

Professional Service Terms & Conditions

These Professional Service Terms (Terms) govern Cyber Protect LLC's provision of Services to Company. By executing a Statement of Work or placing an Order for Services, Company agrees to these Terms. If Company does not agree to these Terms, Company may not receive Services. If Company is accepting these Terms on behalf of another person or other legal entity, Company represents and warrants that Company has full authority to bind that person or legal entity to these Terms. Capitalized terms used in these Terms have the meaning assigned to them in the definitions section at the end of these Terms or elsewhere in these Terms. The interpretation clause in the interpretation section at the end of these Terms sets out the rules of interpretation for these Terms.

1. ORDER; AND PERFORMANCE

1. The Services may be specified in a Statement of Work, or an Order, or as required (Email) by Cyber Protect LLC from time to time. As of the Agreement Effective Date, the Agreement constitutes the terms and conditions that govern Cyber Protect LLC's provision of Services to Company.
2. Cyber Protect LLC may use sub-contractors to perform its contractual obligations under the Agreement. If Cyber Protect LLC uses subcontractors, Cyber Protect LLC will be fully responsible for supervising and directing their performance.

2. SCHEDULING OF THE SERVICES

1. The parties will agree on a start date for the Services, which will be no later than three (3) months from the Agreement Effective Date. Unless agreed otherwise in writing, Cyber Protect LLC will perform the Services within one (1) year of the Agreement Effective Date. Company acknowledges and agrees that if Cyber Protect LLC has not completed the Services within one (1) year of the Agreement Effective Date for reasons that are not attributable to Cyber Protect LLC, Cyber Protect LLC may, at its sole discretion, cancel the unperformed Services and retain any pre-paid fees for the unperformed Services.
2. Any completion times specified in the SOW or the Order are only estimates for Company's and Cyber Protect LLC's resource scheduling.
3. Company is permitted to reschedule the start date of the Services one time, with at least five (5) Business Days prior notice, without incurring additional fees. If Company requests and Cyber Protect LLC agrees to any additional or alternative rescheduling, suspension, or delays, Company will pay an

additional fee equal to twenty-five percent (25%) of the applicable fees in each instance where Cyber Protect LLC accommodates the rescheduled or delayed Services.

4. ACCESS: Company will provide Cyber Protect LLC with sufficient, free, safe, and timely access to the Company's facilities, services, computer systems, and networks to enable the performance of the Services.
5. Software Resale:
 - Cyber Protect does not warranty 3rd party software or hardware to be free from bugs, flaws, or the software or hardware's performance.
 - Software and hardware is warrantied through the individual vendor supplying the devices (e.g., Cynet, ThreatLocker, Huntress, Fortinet, etc.).
 - Cyber Protect does not collect any Internal, PHI or PII data from end-users or contracted companies using 3rd party software (e.g., Cynet, ThreatLocker, Huntress, Fortinet, etc.).
 - Software, hardware, and other 3rd party service are to be used, maintained, updated, and/or upgraded within the length of the 3rd party contract and the agreement set forth by the 3rd party vendor and the end-user.

4. TERMINATION

1. Termination for cause: Either party may terminate this Agreement immediately for cause as provided otherwise in these Terms or if:
 1. the other party breaches this Agreement and has failed to remedy a remediable breach within thirty (30) days of receipt of a notice from the first party specifying the breach and requiring it to be remedied (except for non-payment in which the cure period is ten (10) days), or if the breach is incapable of remedy.
 2. the other party or its property is subject to insolvency or receivership procedures;
 3. the other party becomes insolvent or unable to pay its debts as they mature;
 4. the other party makes an assignment for the benefit of creditors; or
 5. the other party becomes the subject of any other proceeding under any bankruptcy, insolvency, or debtor's relief law.
2. Suspension of performance: Cyber Protect LLC may immediately suspend performance under this Agreement if Company, in Cyber Protect LLC's reasonable opinion, fails to comply with the terms of this Agreement.

3. Effect of termination: Except for termination for cause due to Cyber Protect LLC, all Orders for Services placed by Company and accepted by Cyber Protect LLC before the Agreement ends will remain effective, due, and payable in accordance with the relevant SOW or Order, regardless of whether the Services have been performed.
1. INSURANCE: Each party must maintain insurance with coverage at least equal to what a prudent company would carry under similar circumstances or as required by law, and will provide details of its insurance coverage upon request.

6. PAYMENT AND TAXES

1. Payment: Service fees may be specified in the SOW, estimate, invoice, or order. Unless Company is purchasing the services through an Authorized Partner, in which case payment obligations will be exclusively between the Authorized Partner and Company, Company will pay Cyber Protect LLC all fees within fifteen (15) days of the invoice date without any right to offset, counterclaim, holdback or deduction. Cyber Protect LLC reserves the right to charge a late fee of \$50 if the Company missed its invoice due date by 7 days or more. Cyber Protect LLC also reserves the right to charge interest for late payments (15 days or more) on the unpaid amounts calculated as the lesser of (a) 2.9% per month; or (b) the highest rate allowed by relevant law, accrued and compounded from the date due until payment is received by Cyber Protect LLC. *All labor charges and blocks of prepaid hours purchased are non-refundable and expire in 1-year from the purchase date.** All hardware may be returned within 30 days except custom configurations. Any custom-configured hardware may not be returned. There is a 15% restocking fee on all returned items except special order items. There is a 20% restocking fee on special order items.
2. Credit Card Payments: All invoices will include an additional 3.5% processing fee for all transactions paid via credit card.
3. For nonpayment after 30 days of invoice, Cyber Protect reserves the right to end or stop the unpaid service or may repossess unpaid hardware from Company. Company will hold Cyber Protect harmless in these actions and will allow access to the hardware or software for removal.
4. Transaction Taxes: If Company purchases the Services or Software directly from Cyber Protect LLC, Company will pay all applicable transaction taxes, including sales and use taxes, value-added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and

any related interest or penalty) on amounts payable by Company under these Terms (Transaction Taxes). Cyber Protect LLC will separately state on its invoices the Transaction Taxes that Cyber Protect LLC is required to collect from Company under applicable law. Company will provide proof of any exemption from Transaction Taxes to Cyber Protect LLC at least fifteen (15) Business Days before the due date for paying an invoice. If Cyber Protect LLC does not collect the required Transaction Taxes from Company but is subsequently required to remit the Transaction Taxes to any taxing authority, Company will promptly reimburse Cyber Protect LLC for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to the fault of Cyber Protect LLC.

5. **Withholding Taxes:** All payments due from Company will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority. If Company is required by applicable law to deduct or withhold income taxes from amounts payable to Cyber Protect LLC under this Agreement (Withholding Taxes), Company will remit, and provide Cyber Protect LLC with evidence that Company has remitted, the Withholding Taxes to the appropriate taxing authority and pay to Cyber Protect LLC the remaining net amount. Company will provide written notice to Cyber Protect LLC of its intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days before the due date for any payments under this Agreement and will cooperate with Cyber Protect LLC to reduce any Withholding Taxes. If Cyber Protect LLC provides Company with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then Company will apply the lower rate.
6. If Company purchases the Services through an Authorized Partner, the obligations regarding Transaction Taxes or Withholding Taxes will be the exclusive responsibility of the Authorized Partner or Company, and the rules in Sections 6.2 and 6.3 do not apply as between Cyber Protect LLC and Company.
7. **Income Taxes:** Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
8. **Collections:** The cost of collection, including reasonable attorney's fees shall be borne by the Client/Company.
9. Cyber Protect LLC is not registered outside of Michigan to collect sales or use tax on any goods, services, hardware, software, SaaS, or other taxable items. Company will pay all applicable taxes to their state's tax authority. Cyber Protect does not have a Nexus outside of Michigan.

10. * Microsoft New Commerce Experience (NCE) Licenses - Microsoft Licenses are billed monthly, but to get the lower rates from Microsoft, they enforce a yearly commitment (12 months). Commitment starts on the day of purchase and extends for 12 months from that date. When new licenses are added to an existing pool of licenses for a company, the NCE license date from Microsoft restarts with the last date of purchase. Clients are required to pay out their yearly commitments to Cyber Protect for all Microsoft licenses. If a Company ends its relationship with Cyber Protect the Company must pay out the remainder of its Microsoft licenses in full to Cyber Protect within the month of cancellation.

7. CONFIDENTIALITY

1. Each party acknowledges that it may have access to Confidential Information of the other party in connection with this Agreement and that each party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third parties or used in violation of this Agreement.
2. Each Recipient of Confidential Information under this Agreement must:
 1. keep the Disclosing Party's Confidential Information confidential and protect it at least to the same extent it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information;
 2. not use the Disclosing Party's Confidential Information in any way for its own account or the account of any third party except to perform its duties, exercise its rights, or is otherwise authorized under these Terms; and
 3. not disclose the Disclosing Party's Confidential Information except to perform its duties or exercise its rights under this Agreement or as otherwise authorized under these Terms, provided that:
 1. any disclosure made to the Recipient's employees, contractors, or agents is on a need-to-know basis; and
 2. the Recipient's employees, contractors, or agents in receipt of the Confidential Information are under an obligation of confidentiality no less stringent than that set forth in this section.
3. Notwithstanding the restrictions set out above, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any court, arbitral, administrative, or legislative body, the Recipient must:

1. where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
2. disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
3. assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.
4. Company will immediately notify Cyber Protect LLC if Confidential Information of Cyber Protect LLC is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threatens to violate the terms of this section, Cyber Protect LLC is immediately entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other rights or remedies it may have.
5. Upon the Disclosing Party's request and upon the termination of this Agreement (unless agreed otherwise by the parties at the time), each party will return, destroy or delete permanently (at the Disclosing Party's election) the other party's Confidential Information.
6. On termination of this Agreement, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for five (5) years in accordance with this section.
7. Feedback: Company agrees that Cyber Protect LLC has the unrestricted right to use suggestions and feedback provided by Company regarding the Services and other products and services of Cyber Protect LLC and its Affiliates, without notice to, payment to or consent from Company, and that such suggestions and feedback will be the Confidential Information of Cyber Protect LLC, and not Company.

8. INTELLECTUAL PROPERTY RIGHTS

1. As between the parties, (a) Company owns all right, title, and interest in and to any proprietary information, materials, or other items provided by Company to Cyber Protect LLC under the Agreement (Company IP) and all Intellectual Property Rights therein; and (b) Cyber Protect LLC owns all rights, title, and interest in and to all Cyber Protect LLC Materials and Deliverables, including all Intellectual Property Rights therein. The Services will not be interpreted as 'work for hire'. Company may not exercise any right, title, and interest in and to the Services, Cyber Protect LLC Materials, Deliverables, or

any related Intellectual Property Rights, except for the limited usage rights granted to Company in the Agreement.

8.2 Subject to the terms and conditions of the Agreement, including payment of fees, (a) Cyber Protect LLC grants to Company a fully paid-up, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, non-perpetual license to use and reproduce, for Company's own internal business operations, the Deliverables (and any Cyber Protect LLC Materials solely as provided by Cyber Protect LLC as part of the Deliverables); and (b) Company grants to Cyber Protect LLC a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license, during the term of any applicable SOW, to use, reproduce, and distribute to Cyber Protect LLC's Representatives Company IP to perform the Services and provide the Deliverables under the Agreement. The Services are strictly confidential to Cyber Protect LLC.

9. WARRANTIES; EXCLUSIONS; DISCLAIMERS

1. **Warranty:** Cyber Protect LLC warrants that the Services will be performed in a professional manner consistent with relevant industry standards (Services Warranty).
2. **Exclusive Remedy:** Provided Company notifies Cyber Protect LLC in writing and in sufficient detail of a breach of the Services Warranty within thirty (30) days after provision of the non-conforming Services, Cyber Protect LLC will, at its option, (a) re-perform the Services at no additional cost to Company or (b) credit to the entity that paid Cyber Protect LLC the fees associated with the non-conforming Services. Capped at three (3) months of the total cost. This section states Company's sole and exclusive remedy, and Cyber Protect LLC's sole and exclusive liability, with respect to any breach of warranty relating to the Services. The Services Warranty is personal to Company and may not be assigned, transferred, or passed-through to any third party.
3. **Disclaimer of warranties:** EXCEPT FOR THE SERVICES WARRANTY, THE SERVICES ARE PROVIDED "AS IS". CYBER PROTECT LLC DOES NOT WARRANT THAT: (A) VULNERABILITY SERVICES, TO THE EXTENT PERMITTED BY LAW, CYBER PROTECT LLC MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, SYSTEM AVAILABILITY, FUNCTIONALITY DURING ANY PHASE OF ITS SUPPORT SERVICES, AND DISCLAIMS ALL OTHER OBLIGATIONS AND LIABILITIES, OR EXPRESS AND IMPLIED WARRANTIES REGARDING THE SERVICES, INCLUDING QUALITY, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT; OR THAT CYBER PROTECT LLC WILL FIND ALL VULNERABILITIES. CYBER PROTECT MAKES NO GUARANTEES OR

WARRANTIES REGARDING THE ABILITY TO RESOLVE COMPUTER-RELATED, NETWORK-RELATED, OR SECURITY-RELATED PROBLEMS, TO RECOVER DATA, TO AVOID LOSING DATA, OR TO PREVENT LOSS OF INCOME OR WORK.

4. LIMITATION OF LIABILITY: EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL PAYMENTS PAID OR PAYABLE BY COMPANY TO CYBER PROTECT LLC UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRIOR TO THE CLAIM. CYBER PROTECT WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE DAMAGES WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE, OR OTHERWISE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES (a) COMPANY'S PAYMENT OR INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; OR (b) ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.
5. All hardware and software remain the property of Cyber Protect until paid in full.

10. INDEMNIFICATION

1. Company indemnification obligations: Unless prohibited by law, Company will unconditionally indemnify, and defend Cyber Protect LLC, its Affiliates, and their officers, directors, employees, contractors, and agents (each a Cyber Protect LLC Indemnified Party) against any claims, liabilities, and expenses (including court costs and reasonable attorneys' fees) that a Cyber Protect LLC Indemnified Party incurs as a result of or in connection with:
 1. any third-party claims arising from:
 1. Company's failure to obtain any consent, authorization, or license required for Cyber Protect LLC's use of data, software, materials,
 2. systems, networks or other technology provided by Company under the Agreement;
 3. Company's use of the Services in a manner not expressly permitted by the Agreement;
 4. Cyber Protect LLC's compliance with any technology, designs, instructions, or requirements provided by Company or a third party on Company's behalf;

5. any claims, costs, damages, and liabilities whatsoever asserted by any Company Representative; or
 6. any violation by Company of applicable laws or regulations; and
 2. any reasonable costs and attorneys' fees required for Cyber Protect LLC to respond to a subpoena, court order, or other official government inquiry regarding Company's use of the Services.
11. Cyber Protect LLC indemnification obligations
1. Cyber Protect LLC will indemnify Company and, at Cyber Protect LLC's election, defend Company against a third-party claim asserted against Company in a suit or action if the claim is for direct patent infringement, for direct copyright infringement, or for Cyber Protect LLC's trade secret misappropriation and the claim is asserted against the Services or the Deliverables alone and not in combination with anything else, or solely a combination of the Services or Deliverables.
 2. Exclusions: Notwithstanding anything to the contrary in this Agreement, Cyber Protect LLC will not indemnify or defend Company for claims asserted, in whole or in part, against or resulting from:
 1. technology, designs, instructions or requirements provided by Company or a third party on Company's behalf;
 2. modifications or programming to the Services or Deliverables that were made by anyone other than Cyber Protect LLC; or
 - (i) the Services' or Deliverables' alleged implementation of some or all of a Standard.
 1. Remedies: Cyber Protect LLC may, in its sole discretion and at its own expense, with respect to any Services or Deliverables that are subject to a claim:
 1. procure Company with the right to continue using the affected Services or Deliverables;
 2. replace the affected Services or Deliverables with non-infringing Services or Deliverables;
 3. modify the affected Services or Deliverables so they are non-infringing; or
 4. terminate the provision of the Services and, if the fees were paid in advance, refund the residual value of the fees paid by Company for the affected Services, depreciated using a straight-line method of depreciation over a three (3) year period from the date of provision of the affected Services.

2. Indemnification procedure: The indemnified party (Indemnitee) will: (a) provide prompt written notice to the indemnifying party (Indemnitor) of the claim (provided that the failure to provide timely notice that prejudices the Indemnitor will relieve the Indemnitor of its obligations under this section to the extent the Indemnitor has been prejudiced and the failure to provide timely notice will relieve the Indemnitor of any obligation to reimburse the Indemnitee for its attorney's fees incurred prior to notification); (b) reasonably cooperate in connection with the defense or settlement of the claim; and (c) give the Indemnitor sole control over the defense and settlement of the claim, provided that any settlement of a claim will not include a specific performance obligation or admission of liability by the Indemnitee.
3. Personal and exclusive indemnity: The foregoing indemnities are personal to the parties and may not be transferred to any persons or entity. This states the parties' entire indemnification obligations and Company's exclusive remedy for claims involving infringement of Intellectual Property Rights.

12. PRIVACY, HANDLING, OR PROCESSING OF PERSONAL DATA

1. Each party must comply with all applicable laws governing the collection, use and disclosure of Personal Data and must obtain any required consents with respect to the handling of Personal Data. Cyber Protect LLC manages Personal Data in accordance with Cyber Protect LLC's Privacy Policy available at <https://www.CyberProtectLLC.com>.
2. As Personal Data may originate from various jurisdictions and as Cyber Protect LLC may be unaware of those jurisdictions in the provision of the Services, Company is solely responsible for ensuring that the parties enter into any necessary additional agreements as required by applicable data protection laws. To the extent any Personal Data belongs to residents of the European Economic Area (the EEA), Cyber Protect LLC's processing of such data will comply with the applicable version of the Cyber Protect LLC Data Processing Agreement (DPA) (including if requested the Standard Contractual Clauses for the Transfer of Personal Data to Processors Established in Third Countries approved by EC Commission Decision of 5 February 2010) found on Cyber Protect LLC's website, if requested by Company and executed by the parties. Upon execution, the DPA is incorporated herein by reference. In the event of any conflict between the terms of the DPA and the Agreement or Cyber Protect LLC's Privacy Policy, the terms of the DPA will take precedence insofar as the Personal Data of residents of the EEA is concerned. Cyber

Protect LLC will comply with Cyber Protect LLC's Privacy Policy and the applicable technical and organizational measures set forth in the DPA.

3. Company grants to Cyber Protect LLC a non-exclusive, perpetual right and license to use, reproduce and disclose product, support, or services-related information (excluding Personal Data and Company Confidential Information) and material that is aggregated, anonymized, de-identified, or otherwise rendered not reasonably associated or linked to an identifiable individual or to Company for product improvement (including content synchronization, device tracking, troubleshooting), internal research to enhance Cyber Protect LLC's understanding of Malware, threats, and vulnerabilities (including detecting and reporting threats and vulnerabilities on Company's and Users' computer endpoints and networks) to improve overall security for users generally and in accordance with Cyber Protect LLC's Privacy Policy. This includes compiling statistical and performance information related to the provision of the Services and making such information publicly available. Cyber Protect LLC retains all rights in such aggregated and anonymous data.
4. Each party will bear all technical, operational, and financial consequences resulting from the privacy regulations concerning its activity. Company will, in its use of the Services and Deliverables, comply with its obligations under privacy regulations in respect of its processing of Personal Data and any processing instructions it issues to Cyber Protect LLC. Company represents that it has all rights, permissions, and authorizations necessary for Cyber Protect LLC to process Personal Data under this Agreement. Company agrees that this Agreement is its complete and final instruction to Cyber Protect LLC in relation to the processing of Personal Data.

13. COMPLIANCE WITH LAWS

1. Each party will comply with the applicable national, state, and local laws and regulations with respect to its rights and obligations under this Agreement, including applicable privacy and export control laws and regulations, the U.S. Foreign Corrupt Practices Act, and other applicable anti-corruption laws.
2. Company will not, directly or indirectly, export, transmit, permit access or use any Services or technical data (or any part of Services or technical data) or system or service incorporating any Services to or in any country to which export, transmission, or access is restricted by regulation, statute, or other law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other competent governmental entity that may have jurisdiction over export or transmission. Company will not use, transfer, or access any Services for end use relating to

any nuclear, chemical, or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license.

3. Company acknowledges and agrees that certain Services containing encryption may require authorization from the U.S. and other competent authorities including the European Union, prior to export. Company also acknowledges and agrees that certain Services containing encryption may be subject to import or use restrictions in other countries. Additional information regarding exporting and importing Services may be found on Cyber Protect LLC's "Export Compliance" webpage (www.CyberProtectLLC.com/us/about/export-compliance.aspx), as updated from time to time.
4. If Cyber Protect LLC receives notice that Company is or becomes identified as a sanctioned or restricted party under applicable law, Cyber Protect LLC will not be obligated to perform any of its obligations under this Agreement if such performance would result in violation of the sanctions or restrictions.

13.1 BUSINESS ASSOCIATE AGREEMENTS AND HIPAA-REGULATED SERVICES (Retro Active)

1. No Standalone Service Relationship.

The execution of a Business Associate Agreement ("BAA"), HIPAA addendum, data protection agreement, security questionnaire, vendor compliance document, or similar document by Cyber Protect LLC does not, by itself, create a customer, client, managed services, professional services, or other service relationship between Cyber Protect LLC and Company.

2. Condition Precedent to BAA Effectiveness.

Unless Cyber Protect LLC expressly agrees otherwise in a writing signed by an authorized officer of Cyber Protect LLC, any BAA entered into between Cyber Protect LLC and Company shall become effective only when:

- (a) Cyber Protect LLC and Company have entered into an effective Statement of Work, Order, Master Services Agreement, or other written agreement authorizing Cyber Protect LLC to provide Services; and
- (b) the Services described in that agreement require Cyber Protect LLC to create, receive, maintain, or transmit Protected Health Information on behalf of Company in a manner that causes Cyber Protect LLC to qualify as a Business Associate under applicable law.

Until both conditions are satisfied, the BAA shall not authorize Company to disclose Protected Health Information to Cyber Protect LLC and shall not require Cyber Protect LLC to receive, maintain, access, process, store, transmit, or otherwise handle Protected Health Information.

3. No Authorization to Disclose PHI Before Activation.

Company shall not provide, transmit, disclose, upload, grant access to, or

otherwise make Protected Health Information available to Cyber Protect LLC before the applicable BAA and underlying Services Agreement have become effective. Any unauthorized disclosure made before such effectiveness is outside the scope of the Services and shall not constitute authorization or acceptance by Cyber Protect LLC of such information.

4. BAA Does Not Expand Scope of Services.

A BAA does not require Cyber Protect LLC to perform any service, provide any product, access any system, retain any information, respond to any request, provide monitoring, provide incident response, or undertake any obligation not expressly included in an applicable Statement of Work, Order, or other Services Agreement.

5. Relationship to Services Agreement.

Except to the extent applicable law requires otherwise, the applicable Services Agreement governs the commercial relationship between Cyber Protect LLC and Company, including scope of Services, payment obligations, warranties, disclaimers, limitation of liability, indemnification, dispute resolution, governing law, jurisdiction, and termination.

A BAA shall control only to the extent of a direct conflict concerning the use, disclosure, safeguarding, or handling of Protected Health Information as required by applicable HIPAA law. The existence of a BAA shall not supersede unrelated provisions of the Services Agreement.

6. Termination.

Unless otherwise required by applicable law or expressly stated in the BAA, a BAA shall terminate when the Services that require Cyber Protect LLC to act as a Business Associate terminate. Obligations that applicable law requires to survive termination shall survive only to the extent and for the duration required by applicable law or expressly agreed to by Cyber Protect LLC.

7. No Implied Business Associate Relationship.

Company acknowledges that not every service performed by Cyber Protect LLC requires Cyber Protect LLC to access Protected Health Information or qualify as a Business Associate. Company shall not designate Cyber Protect LLC as a Business Associate solely because Cyber Protect LLC provides information technology, cybersecurity, consulting, assessment, resale, licensing, training, or other services unless the nature of the applicable Services and Cyber Protect LLC's access to Protected Health Information requires such designation under applicable law.

8. Unauthorized or Premature Disclosure.

Company is responsible for ensuring that its workforce, contractors, agents, and systems do not disclose Protected Health Information to Cyber Protect LLC before the parties have executed the agreements required for the applicable

Services. Cyber Protect LLC's inadvertent receipt of information sent contrary to this Section shall not expand the scope of the Services or constitute Cyber Protect LLC's agreement to accept responsibilities beyond those imposed by applicable law and an effective written agreement.

14. TRAINING SERVICES

1. **Training Services:** The terms and conditions in this Section 14 apply to any training Services provided by Cyber Protect LLC to Company. Cyber Protect LLC will provide confirmation of the training Services to Company prior to the start date of the training course. Company must book all courses for training Services within one (1) year of the date of Cyber Protect LLC's invoice for those training Services otherwise Cyber Protect LLC may, at its sole discretion, cancel all or a portion of the training Services that have not been booked by Company. Company agrees that any fees for training services are not refundable or available for credit or exchange, except as expressly agreed to in writing by Cyber Protect LLC.
2. **Training Services fees:** Cyber Protect LLC's fees for training Services will cover the fees for the trainer at Cyber Protect LLC's training center, use of the training systems, reasonable refreshments, and course materials for participants. Cyber Protect LLC is not liable for any travel or accommodation costs incurred by Company or any of its attendees to attend the relevant training course. Unless agreed otherwise in writing, Cyber Protect LLC will provide all training Services in English.
3. **Payment:** Company must pay all training Services fees in accordance with Cyber Protect LLC's invoice to ensure that Cyber Protect LLC has received the training Services fees at least fourteen (14) days prior to the start date of the relevant training course.

14.1. Cancellation

1. By Company: Company must cancel any scheduled training Services in writing within fourteen (14) days of the training course start date to avoid paying fees. Company will pay Cyber Protect LLC the following fees for training Services cancellations within less than fourteen (14) days:
 1. (50%) of the fees costs and expenses relating to the canceled training course (including invoicing costs for this amount) if Cyber Protect LLC receives Company's cancellation notice between seven (7) and fourteen (14) days of the training course start date; or
 2. the full amount of fees, costs, travel, and expenses relating to the canceled training course (including invoicing costs for this amount) if Cyber Protect LLC receives Company's cancellation notice less than seven (7) days prior to the training course start date.
 2. By Cyber Protect LLC
 1. Cyber Protect LLC may cancel any training Services without liability or penalty if it has not received the related training Services fees in accordance with Section 14.3.
 2. Cyber Protect LLC may cancel training Services at any time for convenience. If Cyber Protect LLC is unable to provide a suitable substitute training course, Cyber Protect LLC's sole liability to Company will be to refund the training Services fees paid by Company. For the avoidance of doubt, Cyber Protect LLC will not be liable for any travel or hotel costs associated with the cancellation under this section.
 - 3.
- 14.2. Substitution and Rescheduling
1. Company may substitute training course attendees with employees with substantially equivalent qualifications required for participation in the training course, at Company's discretion. However, Cyber Protect LLC reserves the right to refuse or to limit any training Services if Cyber Protect LLC considers that a Company attendee fails to satisfy the requirements for the relevant training course. Company may reschedule the training course, subject to availability, by providing Cyber Protect LLC with fourteen (14) days prior written notice.
 2. Cyber Protect LLC reserves the right to use substitute instructors, to modify the training Services content slightly and to make changes to the dates and locations of any scheduled training course upon notice to Company. If Company cannot attend because of the changes, Company may rebook for another available course. Cyber Protect LLC will not be liable for any Company costs associated with the rescheduling.

3. **Conduct:** Cyber Protect LLC reserves the right to refuse, limit or cancel any training Services if a Company attendee, in the sole opinion of Cyber Protect LLC, has displayed unreasonable behavior or is deemed to be violent, abusive, or disruptive. In such case, Company will not be entitled to any refunds.
4. **Training Materials:** All training materials and systems that Cyber Protect LLC provides as part of the training Services are provided on an “as-is” basis, without warranty of any kind, whether express, implied, statutory or otherwise including without limitation as to quality, reliability, timeliness, usefulness, sufficiency and accuracy.

15. GENERAL PROVISIONS

1. **Relationship:** The parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary, or other special relationship. Neither party intends this Agreement to benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties and listed Affiliates. This Agreement is not intended to create a third-party beneficiary of any kind. Company must not represent to any third party that it has any right to bind Cyber Protect LLC in any manner and Company will not to make any representations or warranties on behalf of Cyber Protect LLC.
2. **Severability:** If a court holds that any provision of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from this Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of this Agreement, which will continue in full force and effect.
3. **No waiver:** A party’s failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the party agreeing to the waiver.
4. **Force Majeure; other excusable failures or delays in performance**
 1. Neither party is liable for delays or failures to perform any of its obligations under this Agreement to the extent caused by a Force Majeure Event.
 2. Cyber Protect LLC’s failures or delays in its performance are excused to the extent they result from:

1. Company's acts or omissions, or those of its employees, agents, users, affiliates or contractors;
 2. notwithstanding the generality of the subsection above, Company's failure or delay in the performance of a specific task, obligation, or responsibility under this Agreement, which task, obligation, or responsibility is a condition or requirement for a Cyber Protect LLC task, obligation, or responsibility;
 3. reliance on instructions, authorizations, approvals, or other information from Company's Representative; or
 4. acts or omissions of third parties (unless directed by Cyber Protect LLC).
5. Governing law: All disputes arising out of or relating to this Agreement or its subject matter will be governed by the following substantive laws, excluding rules relating to conflict of laws:
 1. the laws of the State of Michigan, if Company purchased the Services in the United States, Mexico, Central America, Canada, South America or the Caribbean;
 2. the substantive Federal laws of the United States of America if Company is a Federal Government entity, and in such case, any disputes relating to this Agreement shall be resolved in accordance with the FAR and the Contract Disputes Act, 41 U.S.C. §§ 7101- 7109.
6. Jurisdiction: The following courts will each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter:
 1. the United States District Court for the Eastern District of Michigan and state courts located in the state of Michigan, when Michigan or Federal law applies.
 - 2.
16. Entire Agreement, Order of Precedence, and Amendments
 1. This Agreement constitutes the entire understanding between Cyber Protect LLC and Company relating to its subject-matter and supersedes all oral or written proposals and all communications between the parties relating to its subject matter. The terms of this Agreement will prevail, notwithstanding any variance with any purchase order or other written instrument submitted by Company, whether or not expressly rejected by Cyber Protect LLC.
 2. If there is any conflict or inconsistency between the terms of any document forming this Agreement, the following order of precedence will apply to the extent of the conflict or inconsistency unless expressly agreed otherwise in any subordinate document, these Terms will prevail over the terms of any SOW or Order.

3. **Notices:** Any notice given under or in relation to this Agreement must be in writing, signed by or on behalf of the party giving it, and addressed to the relevant Cyber Protect LLC entity, "Attention Legal Department", at the corresponding address, or to Company at the contact information Company provided when purchasing or registering for the Services. Notices will be considered delivered when received if delivered by hand with receipt, the next business day after sending it by pre-paid, nationally-recognized, overnight air courier with tracking capabilities, or five (5) Business Days after being sent by registered or certified airmail, return receipt required, postage prepaid, to the address mentioned above.
4. **Additional documents and references:** References to hyperlinked terms in this Agreement are references to the terms or content linked to the hyperlink (or the replacement hyperlink as Cyber Protect LLC may identify from time to time) as amended from time to time. Company acknowledges that the terms or content in the hyperlink are incorporated in this Agreement by reference and that it is Company's responsibility to review the terms or content in the hyperlinks referenced in this Agreement.
5. **Assignment:** Cyber Protect LLC provides the Services to Company for its own internal business purposes and not for the benefit of third parties. Company may not sublicense, assign or transfer its rights under this Agreement without Cyber Protect LLC's prior written consent. Any attempt by Company to sublicense, assign or transfer any of its rights, duties or obligations under this Agreement, whether directly, or indirectly by merger or acquisition, will be null and void. Penalty?
6. **Survival:** The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 6, 8, 10, 15 & 16.

17. DEFINITIONS AND INTERPRETATION

1. In these Terms:

1. **Affiliates** means with respect to Company, means any entity that, directly or indirectly, controls, is controlled by, or is under direct or indirect common control with such entity or one or more of the other Affiliates of that entity (or a combination thereof).

For the purpose of this definition, an entity controls another entity if and as long as the first entity:

1. owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity;

2. can elect a majority of the directors of the other entity; or(iii)provides day-to-day management of such entity under contract or as managing general partner.

Affiliate, with respect to Cyber Protect LLC, means any direct or indirect subsidiary of Cyber Protect LLC, LLC.

1. Agreement means these governing Terms together with any SOW or Order, as applicable.
2. Agreement Effective Date means the date of the last signature of an SOW or the date of Cyber Protect LLC's acceptance of an Order.
3. Authorized Partner means any of Cyber Protect LLC's distributors, resellers, or other business partners that are authorized by Cyber Protect LLC in writing to sell Services.
4. Business Day means any day other than a Saturday, Sunday, statutory or public holiday in the place where the Services are performed.
5. Confidential Information means any information (regardless of the form of disclosure or the medium used to store or represent it) of a party (Disclosing Party), including trade secrets and technical, financial, or business information, data, ideas, concepts, or know- how, that:
 1. is designated as "confidential" or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or
 2. the receiving party (Recipient) should reasonably have considered to be confidential under the circumstances surrounding disclosure.

However, Confidential Information does not include any information that:

1. written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
2. is received from a third party without restrictions on its use or disclosure and not by inadvertence or mistake;
3. is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or
4. is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.
5. Company means the entity to which the Services are to be provided.
6. Consequential Damages mean direct, indirect, special, incidental, punitive, exemplary, consequential, or extra-contractual damages of any kind, including third party claims, loss of profits, loss of goodwill, loss of confidentiality, loss of personnel salaries, computer or system failure or

malfunction, irreversibly encrypted, costs of obtaining substitute cloud services, work stoppage, denial of access or downtime, system or service disruption or interruption, or any lost, damaged, or stolen data, information or systems as well as the costs of restoring any lost, damaged, or stolen data, information or systems.

7. Deliverables mean any tangible deliverables that Cyber Protect LLC provides to Company under the Agreement.
8. Derivative Works means a work that is based on one or more preexisting works (such as a revision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which preexisting work may be recast, transformed or adapted) which, if created without the authorization of the copyright owner of the preexisting work, would constitute copyright infringement.
9. Force Majeure Event means any event beyond a party's reasonable control that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery by Cyber Protect LLC's vendors, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, or default of suppliers or sub-contractors.
10. Intellectual Property Rights means all intellectual property or other proprietary rights throughout the world, whether existing under the statute, at common law, or in equity, now existing or created in the future, including:
 1. copyright, trademark and patent rights trade secrets, moral rights, right of publicity, authors' rights;
 2. any application or right to apply for any of the rights referred to in paragraph (a); and
 3. all renewals, extensions, continuations, divisions, restorations, or reissues of the rights or applications referred to in paragraphs 1. and (ii).
11. Malware means applications, executable code, fileless code, ransomware, or malicious content that Cyber Protect LLC considers to be harmful.
12. Cyber Protect LLC means either:
 1. the relevant Cyber Protect LLC entity which has primary responsibility for providing the Services in the Territory within which Company is located; or

2. any Cyber Protect LLC entity as stated in the SOW.
13. Cyber Protect LLC Materials means all Intellectual Property Rights that are:
 1. owned or licensed by Cyber Protect LLC or its third-party licensors prior to performing the Services;
 2. developed, acquired, conceived or reduced to practice by Cyber Protect LLC or its agents during the provision of the Services, and
 3. modifications, enhancements, and Derivative Works of the Intellectual Property Rights referred to in paragraphs (i) and (ii).
14. Order means a purchase order for Services from Company to Cyber Protect LLC or an Authorized Partner, as applicable.
15. Personal Data means any information relating to an identified or identifiable individual or is otherwise defined as 'Personal Data' under the General Data Protection Regulation or other applicable data protection laws.
16. Representative means a party's Affiliates, permitted resellers, subcontractors, employees, or authorized agents.
17. