

CYBERHIVE RESELLER PARTNER TERMS OF SERVICE

THESE RESELLER TERMS OF SERVICE GOVERN THE APPOINTMENT OF A RESELLER OF CYBERHIVE PRODUCTS.

PLEASE READ THESE RESELLER TERMS OF SERVICE CAREFULLY. THESE RESELLER TERMS OF SERVICE SHALL BE DEEMED ACCEPTED BY CLICKING "ACCEPT" OR BY SIGNING THE RESELLER PARTNER ORDER FORM (AS THE CASE MAY BE).

WHERE AN INDIVIDUAL ENTERS INTO THE AGREEMENT ON BEHALF OF OR IN THE NAME OF THE RESELLER, THE RESELLER CONFIRMS THAT SUCH INDIVIDUAL IS DULY AUTHORISED TO ACCEPT THE AGREEMENT ON BEHALF OF THE RESELLER AND BIND THE RESELLER AS A PARTY TO THIS AGREEMENT.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement:

1.1 Definitions:

Agreement: the Agreement between CyberHive and Reseller to resell the Products in accordance with the Reseller Order Form and the Terms and Conditions.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly, and **controls, controlled** and the expression **change of control** shall be interpreted accordingly.

CyberHive: CyberHive Limited (No. 03974231), a company registered in England and Wales with its registered office at 2nd Floor Newmarket House, Market Street, Newbury, England, RG14 5DP.

End-User: means an end-user who purchases the Product from the Reseller.

End-User Agreement: means an Agreement between the Reseller and the End-User governing use of the Products.

First Line Support: the initial response provided by the Reseller's helpdesk to an End-User where that End-User has initiated a request for support.

Initial Term: the initial term of this Agreement for the duration of time as specified in the Reseller Order Form.

Order Effective Date: the date on which this Agreement commences as specified in the Reseller Order Form.

Products: the good or services of the type and specification referenced in the Reseller Order Form which the Reseller is permitted to resell.

Reseller: means the person identified as the reseller on the Reseller Order Form.

Reseller Order Form: the order form agreed between the parties which incorporates the terms of this Agreement and which sets out the details of the parties and other key commercial details.

Second Line Support: the Reseller's further investigation into the End-User issue to establish the root cause and attempt by the Reseller to resolve.

Term: the full term of this Agreement.

Terms and Conditions: these reseller terms and conditions.

Third Line Support: where issues raised are technical defects in the Products and where the Reseller has not choice but to refer the issue to CyberHive for further investigation and resolution.

Trade Marks: the trade marks that CyberHive may, by express notice in writing, permit or procure permission for, the Reseller to use in respect of the Products.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Year: the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the Term.

- 1.1 **Headings.** Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2 **Person.** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 **Schedules.** The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 **Company.** A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 **Singular and plural.** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.6 **Gender.** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 **Successors and assigns.** This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 **Legislative references.** A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 **Legislative references and subordinate legislation.** A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time.
- 1.10 **Writing.** A reference to **writing** or **written** includes e-mail.
- 1.11 **"Including".** Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 **Clauses and schedules.** References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule.

2. **Commencement and duration**

This Agreement shall commence on the Order Effective Date. Unless terminated earlier in accordance with clause 16, this Agreement shall continue for the Initial Term and shall thereafter renew for consecutive 12 month periods (each an "**Extended Term**") until either party gives to the other party no less than 3 months' written notice to terminate this Agreement in which case this Agreement shall terminate on the expiry of the Initial Term or then current Extended Term as the case may be.

3. **Appointment**

- 3.1 CyberHive appoints the Reseller as its non-exclusive reseller to market, purchase, distribute and resell the Products in the on the terms of this Agreement, and the Reseller accepts the appointment on those terms.
- 3.2 CyberHive shall be free to:
- (a) appoint any other reseller, distributor or agent for the Products; and
 - (b) supply any Products directly whether for use or resale.

