

## Virtual server service agreement

This agreement is entered into by and between CyberHive Ltd of 2<sup>nd</sup> Floor, Newmarket House, Market Street, Newbury, RG14 5DP ("CyberHive") and "the customer" meaning the individual or business who signs or on whose behalf the order form is signed or the individual or business who submits an order by telephone, email, web browser or other means.

Please note that in this agreement, "we"/"us"/"our" denotes CyberHive Ltd, registered office 2<sup>nd</sup> Floor, Newmarket House, Market Street, Newbury, RG14 5DP, and "you"/"your" denotes you the customer.

This agreement outlines the responsibilities, rights and obligations of CyberHive and the customer, and supersedes any and all previous agreements, whether oral or in writing.

### Service provision

1. CyberHive will supply and install (where applicable) all software as ordered by the customer onto the ordered Virtual Server (VS).
2. CyberHive shall use reasonable efforts to ensure the required and services are installed in line with the lead times and target dates agreed between us.
3. After provisioning, CyberHive shall connect the required system to the internet without delay. The VS will be connected to the Internet at the speed specified on the order form. The VS connection may burst above the agreed rate if the customer has requested this subject to payment for the additional bandwidth on a 95th percentile basis.

## Usage

4. The customer agrees to ensure that the facility will not be used for any illegal activity, and indemnifies CyberHive from any liability that may arise due to such usage. Such activity will be deemed to include the publishing of any material that is obscene, threatening, defamatory or which in any way infringes the Intellectual Property rights of another party. The customer accepts that in the event of allegations of infringement of this clause, CyberHive may without notice or liability suspend or interrupt the customer's access to the Internet, or remove any specific material held on our systems on the customer's behalf pending clarification of such allegations or suspicion. In the event that a third party makes direct representation to the customer with regard to possible breach of this clause, the customer will without delay notify CyberHive of the nature and background of such representations so we may promptly carry out any actions required to mitigate any exposure or damages.
5. The customer accepts responsibility for all items published or transmitted from their VS. CyberHive will only act as a distributor of the customer's traffic and will not examine it in any way except for the purpose of efficiently routing it over the Internet and Local Area Network.
6. The customer accepts all responsibility for installing security patches, software updates and all maintenance on the VS operating system and other software installed on the VS. CyberHive is not responsible for any software maintenance of the VS.
7. The customer shall ensure that all software is removed from their systems and is no longer used at the end of any licence term.
8. CyberHive does not warrant that software licenced to the customer is suitable for

the usage intended by the customer; that it does not contain any bugs or defects or that it is in any way guaranteed to be compatible with other software running on the same server.

9. The customer is responsible for ensuring that all software running on the VS is fully licenced and complies with all regulations and authorities.
10. If software is licenced on a counted basis such as 'per user/person/device', the customer must inform CyberHive within 5 working days of the end of each month how many licences they are using. If the customer does not provide this information, the customer agrees that CyberHive can assume that the same numbers of licences are being used as on this order or the customer's most recent report (whichever is most recent). The customer agrees to pay for all licences used regardless of whether or how they are reported and accepts responsibility for any additional costs incurred through under-reporting the number of licenses used.

## **Confidentiality**

11. CyberHive will use reasonable endeavours to ensure that confidential information (including but not limited to data, technical, financial, operational, commercial information) howsoever stored is not disclosed to any third party unless such information is already in the public domain. Likewise, the customer will use all reasonable endeavours to ensure that confidential information (including but not limited to technical, financial, operational, commercial, business ideas, customer information, product information) howsoever stored is not disclosed to any third party unless such information is already in the public domain.

## **Liability**

12. CyberHive will not be liable for any loss of revenue or profits, loss of business or other consequential damages.
13. CyberHive's liability to the customer with regards to an individual service is restricted to the total value of any amounts paid by the Customer to CyberHive in the previous 12-month period on that individual service.

## **Support**

14. CyberHive will provide the customer with access to a support telephone number. Support may also be contacted by email at [support@100percentit.com](mailto:support@100percentit.com) support cover is provided from 9AM to 5:00PM Monday to Friday, excluding Public Holidays and Bank Holidays.

## **Software Licensing**

15. Customers with virtual servers running Microsoft Software are required to comply with the Microsoft Volume Licensing End User Licence Terms. These license terms include the Microsoft Service Provider Use Rights (SPUR) which customers must agree to in order to use or redistribute the Microsoft software.

## **Termination**

16. This agreement covers all orders placed by the customer with CyberHive, whether placed before or after the date of this agreement. Contract length for all such orders is specified on the individual orders.
17. The customer may cancel or downgrade the service according to the Cancellation Policy below.

18. CyberHive reserve the right to terminate this agreement and all services covered by it immediately and without further notices should any properly delivered invoice remain unpaid for a period of thirty days beyond the due date whether demanded or not. Such action will not remove the Customer's liability to pay any outstanding fees for the duration of the contract.

19. In the event of termination of this agreement, all IP addresses issued by CyberHive to the customer will remain the property of CyberHive, and may not be transferred to another provider.

### **Force majeure**

20. CyberHive shall not be liable to the customer for any breach of this agreement for failing to perform any obligation where such breach or failure was the result of any Act of God, insurrection or civil disorder, war or military operations, inclement weather, failure or shortage of power supplies, flood, drought, public disorder, lightning or fire, national or local emergency, acts or omissions of government, highway authority or other government authority, compliance with any statutory obligation, industrial disputes of any kind, the acts of omissions of other telecommunications operators or any cause beyond CyberHive's reasonable control.

