

## Cyberbit Terms and Conditions of Sale

These Terms and Conditions of Sale (“**Terms**”) made between Customer and Cyberbit (all capitalized terms are defined below) shall govern all Purchases from Cyberbit, including without limitation, Purchases of Cyberbit’s Products and Services.

Any pre-printed provisions on Customer’s purchase orders or other terms referenced from Customer’s purchase orders which are not explicitly agreed upon by Cyberbit in writing shall not apply and have no force or effect. Acknowledgement (whether express or implied) by Cyberbit of the Customer’s purchase orders relating to these Terms or a Purchase Order which contain additional, different or conflicting terms and conditions shall not constitute acceptance of such terms and conditions by Cyberbit. Only an agreement or Purchase Order physically signed or expressly agreed to by Cyberbit and by Customer, and which contains Cyberbit’s explicit and specific consent to terms and conditions not set forth herein, shall bind Cyberbit.

### 1. Definitions

- 1.1. “**Affiliate**” means, with respect to either Party, any entity that directly, or through one or more intermediaries, Controls, is Controlled by, or is under common Control with a Party, where “Control” means the ownership of at least fifty percent (50%) of such entity’s voting securities or the power to direct or cause the direction of the management of such entity, through contract, ownership of securities, or otherwise;
- 1.2. “**Confidential Information**” means all information disclosed by Cyberbit to Customer hereunder or otherwise in connection with the Product(s) and/or the Documentation, excluding however information which Customer can prove by written evidence that: (i) is or enters into the public domain, through no action or omission by Customer, (ii) is lawfully received by Customer from a third party who is not in breach of a legal or contractual obligation with respect to the Confidential Information; (iii) is independently developed by Customer without use of the Confidential Information; (iv) is rightfully known to Customer prior to the disclosure by Cyberbit.
- 1.3. “**Customer**” shall mean the Person who contracted with Cyberbit for the Product(s), Service(s), Maintenance and Support, or Professional Services through a binding Purchase Order. For the avoidance of doubt, a Customer may be an End User of the Cyberbit On Prem, a User of the Cyberbit Cloud or a Partner.
- 1.4. “**Cyberbit**” means Cyberbit Ltd. (incorporated under the laws of Israel) or Cyberbit, Inc., (incorporated under the laws of Delaware, USA), or Cyberbit India Private Limited (incorporated under the laws of India) as further detailed in the section titled “Contracting Party, Governing Law and Jurisdiction” below.
- 1.5. “**Cyberbit On Prem**” means Cyberbit’s cyber security training and simulation software product.
- 1.6. “**Cyberbit Cloud**” means Cyberbit’s cyber security training, simulation and skill development software-as-a-service product whether made available through [www.cyberbitrange.com](http://www.cyberbitrange.com) or any other way.
- 1.7. “**Documentation**” means Cyberbit’s Solution Brief, Scenario Guide, technical videos, app-tutorials and any technical manuals, instructions, user information, user manual, training materials, product description(s) and any and all other materials and documentation and any updates of the foregoing that accompany the Product(s) and/or Services or are otherwise provided by Cyberbit from time to time.
- 1.8. “**End User License Agreement**” or “**EULA**” means the end user license agreement available at <https://www.cyberbit.com/legal/> whereby Cyberbit provides the “**End User**” (as defined therein) a license to use the Cyberbit On Prem.
- 1.9. “**Force Majeure**” means any epidemics, fire, flood, unusually severe weather or any other

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extraordinary natural disturbance, acts of God or any public enemy, acts or regulations or decrees of any government (de facto or de jure) or governmental entity, any civil commotion, riots, sabotage, embargo, blockade, insurrection or hostilities, whether or not declared war, strikes, labor shortages or disputes or work stoppages, pandemics or other conditions that may adversely affect the safety of a Party's personnel and/or products, restrictions due to quarantines, severe and unforeseeable market shortage, or any other causes beyond the control of such Party that arise without the fault or negligence of such Party so long as such Party has exercised its best efforts to avoid such causes.

- 1.10. **"Intellectual Property Rights"** means patents, copyrights and related rights, trademarks, trade names, domain names and trade dress and the goodwill associated therewith, know-how, unpatented inventions, invention disclosures whether or not reduced to tangible form, trade secrets and other intellectual property rights of whatever nature, which relate to the Products, Services and the Documentation regardless of whether or not each of the above is patentable, copyrightable or protectable, and regardless of whether or not each of the above has been registered as a patent, copyright, trademark or protected in any other form, and regardless of whether or not each of the above constitutes a commercial or professional secret, and including all applications and rights to apply for such rights and/or similar or equivalent rights or forms of protection subsisting now or in the future, worldwide.
- 1.11. **"License(s)"** means a license to the Cyberbit On Prem granted to the End User in accordance with and subject to the EULA and/or the license to the Cyberbit Cloud granted to the User in accordance with and subject to Terms of Use, as the case may be, and as Purchased by the Customer under the terms of the respective Purchase Order.
- 1.12. **"Maintenance and Support"** shall have the meaning ascribed to it in the section titled "Maintenance and Support" below.
- 1.13. **"Party"** means each of Cyberbit and the Customer, and **"Parties"** means both Cyberbit and the Customer.
- 1.14. **"Partner"** means a distributor or reseller which Cyberbit has approved may resell or distribute its Products and/or Services whether by written agreement with Cyberbit, a one-off Purchase Order or other written approval by Cyberbit. For the avoidance of doubt, all Partners are independent contractors and shall have no authority to bind or represent Cyberbit in any way.
- 1.15. **"Person"** means any individual, firm, corporation (including non-profit corporation), partnership, company, estate, unincorporated organization, limited liability company, division, trust, joint venture, association, government, governmental entity or agency, or other entity or organization.
- 1.16. **"Product(s)"** means Cyberbit On Prem and /or Cyberbit Cloud according to the configuration and with the features and limitations detailed in the respective Purchase Order and as further detailed in the section titled "Purchase Orders".
- 1.17. **"Professional Services"** means professional services as described in the section titled "Professional Services" below.
- 1.18. **"Purchase Order"** means an applicable agreement, sales order or purchase order between Cyberbit and Customer for Purchasing (inter alia) the Product(s), Services, Maintenance and Support and/or Professional Services, as further detailed in the section titled "Purchase Orders" below.
- 1.19. **"Proposal"** means a quote, offer or proposal by Cyberbit offering a potential Customer to Purchase the Product(s), Services, Maintenance and Support or Professional Services, according to the prices, terms and conditions detailed therein, and as further detailed in the section titled "Proposals" below.
- 1.20. **"Purchase(d)"** or **"Sell"** means to acquire or sell a license to use the Product(s) or Services under these Terms and a binding Purchase Order. In no event shall the term "Purchase" or

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“Sell” be construed as a transfer or assignment of any Intellectual Property Rights to Customer.

- 1.21. “**Services**” means the Cyberbit Cloud software-as-a-service offerings and Documentation, whether made available through [www.cyberbitrange.com](http://www.cyberbitrange.com) or in any other way, including any Third-Party Software. If Customer Purchased a remote “Train the Trainer” course or remote instructor or other similar service, then those are also included in the definition of Services.
- 1.22. “**Terms of Use**” means the terms of use available at <https://www.cyberbit.com/legal/> whereby Cyberbit provides “**User**” (as defined therein) a license to use Cyberbit Cloud and the Services.

### 2. Proposals and Purchase Orders

- 2.1. Proposals. Cyberbit’s Proposals are non-binding to Cyberbit unless a Purchase Order has been entered into between Cyberbit and Customer referencing such Proposal. Cyberbit’s Proposals shall be effective only during the term specified therein and if no term is specified, then during (30) days from the date of the Proposal. Cyberbit may withdraw a Proposal at any time unless a Purchase Order referencing or incorporating such Proposal has been entered into.
- 2.2. Purchase Orders. Purchase of Licenses to the Products and/or Services and/or Maintenance and Support and/or Professional Services shall be made through written and signed Purchase Order(s) in Cyberbit’s standard format, or another agreed upon format between Customer and Cyberbit. Each Purchase Order shall specify, inter alia, the scope of respective License, the term of such License, the territory in which the License may be used and the applicable prices and payment terms. To the extent those details are not specified in the Purchase Order, then the corresponding details in Cyberbit’s Proposal to the Customer shall apply. Unless otherwise specifically indicated in a Purchase Order, upon Cyberbit’s written approval of the Purchase Order and / or both Cyberbit’s and Customer’s written signatures on the Purchase Order, the Purchase Order shall be effective. An effective Purchase Order cannot be changed without the written agreement of both parties. A Purchase Order for the Cyberbit On Prem ordinarily has a Statement of Work (“**SOW**”) attached to it.

### 3. Prices and Payment Terms

- 3.1. Unless otherwise specifically agreed in a Purchase Order, Customer shall pay Cyberbit the total Purchase Order price within thirty (30) days following the effective date of the Purchase Order.
- 3.2. All payments shall be made in USD to Cyberbit’s designated bank account, as instructed by Cyberbit. Interest will accrue on all late payments, at the rate of one and a half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is lower, from the date the payment is due until payment is made in full. In addition, Customer shall pay all expenses incurred by Cyberbit, including but not limited to legal fees and expenses and exchange rate losses in connection with collection of any late payments. Notwithstanding the foregoing, if the relevant contracting Party to these Terms and the Purchase Order is Cyberbit India Private Limited, then payments shall be made in INR.
- 3.3. All prices and consideration in any Proposal or Purchase Order are exclusive of any direct or indirect taxes, levies, customs, duties value added tax, levies fees and/or any other payment imposed in any jurisdiction whatsoever (“**Taxes**”). All Taxes, when and if imposed, shall be paid, and borne exclusively by the Customer and all payments to Cyberbit under the Purchase Order shall be made without any deductions or withholdings.
- 3.4. If Customer defaults in making any payment under the Purchase Order, Cyberbit may suspend or withhold the delivery or provision of any Product and/or License and/or Service under the Purchase Order, or the performance of any other obligations of Cyberbit under the Purchase Order. Any continuation of discontinued activity shall not constitute a waiver of such default.
- 3.5. Customer shall not offset, withhold, or reduce any payment(s) due by it to Cyberbit. Customer’s payment obligations are a covenant of the Customer which is independent of other

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covenants in these Terms.

### 4. Licenses

- 4.1. All Licenses to the Cyberbit Cloud are subject to the Terms of Use, which are incorporated herein by reference and shall apply notwithstanding any other provisions to the contrary in these Terms or any Purchase Order.
- 4.2. All Licenses to the Cyberbit On Prem are subject to the terms and conditions of the EULA, which are incorporated herein by reference and shall apply notwithstanding any other provisions to the contrary in these Terms or any Purchase Order.
- 4.3. If Customer is a Partner, then in case it Purchases the Cyberbit On Prem, it shall flow down the EULA to the End User without modification and in case it Purchases the Cyberbit Cloud, it shall flow down the Terms of Use to the User without modification.

### 5. Commercial Off the Shelf Hardware or Software for the Cyberbit On Prem

- 5.1. The Cyberbit On Prem requires certain third-party commercial off the shelf hardware and software (“COTS”) for its operation. Such COTS are not considered part of the Cyberbit On Prem, but are provided and delivered with it, unless otherwise stated in the Purchase Order. The list of the required COTS is included in the SOW. COTS licenses may only be used in conjunction with the Cyberbit On Prem and not separately.
- 5.2. If COTS have not been ordered in the Purchase Order, then they will be purchased separately by the End User or the Customer, at its expense and Customer shall be solely responsible for the maintenance, proper functioning and any other issues arising from Customer purchased COTS. All COTS should be provided in a timely manner by the End User or the Customer in order for Cyberbit to perform under the Purchase Order. During any period for which End User and/or Customer orders Maintenance and Support Services from Cyberbit, End User shall be obligated to purchase subscription licenses for the. In the event End User does not purchase the foregoing, Cyberbit shall not be able to provide End User with Maintenance and Support Services
- 5.3. Any hardware COTS ordered under the Purchase Order shall be delivered by Cyberbit to the shipping address detailed in the Purchase Order, CIP (Delivery Point, International Airport) INCOTERMS 2020. Title to hardware COTS shall pass to Customer upon departure from Cyberbit’s premises.

### 6. Professional Services and Installation of the Cyberbit On Prem

- 6.1. To the extent any Professional Services are ordered under the Purchase Order, they shall be subject to the terms and conditions of the EULA and the scope of such Professional Services shall be as detailed in the SOW.
- 6.2. Installation of the Cyberbit On Prem is anticipated to occur within 3 months after the execution of the Purchase Order (“**Anticipated Installation Date**”). In the event installation is delayed beyond the Anticipated Installation Date due to reasons not attributable to Cyberbit, then the term of the License and the period for providing Maintenance and Support will commence on the Anticipated Installation Date.

### 7. Pre-Requisites

- 7.1. For the Cyberbit Cloud
- 7.2. User shall be responsible for the following Pre-Requisites:
  - 7.2.1. Bandwidth: Each remote session requires 1.5Mbps of line bandwidth. 5\* Bandwidth represents the download speed in the trainee’s/trainer’s computer.
  - 7.2.2. Latency: 100ms or less latency between the End User’s site and the Cyberbit Cloud server.

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7.2.3. **Stability:** The line must be stable. A maximum of 5% packet loss is allowed, however it may impact the user's experience.

To the extent these Pre-Requisites are not met, or delayed, then the Services will not be able to function properly.

### 7.3. For the Cyberbit On Prem

The Customer shall be responsible for providing all required Pre-Requisites, as defined in the SOW, in a timely manner and in a suitable condition. The Customer acknowledges that any delay in providing the required Pre-Requisites shall cause an equal delay in Cyberbit's performance of the Purchase Order.

## 8. Maintenance and Support

### 8.1. For the Cyberbit Cloud

8.1.1. Support for the Cyberbit Cloud shall be as detailed in the section titled "Support Service Terms" in the Terms of Use.

### 8.2. For the Cyberbit On Prem

8.2.1. Maintenance and Support for the Cyberbit On Prem will be provided in accordance with the provisions of the Service Level Agreement ("SLA") which is annexed to the EULA and is incorporated herein by reference as an integral part hereof ("**Maintenance and Support**").

8.2.2. The price of subscription Licenses includes Maintenance and Support for the term of the License, which is defined in the Purchase Order. For the avoidance of doubt, it is hereby clarified that if the License is not a subscription License, then the period for providing Maintenance and Support shall be as defined in the Purchase Order rather than the term of the License.

## 9. Representations and Warranties

Each Party hereby undertakes represents and warrants to the other Party, as follows: (i) Neither the execution nor performance of the Purchase Order will violate any applicable law nor will it conflict with or constitute a default under any license, permit, contract, agreement or commitment to which it is a Party or by which it is bound; (ii) It is a corporation duly organized and validly existing under its place of incorporation, and it has all requisite power and authority to enter into the Purchase Order and to carry out the transactions contemplated thereby; and (iii) All proceedings required to be taken by it to authorize the execution and performance by it of the Purchase Order have been properly taken, and the Purchase Order constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

## 10. Intellectual Property and Confidentiality

10.1. Ownership. The Products, Services(s), and Documentation are protected under applicable copyright, trademark, trade secret and patent laws. The Products, Services and Documentation, including all Intellectual Property Rights therein or thereto, shall at all times remain the sole and exclusive property of Cyberbit and its Affiliates and respective licensors. Nothing in the Purchase Order or these Terms shall constitute or be considered as constituting a transfer or sale or any similar action of any of Cyberbit's Intellectual Property Rights or any part thereof. All rights in and to Cyberbit's Intellectual Property Rights not explicitly granted to You under these Terms are expressly owned by Cyberbit, its Affiliates and licensors, and You shall not have any rights in or to Cyberbit's Intellectual Property Rights or otherwise, except as explicitly permitted in these Terms.

10.2. Infringement Mitigation. If any Product or Service become, or in Cyberbit's reasonable judgment are likely to become, the subject of a claim of patent or copyright infringement or violation of a third party's intellectual property rights or if Cyberbit settles a claim of

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infringement or violation, Cyberbit may at its sole option and discretion: (i) replace or modify the Product and/or Service to make it non-infringing; or (ii) terminate the Purchase Order and return any consideration actually paid to Cyberbit on a pro-rata basis.

- 10.3. Proprietary Notices. Customer must reproduce and include the copyright notice and any other notices that appear in or on the Products. Customer will not and will not direct nor allow any third party to remove any copyright or other proprietary notices from the Products.
- 10.4. Confidential Information. Customer will protect all Cyberbit Confidential Information in strict confidence and take all necessary precautions to protect Cyberbit Confidential Information, using at least those precautions Customer use to protect Customer's own confidential information, but no less than a reasonable degree of care. Customer further agree not to disclose Cyberbit Confidential Information to any third party, except as expressly permitted by Cyberbit in a document in writing physically signed an authorized representative of Cyberbit. Customer shall use Cyberbit Confidential Information solely to the extent needed for exercising Customer's rights under these Terms and in no other manner. Cyberbit Confidential Information may be disclosed to Customer's employees on a need to know basis, provided such employees are bound by written confidentiality obligations at least as restrictive as those under these terms and provided that Customer is solely and fully responsible for all liabilities related to any breach of confidentiality by Customer's employees. Customer shall promptly notify Cyberbit if Customer becomes aware of any breach of these confidentiality obligations or any unauthorized disclosure of Cyberbit Confidential Information.
- 10.5. Remedies. Customer acknowledges that the unauthorized disclosure of the Confidential Information or interference with Cyberbit's Intellectual Property Rights would cause irreparable harm and significant injury to Cyberbit, its licensors and Affiliates, which would be difficult to ascertain. Accordingly, Customer agrees that Cyberbit, its licensors and Affiliates shall be entitled to equitable relief, including injunctive relief, without the posting of any bond, in addition to all other remedies provided under these Terms or available at law. Furthermore, Customer shall indemnify Cyberbit, its licensors and Affiliates against any loss and expense arising due to such unauthorized disclosure of the Confidential Information or breach of Cyberbit's Intellectual Property Rights.

### 11. Warranty and Warranty Disclaimer

- 11.1. The Warranty Disclaimer for the Cyberbit Cloud shall be as detailed in the section titled "Warranty Disclaimer" in the Terms of Use.
- 11.2. The Warranty for the Cyberbit On Prem shall be as detailed in the section titled "Limited Warranty" in the EULA.

### 12. Limitation of Liability

- 12.1. IN NO EVENT SHALL CYBERBIT, ITS LICENSORS AND/OR AFFILIATES AND ANYONE ON THEIR BEHALF BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL (EXCEPT FOR DAMAGES RELATING TO DEATH OR PERSONAL INJURY IN JURISDICTIONS WHERE SUCH DAMAGES MAY NOT BE DISCLAIMED AS A MATTER OF LAW), PUNITIVE, EXEMPLARY OR RELIANCE DAMAGES, LOSSES OR EXPENSES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF BUSINESS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR LOSS OF USE OR DATA) RELATING TO OR ARISING OUT OF THE PRODUCT(S) AND/OR SERVICES AND/OR MAINTENANCE AND SUPPORT AND/OR PROFESSIONAL SERVICES AND/OR THE PURCHASE ORDER AND/OR THESE TERMS, HOWEVER CAUSED, AND WHETHER BASED ON CONTRACT, TORT, EQUITY OR ANY OTHER THEORY OF LIABILITY WHATSOEVER, EVEN IF CYBERBIT WAS NOTIFIED OR OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES.
- 12.2. THE TOTAL AND AGGREGATE LIABILITY OF CYBERBIT, ITS LICENSORS AND

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AFFILIATES AND ANYONE ON THEIR BEHALF FOR ANY AND ALL CLAIMS RELATED TO THE PURCHASE ORDER OR THESE TERMS REGARDLESS OF THE CAUSE OF ACTION (WHETHER BASED ON CONTRACT, TORT, EQUITY OR ANY OTHER THEORY OF LIABILITY WHATSOEVER), SHALL NOT EXCEED AN AMOUNT GREATER THAN ANY CONSIDERATION ACTUALLY PAID TO CYBERBIT DURING THE PRIOR YEAR FOR THE SPECIFIC PRODUCTS OR SERVICES GIVING RISE TO A CLAIM AGAINST CYBERBIT REGARDLESS OF ANY AMOUNTS ACTUALLY PAID TO CYBERBIT.

- 12.3. EACH AND EVERY TERM HEREIN IS SUPPORTED BY SUFFICIENT CONSIDERATION IN LIGHT OF CUSTOMER'S BENEFITS FROM THESE TERMS AND CYBERBIT'S BENEFITS FROM THESE TERMS. CUSTOMER RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THESE TERMS, INCLUDING WITHOUT LIMITATION IN THIS LIMITATION OF LIABILITY SECTION HAVE BEEN BARGAINED FOR AND FORM THE BASIS OF THESE TERMS AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING ANY AMOUNTS TO BE PAID TO CYBERBIT. THE LIMITATIONS CONTAINED IN THIS LIMITATION OF LIABILITY SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE AND/OR ANY OTHER REMEDY PROVIDED UNDER ANY TERM OF THE PURCHASE ORDER OR THESE TERMS.

### 13. Export Control

- 13.1. Export Control Laws. Customer acknowledges that the Products, Services, and any use thereof may be subject to applicable export control and trade laws and regulations, including of the United States and Israel ("**Export Control Laws**"). Customer will not Use, convey, export, or re-export, either directly or indirectly, the Services or the Products, or any part thereof by any way or to any destination restricted or prohibited by Export Control Laws, without first obtaining any and all necessary licenses from the government of the United States or Israel or any other applicable country that imposes Export Control Laws.
- 13.2. Prohibited Persons. Customer represents and warrants that it is not an individual or an entity which is: (i) located in, under the control of, or a national or resident of Cuba, North Korea, Iran, Syria, Lebanon or Sudan or such other countries as may be additionally designated from time to time by the applicable governments where Cyberbit is incorporated; or (ii) listed under the United States Treasury Department's Office of Foreign Asset Control list of "specially designated nationals and blocked persons," the United States Commerce Department's "denied parties list", the United States Commerce Department's "BIS Entity List" or such other applicable lists. Customer undertakes not to provide access to the Services or the Products to any User or Person embargoed or sanctioned by the government of the United States or any Person which resides in Iran, Syria, or Lebanon.

### 14. Term and Termination

- 14.1. The term of the Purchase Order shall commence on its effective date and unless sooner terminated, shall expire at the end of the term of the respective License Purchased under the Purchase Order.
- 14.2. Cyberbit may terminate the Purchase Order if the other Party breached any provision hereof, including without limitation any provisions of the EULA (and SLA), Terms of Use or any provision of the applicable Purchase Order which, if curable, is not cured within thirty (30) days from the prior written notice by Cyberbit to Customer.
- 14.3. Cyberbit may also immediately terminate the Purchase Order in the event of a material breach by the Customer or if Cyberbit, in its sole and absolute discretion, determines that the use of the Products and/or Services might give rise to a continuing breach of the Terms of Use or EULA or a third-party claim against Cyberbit.

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- 14.4. In addition, each Party may terminate the Purchase Order with immediate effect upon the occurrence of any one of the following events: (i) a receiver, trustee, or liquidator of the other Party is appointed for any of its properties or assets; (ii) the other Party admits in writing its inability to pay its debts as they mature; (iii) the other Party makes a general assignment for the benefit of creditors; (iv) the other Party is adjudicated as bankrupt or insolvent; (v) a petition for the reorganization of the other Party or an arrangement with its creditors, or readjustment of its debts, or its dissolution or liquidation is filed under any law or statute; (vi) the other Party ceases its business activities, commences dissolution or liquidation.
- 14.5. Termination of the Purchase Order shall automatically cause the termination of any License Purchased under the Purchase Order and termination of all other applicable agreements referenced herein or otherwise attached to the Purchase Order, including without limitation the EULA, Terms of Use, SLA, SOW other than provisions which survive termination according to the terms of the forgoing agreements. Upon termination, Customer shall, and shall instruct the End User or User (as the case may be) to (i) cease all use of the applicable terminated Product(s) and Services; (ii) return all deliverables and Documentation provided to Customer in connection with the Purchase Order; (iii) erase/delete the terminated Product(s) and any related Confidential Information held by it in electronic form; and (iv) certify to Cyberbit its compliance with the foregoing terms. Within 14 days of termination of the Purchase Order, Customer shall pay Cyberbit the total Purchase Order price minus amounts previously paid by the Customer to Cyberbit, under the Purchase Order. Termination shall not derogate from the rights and remedies of Cyberbit, under contract or applicable law.
- 14.6. The following provisions shall survive termination of these Terms: Definitions, Representations and Warranties, Intellectual Property and Confidentiality, Warranty and Warranty Disclaimer, Limitation of Liability, Export Control, Term and Termination, Contracting Party, Governing Law and Jurisdiction, Force Majeure and Miscellaneous.

### 15. Contracting Party, Governing Law and Jurisdiction

- 15.1. Americas. If the Customer Purchased License(s) to the Products and/or Services in the Americas (USA, Canada, Mexico, Central America, South America, or the Caribbean), the contracting Party to these Terms, referred to herein as Cyberbit is Cyberbit, Inc., and the substantive laws of the State of New York shall govern these Terms and the Purchase Order as though these Terms and the Purchase Order were entered into, and was to be entirely performed within, the State of New York. All claims or disputes arising out of or in connection with these Terms and the Purchase Order shall be heard exclusively by any of the federal or state court(s) of competent jurisdiction located in the Borough of Manhattan, New York City, NY, USA. To that end, each Party irrevocably consents to the exclusive jurisdiction of, and venue in, such court(s), and waives any (i) objection it may have to any proceedings brought in any such court, (ii) claim that the proceedings have been brought in an inconvenient forum, and (iii) right to object (with respect to such proceedings) that such court does not have jurisdiction over such Party. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE TERMS AND THE PURCHASE ORDER.
- 15.2. India. If Customer Purchased the License(s) to the Products and/or Services in India, then the contracting Party to these Terms and the Purchase Order, referred to herein as Cyberbit is Cyberbit India Private Limited and these Terms and the Purchase Order shall be governed, performed, construed, and interpreted in accordance with the laws of Republic of India and courts of New Delhi shall have jurisdiction, without giving effect to conflict of laws provisions. Any dispute arising out of or in connection with these Terms and/or the Purchase Order, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre

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("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat and venue of the arbitration shall be New Delhi. The Tribunal shall consist of one (1) arbitrator. The language of the arbitration shall be English and the hearings, if any, shall be conducted in New Delhi.

- 15.3. China. If the Customer Purchased the Licenses to the Products and/or Services in China, then the contracting Party to these Terms and the Purchase Order, referred to herein as Cyberbit is Cyberbit Ltd. and these Terms and the Purchase Order shall be governed, performed, construed and interpreted in accordance with the laws of Hong Kong, without giving effect to its conflict of laws provisions. Any dispute arising out of or in connection with these Terms and/or a Purchase Order, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Centre ("CIETAC") in accordance with the Arbitration Rules of CIETAC for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Hong Kong. The Tribunal shall consist of one (1) arbitrator. The language of the arbitration shall be English and the hearings, if any, shall be conducted in Hong Kong.
- 15.4. Outside the Americas, India or China. If the Customer Purchased the License to the Products or Services outside the Americas, India or China then the contracting Party to these Terms and the Purchase Order, referred to herein as Cyberbit is Cyberbit Ltd., and unless otherwise indicated in the Purchase Order, the laws of the State of Israel shall exclusively govern all issues arising under or relating to these Terms and the Purchase Order, without giving effect to the conflict of laws principles thereof. All disputes arising under or relating to these Terms and the Purchase Order shall be resolved exclusively in the competent courts in Tel Aviv, Israel.
- 15.5. Notwithstanding any other provision to the contrary, Cyberbit will always have the right, at its sole and absolute discretion, to file a claim or application for injunctive remedies against the Customer, in the competent courts of the jurisdiction in which the Customer's domicile is, according to the governing law in such jurisdiction, without reference to the other provisions in this "Contracting Party, Governing Law and Jurisdiction" section.
- 15.6. UCITA. These Terms and the Purchase Order will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded nor will it be governed by the Uniform Computer Information Transactions Act (UCITA) as adopted by any state.

### 16. Force Majeure

- 16.1. Neither Party shall be responsible or liable for any delay or failure in performance under these Terms and the Purchase Order arising as a result of an occurrence of a Force Majeure *provided however* that the provisions of this Force Majeure Section shall not be construed as relieving either Party from its obligation to pay any sums or consideration due the other Party.
- 16.2. The delayed Party shall send written notice of the delay and the reason thereof to the other Party as soon as possible after the occurrence of the Force Majeure and the time for performance of both Party's obligations hereunder shall automatically be extended for a period equal to the duration of any such delay.
- 16.3. In the event that performance cannot be restored within a mutually agreeable time frame, then either Party may terminate these Terms and the Purchase Order without further liability of one Party to the other for damages on account of such termination by providing the other Party a ninety (90) day prior written notice.

### 17. Miscellaneous

- 17.1. All notices, requests, demands, and other communications under the Purchase Order, shall be

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in writing and sent to the Customer contact details in the Purchase Order or to Cyberbit's contact details below and shall be deemed to have been duly given if sent by facsimile or electronic mail within 2 days after transmission (subject to a receipt of confirmation of the transmission) or if mailed by registered mail prepaid, within ten (10) days from the date they were mailed. Notices should be sent to [sales@cyberbit.com](mailto:sales@cyberbit.com) with copy to [legal@cyberbit.com](mailto:legal@cyberbit.com).

- 17.2. A Purchase Order may either be acknowledged in writing or signed by both Cyberbit and Customer. If a Purchase Order is executed in counterparts, then each counterpart shall be deemed an original, but all of which together shall be deemed to be one and same agreement. A signed copy of the Purchase Order delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of the Purchase Order.
- 17.3. The Purchase Order, these Terms, and any EULA (and SLA), Terms of Use and SOW, are intended to be the sole and exclusive agreement between the parties regarding the transaction with Customer under the Purchase Order and shall supersede all previous representations, understandings, negotiations, and proposals in relation thereto including any Proposals. To the extent the Customer is a Partner, then the terms of the reseller or distribution agreement shall also apply. In the event of any conflict between any of the foregoing documents the following order of precedence shall apply:  
  
First: the Purchase Order; Second: the EULA (and SLA) or Terms of Use; Third: these Terms; Forth: : the reseller or distribution agreement; and Fifth: the SOW.
- 17.4. If any provision of these Terms is held to be invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible so as to affect the original intent of these Terms, and the remainder of the provisions of these Terms shall remain in full force and effect.
- 17.5. Customer may not assign its rights or obligations under the Purchase Order and these Terms without the prior consent of Cyberbit in a document physically signed by both Party's authorized representatives. Cyberbit may assign the Purchase Order and these Terms to a successor corporation resulting from its merger or acquisition, or to its Affiliate, by written notification to Customer.
- 17.6. The failure of either party to demand execution of any of any provision under these Terms, or the waiver by either party of any breach under these Terms shall not prevent a subsequent enforcement of such terms, nor be deemed a waiver of any subsequent breach.

Last updated Oct. 7, 2021