

CYBERBIT PROFESSIONAL PROFESSIONAL SERVICES AGREEMENT

MARCH 2018

Cyberbit Professional Services Agreement

This Professional Services Agreement (“**Agreement**”) sets forth the terms and conditions of the applicable Professional Services to be performed by Cyberbit Ltd. or any of its subsidiaries (“**Cyberbit**”) for Cyberbit’s End Users who have ordered such Professional services under a valid Purchase Order (“**End User**”; each a “**Party**” and together the “**Parties**”). By executing a Purchase Order End User hereby accepts the terms and conditions set out below.

1. Definitions

- 1.1. The definitions of the terms defined in Section 1 entitled “Definitions” in the Cyberbit End User License Agreement (“**EULA**”) available at (<https://www.cyberbit.com/support/>) are hereby incorporated herein by reference.
- 1.2. “**Materials**” shall mean any documents created or conceived in relation to or in connection with the performance of this Agreement.
- 1.3. “**Professional Services**” means the professional Services ordered by End User from Cyberbit under a duly exercised Purchase Order, as detailed in the SOW attached to such Purchase Order, including without limitation training, installation, integration, consulting and other professional services.
- 1.4. “**SOW**” means the statement of work, attached to or issued pursuant to a Purchase Order, which details the technical scope of the Professional Services to be performed by Cyberbit in connection with the applicable Purchase Order, including but not limited to installation and deployment of Products, Update of Products, training, etc.
- 1.5. “**Update**” means all published revisions and corrections to the printed documentation, corrections and new releases of the Product, including Fixes and patches, which are generally made available to Cyberbit’s End Users and which are designated by Cyberbit by two numbers on the right of the decimal point (e.g. Release 3.1.X). Updates shall not include any new Versions or optional modules or future products that Cyberbit licenses separately or charges for separately.
- 1.6. “**Version**” means a release of the Product which contains substantial and significant enhancements, or other substantial changes in functionality or performance as compared to the previous version (if any), which is designated by Cyberbit by a number on the left of the decimal point or by one number on the right of the decimal point (e.g. Release X.0 or Release 4.X). Versions shall not include optional modules or future products that Cyberbit licenses separately or charges for separately.
- 1.7. “**Workaround**” means a method for achieving a task or goal when the usual or planned method is not working.

2. Performance of Professional Services

- 2.1. Cyberbit will perform the Professional Services and deliver the Software and/or Material specified as deliverables in the applicable SOW (the “**Deliverables**”) in accordance with the requirements in the SOW, or if no SOW is executed, then in the applicable Purchase Order and its attachments.
- 2.2. Unless otherwise specified in the applicable SOW, all Professional Services shall be performed at Cyberbit’s premises. For Professional Services performed at End User’s premises, End User shall (a) provide Cyberbit personnel with reasonable office space and necessary access to hardware and other systems, and (b) comply in all material respects with applicable laws relating to the treatment of Cyberbit personnel who are on End User’s premises.
- 2.3. If at any time prior to completion of the Professional Services under an SOW, the Parties mutually agree on any changes to be performed under the SOW, then Parties will enter into a formal amendment to such SOW, to be hand signed by each Party’s duly authorized signatories. Until such time as any change is agreed to and duly signed as aforesaid, Cyberbit will continue to provide the Professional Services as if such change had not been requested or recommended.
- 2.4. End User and Cyberbit will schedule a mutually agreed time for Professional Services delivery.
- 2.5. Cyberbit will provide appropriately qualified personnel to perform the Professional Services and reserves the right to engage independent contractors to perform some or all of the Professional Services, provided that Cyberbit remains responsible for the performance of the Professional Services in accordance with this Agreement.
- 2.6. The Parties are independent contractors under this Agreement and nothing in this Agreement authorizes a Party to act as an agent of the other or bind the other to any transaction or agreement.

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3. Payment

- 3.1. In consideration for the Professional Services, End User shall pay Cyberbit (or Cyberbit's reseller or distributor) the fees detailed in the applicable Purchase Order or SOW.
- 3.2. Unless otherwise explicitly specified in the Purchase Order or SOW, End User shall reimburse Cyberbit for all reasonable expenses incurred by Cyberbit in performing the Professional Services, including travel, lodging, per diem and out of pocket expenses, subject to End User's pre-approval. In general, expenses will only be incurred for provision of the Professional Services at locations other than Cyberbit's offices, as agreed by Cyberbit and End User.
- 3.3. Unless otherwise specified in the applicable Purchase Order or SOW:
 - 3.3.1. Cyberbit shall submit invoices on a monthly basis for all fees, charges and expenses relating to the performance of the Professional Services under the Purchase Order or SOW.
 - 3.3.2. Payments shall be made in U.S. Dollars, within thirty (30) days of receipt of invoice..

4. Communication and End User Pre-requisites

- 4.1. At the kick-off meeting between Cyberbit and End User, or within 30 days from the execution of the Purchase Order, End User will designate a suitably qualified representative which will have the authority and responsibility for coordination of the Professional Services and any activity relate thereto ("**Designated Representative**"). End User shall promptly inform Cyberbit of the contact details of its Designated Representative.
- 4.2. All communications with Cyberbit shall be by the Designated Representative either by email, phone, or by using a web form. All such methods and contact details will be published in Cyberbit's official website or will be agreed between the Parties during the kick off meeting.
- 4.3. The language for all communications related to Professional Services shall be English.
- 4.4. Professional Services may be provided via remote access to the Product. The End User shall be responsible for providing a remote VPN access for Cyberbit's team for that purpose. End User shall be responsible for designating a representative which will be able to provide on-site IT support during any remote Professional Services activities.
- 4.5. Prior to any Update, End User shall provide Cyberbit's support team a report to be generated by the Updated Product that recaps the utilization of the Product and other data that may be required by Cyberbit in order to perform an Update.
- 4.6. The Designated Representative will provide access to End User's IT admins, network engineers, firewall admins and any other required personnel for a smooth deployment.
- 4.7. The Designated Representative will assist in coordinating meetings / design reviews with relevant End User personnel and management members.
- 4.8. Facilities and Environment:

End User will arrange (in its premises) suitable facilities and connectivity according to the schedule agreed upon in the kick off meeting, including without limitation:

 - 4.8.1. Server room (to host the Cyberbit Product's Servers) – including required Power, Air-Conditioning, Racks, (network and power) cables etc.
 - 4.8.2. Connectivity (Network, Firewall ports etc.) to all components – including opening all required ports, ensuring networking routing works as required etc.
 - 4.8.3. Internet connection in all sites.
 - 4.8.4. Remote connection available to all sites.
- 4.9. All COTs and pre-requisites which End User is obligated to provide according to the SOW or the Purchase Order, will be provided by End User and at its expenses, according to the schedule agreed upon in the kick off meeting. Detailed specification for Pre- Requisite will be provided by Cyberbit after the kick off meeting.
- 4.10. End User shall prepare the site prior to the commencement of the implementation.

5. Security and Privacy Responsibilities

The provisions of Section 4 of the EULA entitled: "Your Data Security and Privacy Responsibilities" are incorporated by reference to this Agreement and shall apply with respect to any Professional Services and Material provided hereunder.