- 3.3 The Reseller shall buy the Products for its own account for resale under this Agreement.
- 3.4 The Reseller shall purchase the Products only from CyberHive, and shall not for the Term resell, distribute or manufacture any goods or services which compete with the Products, without the prior written consent of CyberHive, such consent not to be unreasonably withheld or delayed.
- 3.5 The Reseller shall not:
 - (a) represent itself as an agent of CyberHive for any purpose;
 - (b) pledge CyberHive's credit;
 - (c) give any condition or warranty on CyberHive's behalf;
 - (d) make any representation on CyberHive's behalf;
 - (e) commit the SupplierCyberHive to any contracts; or
 - (f) otherwise incur any liability for or on behalf of CyberHive.
- 3.6 The Reseller shall not, without CyberHive's prior written consent, make any promises or guarantees about the Products (including with respect to any promises or guarantees which might be contained in an End-User Agreement) beyond those contained in the promotional material supplied by CyberHive.

4. Reseller's undertakings

- 4.1 The Reseller undertakes and agrees with CyberHive that at all times during the Term it shall:
 - (a) use reasonable endeavours to promote and sell the Products and to expand the sale of the Products by all reasonable and proper means and not to do anything which may hinder or interfere with such sales;
 - (b) employ a sufficient number of suitably qualified and trained personnel to ensure the proper fulfilment of the Reseller's obligations under this Agreement;
 - (c) not resell the Products at a price exceeding the maximum resale price from time to time specified by CyberHive in writing;
 - (d) submit written reports at regular intervals to CyberHive showing details of sales and any other information relating to the performance of its obligations under this Agreement that CyberHive may reasonably require from time to time;
 - (e) keep full and accurate books of account and records clearly showing all enquiries, quotations, transactions and proceedings relating to the Products and allow CyberHive, on reasonable notice, access to such accounts and records for inspection;

- (f) inform CyberHive immediately of any change in control of the Reseller, and of any change in its organisation or method of doing business that might be expected to affect the performance of the Reseller's duties in this Agreement;
- (g) bear the cost of all returns from customers relating to the Products; and
- (h) pay or ensure payment on the due date to CyberHive of all sums due to CyberHive for sales of the Products.

5. Supply of Products

- 5.1 CyberHive shall use its reasonable endeavours to meet all orders for the Products forwarded to it by the Reseller as soon as practicable, but CyberHive may, at its discretion, refuse any order that it reasonably considers it would be impracticable to attempt to meet. The Reseller acknowledges that CyberHive may supply other Resellers or customers in priority to the Reseller.

6. End-Users Agreements

- 6.1 The Reseller must ensure that each End-User to whom it wishes to grant access to, and use of, the Product enters into an End-User Agreement with the Reseller which governs use of the Product. The End-User Agreement must be fully executed prior to access to the Product.
- 6.2 The Reseller shall ensure that all End-User Agreements grant and preserve the right for CyberHive to request reasonable information about and audit the End-User's use of the Product to verify it does not exceed its licenced rights.
- 6.3 Upon CyberHive's request the Reseller shall provide a copy of any End-User Agreement for CyberHive's review and CyberHive may require that, at the Reseller's expense, amendments be made to the End-User Agreement to provide greater protection for the Product.
- 6.4 The Reseller shall use its best endeavours to enforce the terms of any End-User Agreement if it becomes aware of a breach such End-User Agreement.
- 6.5 The Reseller shall not be permitted to, and shall ensure that any End-Users are not permitted to through their respective End-User Agreement:
- (a) rent, lease, sub-license, loan, provide, or otherwise make available, the Product in any form, in whole or in part to any person without prior written consent from us;
 - (b) not copy any part of the Product, except where it is necessary for the purpose of back-up or operational security;

- (c) not translate, merge, adapt, vary, alter or modify, the whole or any part of the Product, nor permit the Product or any part of it to be combined with, or become incorporated in, any other programs; or
 - (d) not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Product subject to the following exceptions:-
 - (i) The right to decompile (or effectively reverse-engineer) if necessary for interoperability between the Product and another program;
 - (ii) The right to make a back-up copy of program underlying the Product if necessary for its lawful use; or
 - (iii) The right to observe, study or test the functioning of the programs underlying the Product in order to determine the underlying ideas and principles.
- 6.6 The Reseller shall be responsible for any actions or omissions of the End-Users as if they were its own and the Reseller shall indemnify CyberHive against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Reseller arising out of or in connection with the End-User's use of the Products.
- 7. Private labelling**
- 7.1 The Reseller shall only be permitted to market, purchase, distribute and resell the Products under its own branding with the prior written consent of CyberHive.
- 7.2 Where CyberHive provides its written consent, it may as a condition of such consent require the Reseller to comply with any additional guidelines, policies or directions issued by it from time to time (together "**Private Labelling Rules**"). The Private Labelling Rules shall form part of this Agreement and any breach of the Private Labelling Rules shall be a breach of this Agreement.
- 8. Support**
- 8.1 The Reseller shall be responsible for providing First Line Support and Second Line Support to the End-Users.
- 8.2 The Reseller shall provide the First Line Support and Second Line Support:
- (a) with the highest level of care, skill and diligence and in accordance with best industry practice;
 - (b) in a timely manner and in a manner which can be readily accessed by End-Users at all times; and

- (c) in accordance with any specifications or service levels introduced by CyberHive from time to time.
- 8.3 CyberHive shall be responsible for maintaining and continuing development of the Product until CyberHive ceases to make the Product available on the market.
- 8.4 CyberHive shall be responsible for:
 - (a) Providing all support and maintenance for source code issues with the Product; and
 - (b) Development, testing and quality assurance procedures in connection with current release of the Product.
- 8.5 CyberHive may agree at its sole discretion to provide training on the Product to the Reseller. Any such training shall be subject to additional charges at CyberHive's then current rates.
- 9. Fees and payment**
- 9.1 The fees to be paid by the Reseller to CyberHive for its initial purchase of the Products are as set out in the Reseller Order Form and any further purchases of the Products shall be based upon any pricing lists notified to the Reseller by CyberHive in writing from time to time.
- 9.2 CyberHive shall give the Reseller 14 days' notice in writing of any increase in the prices for the Products and any price increase shall take precedence over any prices set out in the Reseller Order Form unless otherwise agreed by CyberHive in writing.
- 9.3 The Reseller shall pay invoices:
 - (a) within 30 days of the receipt of the invoices; and
 - (b) in full and in cleared funds to the bank account nominated in writing by CyberHive.
- 9.4 The Reseller shall not be required to release any licence keys or otherwise provide the Reseller access to the Products to enable it to resell them to End-Users until all outstanding invoices issued under this Agreement have been paid in full.
- 9.5 Any and all expenses, costs and charges incurred by the Reseller in the performance of its obligations under this Agreement shall be paid by the Reseller, unless CyberHive has expressly agreed in advance in writing to pay such expenses, costs and charges.
- 9.6 The Reseller shall provide a report to CyberHive of sales made in each preceding month on the first Business Day of the month for the duration of the Term. Such report shall include:

- (a) the number of Products sold and End-User Agreements concluded in the relevant calendar month;
 - (b) the price it sold the Products for; and
 - (c) such other information as CyberHive may reasonably request regarding the sale of the Products to End-Users.
- 9.7 As between CyberHive and the Reseller, the Reseller is solely responsible for the collection, remittance and payments of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, sale, importation, lease or other distribution of the Products.
- 9.8 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.9 Interest on late payments.
 - (a) If a party fails to make a payment due to the other party under this Agreement by the due date, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
 - (b) Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 10. VAT and taxes**
- 10.1 The prices are exclusive of amounts in respect of VAT. The Reseller shall, on receipt of a valid VAT invoice from CyberHive, pay to CyberHive any additional amounts in respect of VAT as are chargeable on a supply of Products.
- 10.2 Where, under this Agreement, any party makes a supply to any other party (**Recipient**) for VAT purposes and VAT is or becomes chargeable on that supply for which the supplying party is required to account to the relevant tax authority, the Recipient shall, subject to the receipt of a valid VAT invoice, pay the supplying party (in addition to, and at the same time as, any other consideration for that supply) the amount of such VAT.
- 10.3 Where any party is required by this Agreement to reimburse or indemnify any other party for any cost or expense, that first party shall reimburse or indemnify the other party for the full amount of the cost or expense, including any VAT on that amount, except to the extent that the other party is entitled to credit or repayment for that VAT from any relevant tax authority.

10.4 All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Products shall be the responsibility of, and for the account of, the Reseller.

11. Advertising and promotion

11.1 The Reseller shall:

- (a) not use any advertising materials or promotional literature to promote the Products without CyberHive's consent;
- (b) display advertising materials and other signs provided by CyberHive;
- (c) observe all directions and instructions given to it by CyberHive for promotion and advertisement of the Products; and
- (d) not make any written statement as to the quality or manufacture of the Products without the prior written approval of CyberHive.

11.2 CyberHive shall:

- (a) approve or reject, in its sole discretion, any promotional information or material or any advertising and promotional programme submitted by the Reseller within 28 days of receipt; and
- (b) provide the Reseller with copies of its own promotional and advertising material for the Products which CyberHive produces from time to time.

11.3 The Reseller shall ensure that any website that it uses for the sale of the Products complies with the quality standards and criteria specified by CyberHive from time to time.

12. Trade Marks

12.1 CyberHive grants to the Reseller the non-exclusive right to use the Trade Marks in the United Kingdom for the promotion, advertisement and sale of the Products, subject to, and for the duration of, this Agreement. The Reseller acknowledges and agrees that all rights in the Trade Marks shall remain in CyberHive, and that the Reseller has and will acquire no right in them by virtue of the discharge of its obligations under this Agreement, except for the right to use the Trade Marks as expressly provided in this Agreement.

12.2 The Reseller shall market and sell the Products only under the Trade Marks, and not in association with any other trade mark, brand or trade name unless the Reseller has permission to private-label the Products pursuant to clause 7.1.

12.3 The Reseller shall comply with all rules for the use of the Trade Marks issued by CyberHive from time to time and shall not, without the prior written consent of CyberHive:

- (a) make any addition to any advertising and promotional materials supplied by CyberHive; or
 - (b) alter, deface or remove any reference to the Trade Marks.
- 12.4 The Reseller shall not sub-license, assign, transfer, charge, or otherwise encumber the right to use, reference, or designate the Trade Marks to any other party, except as otherwise expressly permitted under this Agreement.
- 12.5 The Reseller shall not do, or omit to do, anything in its use of the Trade Marks that could adversely affect their validity or reputation.
- 12.6 The Reseller shall not, at any time during or within one year after termination of this Agreement, in connection with any business similar to that of CyberHive, adopt, use, obtain, register or try to register without the prior written consent of CyberHive a word or symbol or a combination of the two similar to the Trade Marks.
- 12.7 The Reseller shall immediately on request enter into any further Agreements with CyberHive, in a form satisfactory to CyberHive, necessary for the recording, registration or safeguarding of CyberHive's rights in the Trade Marks or the marketing of the Products under the Trade Marks.
- 12.8 The Reseller shall promptly give notice to CyberHive in writing if it becomes aware of:
 - (a) any infringement or suspected infringement of the Trade Marks or any other intellectual property rights relating to the Products; or
 - (b) any claim that any Product infringes the rights of any third party.
- 12.9 In respect of any matter that falls within clause 12.8(a):
 - (a) CyberHive shall in its absolute discretion, decide what action to take in respect of the matter (if any);
 - (b) CyberHive shall conduct and have sole control over any consequent action that it deems necessary and the Reseller shall on being so requested by CyberHive and at CyberHive's cost assist in taking all steps to defend the rights of CyberHive including the institution at CyberHive's cost of any actions which it may deem necessary to commence for the protection of any of its rights; and
 - (c) CyberHive shall pay all costs in relation to that action and shall be entitled to all damages and other sums that may be paid or awarded as a result of that action.
- 12.10 The Reseller shall not use the Trade Marks as part of the name under which the Reseller conducts its business, or any connected business, or under which it sells or services any products (except the Products), or in any other way, except as expressly permitted under this Agreement.

12.11 Upon termination or expiry of this Agreement for any reason, the Reseller shall immediately stop using all or any part of the Trade Marks.

13. Compliance with laws and policies

13.1 The Reseller shall at its own expense comply with all laws and regulations relating to its activities under this Agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

14. Data protection

14.1 The following definitions apply in this clause 14:

Agreed Purposes: for the purpose of ensuring that the End-Users are able to use and benefit from the Product in accordance with the End-User Agreement and the terms of this Agreement.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisation measures: as set out in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (**DPA 2018**) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended.

Permitted Recipients: the parties to this Agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Agreement.

Shared Personal Data: the personal data to be shared between the parties under this Agreement.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

14.2 This clause 14 sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

14.3 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall constitute a material breach for the purposes of clause 16.1(b).

14.4 Each party shall:

- (a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

- (b) give full information to any data subject whose personal data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination or expiry of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this Agreement;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
- (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that:
 - (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or
 - (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or
 - (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or
 - (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

14.5 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject rights request;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;

- (d) not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
 - (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
 - (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination or expiry of this Agreement unless required by law to store the Shared Personal Data;
 - (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 14; and
 - (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 14.6 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it. The liability of the indemnifying party under this clause shall be subject to the limits set out in clause 15.
- 15. Limitation of liability**
- 15.1 The restrictions on liability in this clause 15 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 15.2 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
 - (d) CyberHive shall not be liable for the following types of loss:
 - (i) loss of profits;
 - (ii) loss of sales, revenue or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) wasted expenditure;
 - (vi) loss of use or corruption of software, data or information;
 - (vii) loss of or damage to goodwill or reputation;
 - (viii) loss arising from lawful termination of the Agreement; and
 - (ix) indirect or consequential loss.
 - (x) The total liability of CyberHive in respect of all other loss or damage arising under or in connection with this Agreement shall in no circumstances exceed The fees paid by CyberHive in the 12 months preceding the event, action or omission which gave rise to liability under this Agreement.
- 15.3 Terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 15.4 Unless the Reseller notifies CyberHive that it intends to make a claim in respect of an event within the notice period, CyberHive shall have no liability for that event. The notice period for an event shall start on the day on which Reseller ought reasonably to have become aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 16. Termination**
- 16.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of this Agreement (other than failure to pay any amounts due under this Agreement) which breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (j) the other party (being an individual) is the subject of a bankruptcy petition, application or order;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued

against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1(c) to clause 16.1(k) (inclusive);
- (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (n) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; and/or
- (o) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation.

16.2 Without affecting any other right or remedy available to it, CyberHive may terminate this Agreement with immediate effect by giving written notice to the Reseller if:

- (a) the Reseller does not make any sales of the Product for a consecutive 6-month period; and/or
- (b) there is a change of control of the Reseller.

17. Consequences of termination

17.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

17.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

17.3 On termination or expiry of this Agreement:

- (a) the Reseller shall immediately pay to CyberHive all of CyberHive's outstanding unpaid invoices and interest;
- (b) all rights to resell the Products shall immediately cease;
- (c) all existing End-User Agreements shall be assigned to CyberHive in accordance with CyberHive's written instructions.

17.4 The termination or expiry of this Agreement shall not of itself make CyberHive liable to pay any compensation to the Reseller, including compensation for loss of profits or goodwill.

17.5 Subject to clause 17.3, all other rights and licences of the Reseller under this Agreement shall terminate on the date of termination or expiry of this Agreement.

18. Confidentiality

18.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2.

18.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

19. Force majeure

19.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and interruption or failure of utility service.

19.2 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of

the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Agreement by giving 7 days' written notice to the affected party.

20. Other important terms

- 20.1 **No partnership or agency between the parties.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 20.2 **No agency on behalf of third party.** Save for as otherwise set out in this Agreement, each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 20.3 **Entire agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.4 **No reliance on matters outside Agreement.** Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 20.5 **Misrepresentation and misstatement.** Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 20.6 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.7 **Assignments and other dealings.** This Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 20.8 **No automatic waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 20.9 **Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.10 **Notices.** Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office or such other address that either party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, or by commercial courier, or email to the email address that either party may specify to the other party.
- 20.11 **Deemed receipt of notices.** A notice or other communication shall be deemed to have been received:
- (i) if delivered personally, when left at the address referred to in clause 20.10;
 - (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
 - (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
 - (iv) or, if sent by email, one Business Day after transmission.
- 20.12 **Exclusions from notice provisions.** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 20.13 **Third party rights.** No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 20.14 **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 20.15 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
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