### **Jurisdiction**

21. The Laws of England will apply to this agreement and any modification of it and any dispute will be resolved in England by Arbitration where no issue of Law arises or failing that, in the Courts.

## Virtual server cancellation policy

22. Virtual/hosted servers can be cancelled or downgraded after the expiry of any agreed minimum period. A minimum of 30 days' notice is required. In the event that a Customer cancels or downgrades their Services mid-way through the minimum contract period, they will not be entitled to any refund for any remaining amounts and remain liable for any invoices yet to be generated that cover the remainder of the minimum contract period. For the avoidance of doubt, contracts move to a rolling monthly contract or as defined in each order form at the end of the minimum contract period unless cancelled by you.
23. Servers are automatically switched off at the end of a contract. Customers acknowledge that it is their responsibility to ensure that all data is removed from the server prior to the end of the contract. Servers that have been switched off will be permanently deleted 14 days after the end of the contract and all data stored on the systems will be lost. CyberHive is not responsible for any data which remains on our systems after the expiry of a contract.
24. Any software that is used for any period, howsoever short during a calendar month will be billed for the entire month. No refunds will be given for any part month of software usage.
25. SSL Certificates and other 'add-on' services will have their own minimum period and recurring minimum periods. If a Service is cancelled during the minimum period or renewal period, no refunds will be due for unused time during these periods.
26. Cancellations or Service downgrades must either be done through the online portal or in writing via the support ticketing system. Cancellations or service downgrades requested via ticketing system are not confirmed until you have received

a confirmation email.

27. Termination of a contract is without prejudice to all rights and responsibilities of either party incurred prior to the termination of the contract.
28. Distance selling regulations. The customer acknowledges that all Services are bespoke and created to order for each customer. If you are buying as a consumer (i.e., not within the course of your business), the Consumer Protection (Distance Selling) Regulations 2000 normally allow you to cancel the contract at any time within fourteen (14) working days, beginning on the day after you received the Acceptance Confirmation. By placing your order for the Services, you agree to us starting supply of those Services before the end of the seven working day cancellation period. As such, you will not have the right to cancel the contract under the Consumer Protection (Distance Selling) Regulations 2000.
29. Prices are liable to change at any time. Price changes that occur during a minimum contract period will only become effective at the end of that contract period. We will notify you at least 30 days before the price increase comes into effect. If you do not accept the price increase, you must cancel your service(s) prior to their implementation. If you do not cancel the service(s) you are deemed to have accepted the new prices.

## Microsoft volume licensing end user license terms

(Terms and conditions regarding use of Microsoft software)

This document governs the use of Microsoft software, which may include associated media, printed materials, and “online” or electronic documentation (individually and collectively, “Products”) provided by CyberHive Ltd (hereinafter referred to as “CyberHive”). CyberHive does not own the Products and the use thereof is subject to certain rights and limitations of which CyberHive must inform you. Your right to use the Products is subject to the terms of your agreement with CyberHive, and to your understanding of, compliance with, and consent to the following terms and conditions, which CyberHive does not have authority to vary, alter, or amend.

### DEFINITIONS

“Client Software” means software that allows a Device to access or utilize the Services or functionality provided by the Sever Software.

“Device” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone”, server or other electronic device.

“Server Software” means software that provides Services or functionality on a computer acting as a server.

“Software Documentation” means any end user document included with server software.

“Redistribution Software” means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

### OWNERSHIP OF PRODUCTS

The Products are licenced to CyberHive from an affiliate of the Microsoft Corporation



(collectively "Microsoft"). All title and intellectual property rights in and to the Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Products) are owned by Microsoft or its suppliers. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Products does not transfer any ownership of the Products or any intellectual property rights to you.

#### USE OF CLIENT SOFTWARE

You may use the Client Software installed on your Devices by CyberHive only in accordance with the instructions, and only in connection with the Services, provided to you by CyberHive. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User Licence Agreement that may be presented in electronic form during the use of the Client Software.

#### USE OF REDISTRIBUTION SOFTWARE

In connection with the Services provided to you by CyberHive, you may have access to certain "sample" "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO CyberHive WHICH TERMS MUST BE PROVIDED TO YOU BY CyberHive. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by CyberHive.

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## LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY

You may not reverse engineer, decompile or disassemble the Products except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

## NO RENTAL

You may not rent, lease, lend, pledge or directly or indirectly transfer or distribute the Products to any third party, any may not permit any third party to access to and/or use the functionality of the Products except for the sole purpose of accessing the functionality of the Products in the form of software series in accordance with the terms of this agreement and any agreement between you and CyberHive.

## TERMINATION

Without prejudice to any other rights, CyberHive may terminate your rights to use the Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with CyberHive, or CyberHive's agreement

with Microsoft under which the Products are licenced, you must stop using and/or accessing the Products, and destroy all copies of the Products and all of their component parts.

NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.

ANY WARRANTIES, LIABILITIES FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY CyberHive AND NOT BY MICROSOFT, ITS AFFILATES OR SUBSIDIARIES.

### **PRODUCT SUPPORT**

Any support for the Products is provided to you by CyberHive and is not provided by Microsoft, its affiliates or subsidiaries.

### **NOT FAULT TOLERANT**

THE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL , PROPERTY OR ENVIRONMENTAL DAMAGE.

### **EXPORT RESTRICTIONS**

The Products are subject to U.S. export jurisdiction. CyberHive must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

### **LIABILITY FOR BREACH**

In addition to any liability you may have to CyberHive, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

APPENDIX:

You find the MICROSOFT SERVICES PROVIDER USE RIGHTS ("SPUR") under  
[http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?  
Mode=3&DocumentTypeId=2](http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=2)