

## CYBERBIT TERMS OF USE

This Terms of Use Agreement (this “Agreement”) is between You and Cyberbit (all capitalized terms are defined below) with respect to any Services you access or Use.

If You are Using the Services on behalf of a Customer that signed a separate agreement with Cyberbit which explicitly governs the Use of the Services or the Product, then such separate signed agreement governs Your Use of the Services and this Agreement shall not apply.

BY CLICKING ON THE “ACCEPT” BUTTON BELOW, BY ACCESSING AND/OR USING THE SERVICES, OR BY ENTERING INTO A PURCHASE ORDER, YOU WARRANT AND REPRESENT THAT: (i) YOU ARE OF A LEGAL AGE TO FORM A BINDING CONTRACT WITH CYBERBIT AND THAT YOU HAVE THE CAPACITY AND AUTHORITY TO BIND YOURSELF AND/OR THE ENTITY ON WHOSE BEHALF YOU ARE ACTING, AS THE CASE MAY BE, TO THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (ii) THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE THEY ARE BINDING UPON YOURSELF AND/OR THE ENTITY ON WHOSE BEHALF YOU ARE ACTING, AS THE CASE MAY BE.

IF YOU DO NOT OR CANNOT AGREE WITH ALL THE TERMS OF THIS AGREEMENT, YOU MUST NOT CLICK THE “ACCEPT” BUTTON OR ACCESS, OR USE THE SERVICES, BUT RATHER CLICK THE “DECLINE & LOGOUT” BUTTON BELOW.

WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT AND NO SOLICITATION OF ANY SUCH WRITTEN APPROVAL BY OR ON YOUR BEHALF SHALL BE CONSTRUED AS AN INFERENCE TO THE CONTRARY.

If you are using the Services on behalf of an organization or entity, then you agree, represent and warrant that (i) “You,” “Your,” and “User” includes you and any organization or entity that You represent, (ii) You are duly authorized by such organization or entity to agree on its behalf and bind such organization or entity to this Agreement; (iii) the organization or entity is legally responsible for the Use of the Services, whether by You or anyone else, whether or not authorized by Your organization or entity; and (iv) any and all claims arising out of or in connection with this Agreement or the Services will be raised by such organization or entity, rather than You, and You hereby assign all such claims to such organization or entity.

Cyberbit may amend and/or update this Agreement from time to time in its sole discretion, with or without providing prior notice to You. All amendments and updates shall become effective immediately at the time of being uploaded to [www.cyberbitrange.com](http://www.cyberbitrange.com) and apply to all access and Use of the Services thereafter. If you do not agree with or accept the updated terms, you must cease Use of the Services. You will be deemed to accept the updated Agreement if you continue to Use the Services after the time that the updated Agreement is uploaded.

YOU UNDERSTAND AND AGREE THAT NO RESELLER OR DISTRIBUTOR OF THE SERVICES(S) IS: (i) AN AGENT OF CYBERBIT; (ii) AUTHORIZED TO PROVIDE ANY WARRANTIES (STATUTORY OR OTHERWISE) OR REPRESENTATIONS ON BEHALF OF CYBERBIT; OR (3) AUTHORIZED TO MODIFY OR TO AMEND ANY PROVISIONS OF THIS AGREEMENT.

### 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 company’s or entity’s share capital or the power to direct or cause the direction of the management of such company or entity, through contract, ownership of securities, or otherwise;

1.2. “Catalog” means the platform available at [www.cyberbitrange.com](http://www.cyberbitrange.com), through which Services are provided, Exercises and their respective details are displayed, and through which Sessions may be reserved, cancelled and Used.

1.3. “Confidential Information” means all information disclosed by Cyberbit to You hereunder or otherwise in connection with the Product, Services or the Documentation, excluding however information which You can prove by written evidence that: (i) is or enters into the public domain, through no action or omission by You or by the respective Customer, (ii) is lawfully received by You from a third party who is not in breach of a

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legal or contractual obligation with respect to the Confidential Information; (iii) is independently developed by You without use of the Confidential Information; (iv) is rightfully known to You prior to the disclosure by Cyberbit.