6. Intellectual Property and Confidentiality

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- 6.1. The provisions of Section 5 of the EULA entitled “Intellectual Property and Confidentiality” are incorporated by reference to this Agreement and shall apply with respect to any Professional Services and Materials provided hereunder.
 - 6.2. Unless otherwise expressly provided in the applicable SOW, all Intellectual Property Rights in and to the Professional Services and Materials will be the sole and exclusive property of Cyberbit, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Professional Services and Materials are used or licensed. 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 End User. No work product of Cyberbit shall be construed as or deemed to be a “work made for hire”. Accordingly, End User acknowledges that Cyberbit retains sole and exclusive ownership of all right, title and interest to all Intellectual Property Rights in the Professional Services and Materials. Cyberbit shall own all rights in any copy, translation, modification, adaptation or derivation of the Deliverables and the Professional Services and Materials, including any improvement or development thereof. At no time will End User dispute or contest Cyberbit’s exclusive ownership rights in any Deliverables, Professional Services and Materials. Notwithstanding the above, Cyberbit grants to End User a non-exclusive license in the Professional Services and Materials which shall be on the same terms and subject to the same limitations as the License granted to End User under the applicable Purchase Order and subject to the terms and conditions of the EULA. In addition, unless otherwise specifically agreed in the applicable SOW, no Professional Services and Materials shall be supported by Cyberbit under the SLA.
7. **Warranty and Limitation of Liability**
- 7.1. **Limited Service Warranty**
CYBERBIT WARRANTS THAT WHILE PERFORMING THE PROFESSIONAL SERVICES, CYBERBIT WILL RENDER SUCH PROFESSIONAL SERVICES WITH REASONABLE CARE AND SKILL IN COMPLIANCE WITH APPLICABLE LAWS. IF END USER NOTIFIES CYBERBIT WITHIN NINETY (90) DAYS AFTER THE COMPLETION OF SUCH PROFESSIONAL SERVICES OF A BREACH OF THE FOREGOING WARRANTY, CYBERBIT WILL RE-PERFORM SUCH PROFESSIONAL SERVICES IN COMPLIANCE WITH THE FOREGOING WARRANTY. IF DESPITE ITS REASONABLE EFFORTS, CYBERBIT IS UNABLE TO PROVIDE END USER WITH PROFESSIONAL SERVICES IN COMPLIANCE WITH THE FOREGOING WARRANTY, THEN CYBERBIT’S ENTIRE LIABILITY, AND END USER’S EXCLUSIVE REMEDY, UNDER THIS WARRANTY SHALL BE RETURN OF THE CONSIDERATION ACTUALLY PAID TO CYBERBIT FOR THE AFFECTED PROFESSIONAL SERVICES.
 - 7.2. **Warranty Disclaimers**
EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS LIMITED WARRANTY SECTION, CYBERBIT PROVIDES THE PROFESSIONAL SERVICES “AS IS”, AND END USER’S USE OF THE PRODUCT THAT THE PROFESSIONAL SERVICES ARE RELATED TO AND THE OUTCOME OF THE PROFESSIONAL SERVICES IS AT END USER’S 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 PROFESSIONAL SERVICES AND/OR ANY MATERIAL AND/OR ANY RELATED DOCUMENTATION, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE OF THE PRODUCT, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND TITLE, SATISFACTORY QUALITY OR SUITABILITY. 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 PRODUCT OR PROFESSIONAL SERVICES.
 - 7.3. **Warranty Exception**
The provisions of Section 7.3 of the EULA entitled “Warranty Exception” are incorporated by reference to this Agreement and shall apply with respect to any Professional Services and Material provided hereunder.
 - 7.4. **Limitation of Liability**

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The provisions of Section 8 of the EULA entitled "Limitation of Liability" are incorporated by reference to this Agreement and shall apply with respect to any Professional Services and Material provided hereunder.

8. Term and Termination

The provisions of Section 10 of the EULA entitled "Term and Termination" are incorporated by reference to this Agreement and shall apply with respect to any Professional Services and Material provided hereunder.

9. Contracting Party, Governing Law and Jurisdiction

The provisions of Section 11 of the EULA entitled "Contracting Party, Governing Law and Jurisdiction" are incorporated by reference to this Agreement and shall apply with respect to any Professional Services and Material provided hereunder.

10. Miscellaneous

The provisions of Section 12 of the EULA entitled "Miscellaneous" are incorporated by reference to this Agreement and shall apply with respect to any Professional Services and Material provided hereunder.