a Prohibited Person, and (ii) Customer will not grant access to the Offering to any User who is a Prohibited Person. Customer and its authorized Users will cooperate with Cybereason in confirming such compliance, including by furnishing supporting documentation, as reasonably requested by Cybereason. Cybereason shall have the sole discretion to withdraw, cancel, terminate, alter, or modify the Offerings to the extent Cybereason finds it necessary to do so in order to comply with applicable laws including Export Controls and Economic Sanctions Laws. Customer is solely responsible for determining the appropriateness of the Offering for its business purposes, complying with laws applicable to Customer in connection with the use of the Offerings and obtaining any and all required consents for its use of the Offering. The Parties agree to comply with the applicable Special Terms, which are hereby incorporated into the Agreement by reference.
- 14.13 U.S. Government Restricted Rights. Cybereason provides the Offerings, 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 Offering, including related software and technology, are provided to the end user with only those rights as provided under the terms and conditions of this Agreement. None of the Offerings will be used for ultra-hazardous matters or any other prohibited end-uses, including nuclear activities, chemical/biological weapons, or missile projects unless authorized by the U.S. Government.