1.4. “Customer” means the Person who contracted for the Services from Cyberbit through a binding Purchase Order.

1.5. “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.

1.6. “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 Services or are otherwise provided by Cyberbit from time to time.

1.7. “Exercise” means any exercise that is or may be conducted by a User, Using the Services.

1.8. “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 Product, Services, the Software and/or 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.

1.9. “License” means any license granted in accordance with and subject to the terms and conditions of the section titled “License” below.

1.10. “License Metrics” means the Cyberbit Cloud License Metrics detailed in the section titled License below.

1.11. “Party” means either You or Cyberbit and “Parties” means both you and Cyberbit.

1.12. “Permitted Purpose” means only one or more of the following: training purpose, educational purpose, skill assessment and skill development purpose.

1.13. “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.

1.14. “Product” means Cyberbit’s cyber security training, simulation and skill development software-as-a-service product whether made available through the Catalog or any other way. The Product is known as the Cyberbit Cloud.

1.15. “Purchase(d)” means to acquire a license to use the Services under the terms and conditions of this Agreement and a valid Purchase Order. Under no conditions shall the term “Purchase” be construed as a transfer or assignment of any Intellectual Property Rights to You.

1.16. “Purchase Order” means an applicable agreement or purchase order or sales order for Purchasing (inter alia) a License to Use the Services, whether the Purchase Order is directly between Customer and Cyberbit or whether between Customer and Cyberbit’s distributor or reseller and as further described in the Section titled Purchase Orders below.

1.17. “Session” means a single training session, in which You may perform an Exercise Using the Services.

1.18. “Services” means Cyberbit’s software-as-a-service Product services and Documentation, whether made available through the Catalog or in any other way, including any Third-Party Software. If You Purchased a remote “Train the Trainer” course or remote instructor or other similar service, then those are also included in the

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definition of Services.

1.19. “Software” means the Product software through which the Services are provided whether in object, source or executable form including any updates and new versions of the software and related Documentation.

1.20. “Term” means the period of time during which the License for the Services is effective, as specified in the applicable Purchase Order. If a specific Term is not specified in the Purchase Order, then the Term shall commence on the effective date of the Purchase Order and shall end 12 months from the effective date of the Purchase Order.

1.21. “Territory” means the territory detailed in the Purchase Order and in which the Services may be Used.

1.22. “Use” means use of the Services by You. Each instance of the Services being accessed by a User is considered a Use.

1.23. “User” means either: (i) one specific individual that is authorized by a Customer to Use the Services under the License granted to such Customer, regardless of whether or not the individual is actively using or accessing the Services at any given time; or (ii) a ”Trainee” or a “One Time Trainee” which is an individual who has been granted access to the Services by Cyberbit; or (iii) an administrator or manager on behalf of the Customer.

1.24. “You” means the Customer and/or an entity on whose behalf an individual is acting, and/or a User, as the case may be.

1.25. “Your” means belonging to or associated with You.

## 2. PURCHASE ORDERS

2.1. Purchase Orders. Licenses to Use the Services shall be Purchased through written and signed Purchase Order(s) in Cyberbit’s standard format, or another agreed upon format between the Customer and Cyberbit or its resellers or distributors. Each Purchase Order shall specify, inter alia, the scope of License, the Term of the License, the Territory in which the License may be Used and the applicable prices and payment terms. Upon Cyberbit’s written approval of a Purchase Order and/or both Cyberbit’s and Customer’s written signatures on a Purchase Order, such Purchase Order shall become effective, and its Term will commence. An effective Purchase Order cannot be changed without the written agreement of both parties.

2.2. Preprinted Provisions. Any preprinted provisions on Customer’s purchase order(s), or other terms referenced from Customer’s purchase order(s) shall not apply. Any acknowledgement (whether express or implied) by Cyberbit of the Customer’s purchase order(s) which contain additional, different or conflicting terms relating to this Agreement shall not constitute acceptance of such terms and conditions by Cyberbit. Only an agreement or Purchase Order signed by both Cyberbit and Customer which contains Cyberbit’s explicit and specific consent to terms and conditions not set forth herein, shall bind Cyberbit.

## 3. LICENSE

3.1. License. Subject to the terms and conditions of this Agreement and full payment of the price specified in the applicable Purchase Order, Cyberbit hereby grants You, during the Term, a non-exclusive, non-transferable, non-assignable, non- sublicensable, revocable subscription license, within the limitations of the Territory and the License Metrics detailed in the Purchase Order to: (i) Use the Services in case of a User, and to enable its Users to Use the Services, in case of a Customer; and (ii) Use the Documentation in connection with the Use of the Services. The License may only be Used for the Permitted Purpose. The Customer shall not grant its respective Users a right to Use the Services which is beyond the License Metrics, Term and Territory of Customer’s License.

3.2. Username and Password. The Services may be Used by Users who access the Services through their Username (typically User’s email address) and their Password which is created through the Catalog (“Username” and “Password” respectively).

3.3. Customer’s Responsibility. Customer will be responsible for the compliance of its respective Users with the applicable provisions of this Agreement.

3.4. Other than the License granted in this Section above, NO OTHER LICENSE IS GRANTED

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UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHTS TO USE OR ACCESS SERVICES THAT WERE NOT ACQUIRED LAWFULLY OR ACCESSED IN AN ILLEGITIMATE OR UNAUTHORIZED MANNER.

### 3.5. License Metrics

3.5.1. License Metrics based on Named Users: If Customer Purchased a License with a limitation on the number of Named Users, then the following License Metrics shall apply:

- (i) The number of Users which a Customer may enable to Use the Services on Customer's behalf is limited to the number of named users Purchased by the Customer in the Purchase Order ("Named User"). A Named User refers to a specific individual Using the Services, and not to any User who is using the Services. Therefore, the total number of Named Users Using the Services, is the total number of individuals which were, are or will be Using the Services. It is Customer's responsibility and liability to ensure that the number of Named Users does not exceed the number Purchased in the Purchase Order and that only one individual is counted as a Named User. Each Named User shall be subject to all of terms and conditions of the Agreement which apply to a User.
- (ii) After Customer designates its Users, it will not be able to change them other than in case of manpower turnover, and up to a total of 20% of the Users. In any event, the total number of Named Users shall not exceed the number ordered in the Purchase Order.
- (iii) Each Exercise may be Used by a Named User only up to three times.

3.5.2. License Metrics based on Training Days: If Customer Purchased the Services with a limitation on the number of Training Days, then the following License Metrics shall apply:

- (i) The number of Training Days which a Customer may Use (or may enable its Users to Use) is limited to the number of Training Days Purchased by the Customer in the Purchase Order.
- (ii) A Training Day shall include a maximum of 9 hours (from 9:00 AM to 18:00 PM – local time). A Training Day in which less than 9 hours are utilized, shall count as an entire Training Day.
- (iii) Only one Session may be conducted simultaneously during a Training Day, provided however, that the number of Labs which may be conducted simultaneously is equal to the number of Users. A "Lab" is a type of Exercise intended to teach a specific single topic in an individual training and is designated as "Lab" in the Product. If Customer orders more than one Session concurrently – then each such Session shall be counted as a separate Training Day.
- (iv) The number of Users Using the Services simultaneously shall be limited to the number detailed in Cyberbit's quote / proposal / Purchase Order and if no such number is specified, then the number of Users shall be limited to 10.

3.5.3. Other. If other specific License Metrics are detailed in the Purchase Order, then those specific License Metrics shall apply to the License.

3.6. Changes. Cyberbit reserves the right at any time to amend, revise, update the Services or discontinue certain Exercises available through the Product.

## 4. EVALUATION LICENSE

4.1. Evaluation License. If the Services are provided to You for evaluation purposes, or as an experience class, master class, workshop, proof of concept, proof of value, or any other similar activity, then Cyberbit hereby grants You a non-exclusive, non-transferable, non-assignable, non- sublicensable, revocable license, to use the Services solely for internal evaluation within the Permitted Purpose ("Evaluation License"). The Evaluation License shall terminate automatically and thus be revoked upon the later of: (i) the end of the evaluation period, to the extent such period is specified in an evaluation agreement or evaluation form signed in connection with the Evaluation License, or; (ii) the end of the experience class, workshop or proof of concept, in the event that this is the evaluation

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activity which is performed; or (iii) if no such period was pre-agreed, thirty (30) days from the date on which Cyberbit granted You the right to Use the Services (“Evaluation Period”). Cyberbit may terminate and revoke the Evaluation License at any time by written notice of immediate effect and in such a case the Evaluation Period shall end immediately. The Services may contain an automatic disabling mechanism that prevents its Use after a certain period of time. The provisions of the section titled “Consequences of Termination or Expiration” shall apply upon expiration or termination of the Evaluation Period. All other terms and conditions of this Agreement shall apply to Your evaluation of the Services, unless otherwise specifically stated herein or in the evaluation agreement or form.

4.2. Evaluation License Indemnification. You will defend, indemnify and hold Cyberbit, its Affiliates and licensors harmless from any and all claims, damages, and losses, whether direct, indirect, or consequential, including all legal fees and expenses, arising from or in connection to claims brought by any third party relating to Your use of the Software pursuant to the Evaluation License.

### 5. SUPPORT SERVICE TERMS

5.1. Customers’ Support. Customers may open support tickets through Cyberbit’s support ticketing system <https://support.cyberbit.com/portal/en/signin>. Service hours are Monday to Friday from 9:00 AM to 17:00 local time, not including national holidays. Cyberbit will employ reasonable efforts to respond to opened tickets by the close of the next business day.

5.2. Users’ Support. Support for Users shall be provided directly through their respective Customer administrator.

### 6. LICENSE AND USE RESTRICTIONS

6.1. Prohibited Activities. You will not, nor will you direct or allow any third party to: (i) sell, transfer, publicly display, assign, rent, lease, distribute, loan, export, or sublicense the Services to any Person, provided however, Customer will be entitled to grant its Users the right to Use the Services under the terms of this Agreement; (ii) decipher, reverse translate, decompile, disassemble or otherwise reverse engineer the Services or the Software or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the Software or Services by any means whatsoever or otherwise reduce the Software into human-readable form; (iii) develop any products, modules, add-ons or other applications, features or functionality based upon, derivative from or otherwise utilizing the Services via any means or otherwise create copies or reproductions of the Software or Services or Documentation; (iv) use the Services to store or transmit offensive, obscene, infringing, defamatory, threatening, libelous, abusive, or otherwise unlawful or tortuous information or material or to store or transmit information or material in violation of third party privacy rights or intellectual property rights; (v) breach the security of the Services or Software or perform any form of scanning, scraping, probing, robotic navigating, bulk extracting or hacking of the Services; (vi) interfere with, circumvent, manipulate, impair or disrupt the operation, or the functionality of the Software or Services or any copyright protection mechanism or copy protection software contained in or related to the Services or Software or work around or circumvent any technical limitations in the Services; (vii) enable, or attempt to enable, features or functionalities of the Services that are otherwise disabled, inaccessible or undocumented in the Documentation; (viii) create data or executable programs which imitate data or functionality of the Services or the Software (ix) use the Services beyond the License Metrics or outside the Permitted Purpose (including by using or exploiting the attacks or attack tools of whatever kind provided within the Services for any purpose other than Using the Services for the Permitted Purpose); (x) incorporate any virus or harmful code in the Services, including without limitation any trojans or other material which is malicious or technologically harmful; (xi) attempt to gain unauthorized access to the Services, the servers on which Cyberbit’s sites are stored or any server, computer or database connected to the Services; (xii) attack the Software or Services in any way whatsoever; (xiii) take any action that would, or that would be reasonably likely to, subject the Software to any freeware, open source or similar licensing or distribution models, including through linking to or calling to the Product; (xiv) publicly disseminate performance information or analysis about the Services, including, without limitation, benchmarking test results, answers on how to complete the Exercises or about intellectual property contained in the Services or Software; or (xv) connect the simulated environment provided in the scope of the Services to an external network or environment..

6.2. Compliance with Laws. You represent and warrant to Cyberbit that You will not Use or allow the Use of the Services or Product or any portion thereof for malicious or illegal purposes, or otherwise in violation of

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applicable laws or regulations (including without limitation Export Control and Privacy Laws, as defined below).

6.3. **Indemnification.** You will indemnify and hold Cyberbit harmless from and against claims, losses, costs (including reasonable attorneys' fees) or liability arising in connection with Your breach of Your obligations, representations and warranties in this License and Use Restrictions Section.

### 7. YOUR USERNAME AND PASSWORD

7.1. **Rules pertaining to Username and Password.** Each Username and Password is personal and may only be Used by the specific individual which was granted the License to Use the Services and created the Password. You will keep Your Username and Password confidential and shall not share them or transfer them to anyone else. You will log out from your account each time You finish Using the Services. You will not: (i) create an account for anyone other than yourself; or (ii) create an account with an email address which is not yours. You will be responsible for all liabilities incurred through use (authorized or unauthorized) of Your Username or Password, by You or by any third party and for breach of the security of your Username and Password.

7.2. **Unauthorized Use.** In the event of: (i) any unauthorized use of your Username or Password; (ii) a suspicion that anyone other than You knows Your Password; or (iii) any other breach of security, You should promptly notify your Customer administrator- if You are a User, or open a ticket according to the instructions in the Section titled "Support Service Terms" – if You are a Customer.

7.3. **Breach of Obligations.** Breach of Your obligations under this Section is cause for immediate blocking or suspension of Your access to the Services, the Catalog and the Product, and termination of this Agreement and the Purchase Order at Cyberbit's sole discretion.

7.4. **Liability.** For the avoidance of any doubt, Customer shall ensure and be liable for User's compliance with the provisions of this Section. CYBERBIT WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM YOUR FAILURE TO COMPLY WITH THIS SECTION.

### 8. DATA SECURITY AND PRIVACY

8.1. **Privacy Policy.** Personal information provided by You or collected by Cyberbit in connection with the Your Use of the Services will be retained and used in accordance with Cyberbit's Privacy Policy for the Cyberbit Cloud available at [www.cyberbit.com/legal](http://www.cyberbit.com/legal) as may be updated from time to time ("Privacy Policy").

8.2. The Services analyze and/or access data as described in the Privacy Policy and the Use of the Services may be subject to data protection or privacy laws or regulations in certain jurisdictions ("Privacy Laws"). You are solely responsible for ensuring that Your Use of the Services is in accordance with the Privacy Laws.

8.3. **Data Security and Accuracy.**

8.3.1. You are responsible for the accuracy of all data entered by You through the Product or Services or provided to Cyberbit in any other way in connection with using the Services. For the avoidance of doubt, You are solely responsible for all content provided, transmitted, maintained, retained, or stored in connection with your Use of the Services.

8.3.2. You hereby grant Cyberbit a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use and display the information and materials that you provide Cyberbit through the Services as reasonably necessary to provide the Services to You and to the respective Customer which granted You the right of Use, subject to the Privacy Policy.

8.3.3. It is Your obligation to implement and maintain adequate internal security measures in connection with the Use of the Services and to immediately notify Cyberbit if you suspect a breach of your security measures.

8.3.4. You are responsible for configuring your information technology, computer programs and platforms in order to access the Services. You hereby undertake to use at least industry-standard virus protection practices to protect your systems, networks, products and infrastructure against viruses, worms, malware or other similar security threats and to use commercially reasonable efforts to prevent unauthorized access to or use of the Services.

### 9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

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9.1. Ownership. The Product, Services(s), Software, and Documentation are protected under applicable copyright, trademark, trade secret and patent laws. The Product, Services(s), Software, 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 this Agreement 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 to You. All rights in and to Cyberbit's Intellectual Property Rights not explicitly granted to You under this Agreement are expressly reserved by and to 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 this Agreement.

9.2. Infringement Mitigation. If the Product, Software or Services 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 infringement or violation, Cyberbit may at its sole option and discretion: (i) replace or modify the Product and/or Services to make it non-infringing; or (ii) terminate this Agreement and return any consideration actually pre-paid to Cyberbit on account of the terminated License Term. Cyberbit shall notify You in writing, whether it is exercising any of the foregoing options.

9.3. Proprietary Notices. You must reproduce and include the copyright notice and any other notices that appear in or on the Product. You will not and will not direct or allow any third party to remove any copyright or other proprietary notices from the Product.

9.4. Confidential Information. You will treat all the Confidential Information in strict confidence and take all necessary precautions to protect the Confidential Information, using at least those precautions You use to protect Your own confidential information, but no less than a reasonable standard of care. You further agree not to disclose the Confidential Information to any third party, except as expressly permitted by Cyberbit in a document in writing duly signed by Cyberbit's authorized representative. You shall use the Confidential Information solely for exercising your rights under the License in accordance with this Agreement and in no other manner. Customer may disclose Confidential Information to its Users, on a need to know basis, provided each such User is bound by written confidentiality obligations and provided that Customer is solely and fully responsible for all liabilities arising out of or related to any breach of confidentiality by each such User. You shall promptly notify Cyberbit if You become aware of any kind of a breach of these confidentiality obligations or unauthorized disclosure of the Confidential Information.

9.5. Feedback. From time to time, Customer or its Users may submit to Cyberbit comments, questions, enhancement requests, suggestions, ideas, corrections, process descriptions or other information related to the Product and/or Services ("Feedback"). Customer and Users hereby grant Cyberbit and its Affiliates a worldwide, perpetual, irrevocable, royalty-free, fully paid-up license to use and exploit the Feedback, including without limitation all rights to use and incorporate the Feedback into the Product and Services without restriction or payment to Customer or Users.

9.6. Remedies. You acknowledge that any 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, You agree 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 this Agreement or available at law. Furthermore, You shall indemnify and hold Cyberbit, its licensors and Affiliates harmless against any loss and expense arising due to such unauthorized disclosure of the Confidential Information or breach of Cyberbit's Intellectual Property Rights.

## 10. WARRANTY DISCLAIMER

10.1. CYBERBIT PROVIDES THE SERVICES AND DOCUMENTATION "AS IS" AND YOUR USE THEREOF IS AT YOUR OWN RISK. CYBERBIT, ITS LICENSORS AND AFFILIATES DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, TO ANY PERSON, WITH RESPECT TO THE PRODUCT AND/OR THE SERVICES AND/OR THE SOFTWARE AND/OR ANY RELATED DOCUMENTATION AND/OR LICENSES AND/OR ANY RESULTS FROM THE USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE OF THE SERVICES, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND TITLE,

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SATISFACTORY QUALITY, SUITABILITY, ACCURACY OR COMPLETENESS. CYBERBIT ALSO MAKES NO WARRANTY REGARDING NON-INTERRUPTION OF USE OR FREEDOM FROM BUGS, VIRUSES, NON-INTRUSION DUE TO HACKING OR OTHER SIMILAR MEANS OF UNAUTHORIZED ACCESS OR UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SERVICES. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES MAY NOT REFLECT REAL-WORLD SITUATION(S) AND SHALL NOT BE RELIED UPON AS ADVICE.

10.2. THE FOREGOING ARE ESSENTIAL TERMS OF THIS AGREEMENT AND, IF ANY OF THESE TERMS ARE CONSTRUED AS UNENFORCEABLE, FAIL IN ESSENTIAL PURPOSE, OR BECOME VOID OR DETRIMENTAL TO CYBERBIT, ITS AFFILIATES, LICENSORS AND SUPPLIERS, FOR ANY REASON, THEN ALL RIGHTS TO ACCESS OR USE THE SERVICES SHALL TERMINATE IMMEDIATELY.

10.3. CYBERBIT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OF WHATEVER NATURE SUFFERED BY YOU AND ARISING OUT OF, OR IN CONNECTION WITH, ANY ACT, OMISSION, MISREPRESENTATION OR ERROR MADE BY YOU OR ON YOUR BEHALF OR ARISING FROM ANY CAUSE BEYOND CYBERBIT'S CONTROL.

10.4. Inability to Exclude Warranties. If a jurisdiction applicable to this Agreement restricts the exclusion of certain implied warranties, limitations on how long an implied warranty may last, or the exclusion or limitation of incidental, consequential, or special damages then (i) each warranty which cannot be excluded is limited in time to ninety (90) days from the effective date of the respective Purchase Order; and (ii) Cyberbit's total liability for breach of all such warranties are limited as provided in section titled Limitation of Liability below.

10.5. Uptime. Cyberbit makes limited guarantees as to host server reachability and operability within the control of Cyberbit, with such host server reachability and operability collectively known as "Uptime." With respect to such Uptime, Cyberbit guarantees a 99% Uptime per month, excluding issues caused by third parties such as (but not limited to) network outages, power outages, usage surges, usage spikes, virus attacks, denial of service attacks, and the like.

10.6. Basis of Bargain. You recognize and agree that the warranty disclaimers and liability and remedy limitations in this Agreement, including without limitation in this Warranty Disclaimer Section have been bargained for and form the basis of this Agreement and that they have been taken into account and reflected in determining any amounts to be paid by Customer under any respective Purchase Order as well as the consideration between the parties related to Your access and/or Use of the Product and/or Services. Regardless of any amounts actually paid to Cyberbit, each and every term of this Agreement is supported by sufficient consideration in light of Your benefits from accessing and/or Using any Product and/or Services and in light of Cyberbit's restrictions on Your access and/or Use of any Product and/or Services.

## 11. LIMITATION OF LIABILITY

IN NO EVENT SHALL CYBERBIT, ITS LICENSORS AND/OR AFFILIATES AND/OR 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 THIS AGREEMENT, THE PRODUCT SERVICES, THE SOFTWARE, DOCUMENTATION AND LICENSES, 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.

THE TOTAL AND AGGREGATE LIABILITY OF CYBERBIT, ITS LICENSORS AND AFFILIATES AND ANYONE ON THEIR BEHALF, TAKEN AS A WHOLE, FOR ANY AND ALL CLAIMS RELATED TO THIS AGREEMENT REGARDLESS OF THE CAUSE OF ACTION (WHETHER BASED ON CONTRACT, TORT, EQUITY OR ANY OTHER THEORY OF LIABILITY WHATSOEVER), SHALL NOT EXCEED AN



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AMOUNT GREATER THAN THE CONSIDERATION ACTUALLY PAID TO CYBERBIT DURING THE RELEVANT CALENDAR YEAR FOR THE SPECIFIC SERVICES GIVING RISE TO A CLAIM AGAINST CYBERBIT LESS ANY AMOUNTS PAID BY CYBERBIT RELATED TO ANY PRIOR CLAIMS. OR (II) IN THE EVENT OF AN EVALUATION LICENSE - THE AMOUNT OF US\$500 (FIVE HUNDRED US DOLLARS). 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 THIS AGREEMENT.

### 12. EXPORT CONTROL

12.1. Export Control Laws. You acknowledge that the 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”). You will not Use, convey, export, or re-export, either directly or indirectly, the Services (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.

12.2. Prohibited Persons. You represent and warrant that You are 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 and/or any of its Affiliates are 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 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.

### 13. TERM AND TERMINATION

13.1. Term. This Agreement is effective from the earlier of: (i) the effective date of the applicable Purchase Order or (ii) the day of the acceptance of this Agreement by You. Subject to the termination provisions detailed below, the Term of this Agreement and of the License shall be as detailed in the Section titled “Purchase Orders” and thereafter it shall expire.

13.2. Termination. Cyberbit may terminate this Agreement if you breach of any of the provisions hereof or of the applicable Purchase Order which, if curable, is not cured within thirty (30) days from the prior written notice by Cyberbit or its Affiliates or licensors unless such breach is a material breach. In the event of a material breach, Cyberbit may terminate this Agreement effective immediately. Cyberbit may also immediately terminate this Agreement in the event that Cyberbit, in its sole and absolute discretion, determines that Your Use of a Services might give rise to a continuing breach of this Agreement or third-party claim against Cyberbit.

13.3. Consequences of Termination or Expiration. Upon termination or expiration of this Agreement the following provisions shall apply: (i) any License in the Services shall terminate immediately, and (ii) You shall cease any and all use of the Services, or delete or uninstall any Software provided to You, (iii) return all Documentation and any copies thereof and related materials which are in Your possession; and (iv) in the event You are a Customer You shall ensure and be responsible that all Your Users comply with paragraphs (ii) and (iii) above. You are required to certify to Cyberbit Your compliance, and if You are a Customer, Your User’s compliance with the foregoing provisions within 14 days of termination.

13.4. Survival. The following Sections shall survive termination or expiration of this Agreement: Definitions, Evaluation License Indemnification, License and Use Restrictions, Intellectual Property and Confidentiality, Warranty Disclaimer, Limitation of Liability, Export Control, Contracting Party, Governing Law and Jurisdiction, and Miscellaneous.

### 14. CONTRACTING PARTY, GOVERNING LAW AND JURISDICTION

14.1. Americas. If You Purchased the Services in the Americas (USA, Canada, Mexico, Central America, South America, or the Caribbean), the contracting party to this Agreement, referred to herein as Cyberbit is Cyberbit, Inc., and the substantive laws of the State of New York, without regard to conflict of law principles,

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shall govern this Agreement as though this Agreement was 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 this Agreement 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 THIS AGREEMENT.

14.2. India. If You Purchased the Services in India, then the contracting party to this Agreement, referred to herein as Cyberbit is Cyberbit India Private Limited. This Agreement 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 this Agreement, 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 ("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.

14.3. Outside the Americas and India. If You Purchased the Services outside the Americas or India then the contracting party to this Agreement, 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 this Agreement, without giving effect to the conflict of laws principles thereof. All disputes arising under or relating to this Agreement shall be resolved exclusively in the competent courts in Tel Aviv, Israel.

14.4. 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 You, in the competent courts of the jurisdiction in which Your 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.

14.5. UCITA. This Agreement 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.

## 15. MISCELLANEOUS

15.1. Assignment. You may not assign Your rights or obligations under this Agreement without the prior consent of Cyberbit in a document physically signed by both Party's authorized representatives. Cyberbit may assign this Agreement to a successor corporation resulting from its merger or acquisition, or to its Affiliate, by written notification to You.

15.2. Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the original intent of the Agreement, and the remainder of the provisions of this Agreement shall remain in full force and effect.

15.3. Third Party Software. The Services may from time to time contain third party software programs which are (i) available under open source or; (ii) free software licenses or; (iii) commercial proprietary software ("Third Party Software"). Your use of such Third-Party Software is governed by its respective agreement available at Third Party Software website and subject to its terms or by other third-party terms which may be provided by Cyberbit upon request. This Agreement does not modify any rights or obligations You may have under those Third-Party Software licenses, however, to the extent permitted under the Third-Party Software licenses, the terms of the License shall also apply to such Third-Party Software. You will defend, indemnify and hold Cyberbit harmless from and against any and all liability or claim arising from or in connection to your violation of any Third Party's

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rights and/or your misuse of Third-Party's Software and/or your breach of Third Party's license agreement.

15.4. Third Party Links and Resources. The Services may contain links to other sites, apps and resources provided by third parties, which are provided for Your information only. Cyberbit has no control over the contents of those sites, apps or resources.

15.5. Entire Agreement. This Agreement and the applicable Purchase Order (if entered into between You and Cyberbit) together with the Privacy Policy sets forth the entire understanding and agreement between You and Cyberbit and may be amended or supplemented only by a written amendment physically signed by both parties.

15.6. U.S. Government Rights. Any use, modification, reproduction release, performance, display or disclosure of the Software and Documentation by the U.S. Government shall be solely in accordance with the terms of this Agreement. The Software and Documentation are "commercial computer software" or "commercial computer software documentation" as defined in FAR 2.101 and FAR 12.212 and they are provided only with the rights under this Agreement and with no other or additional rights under the FARs or DFARs.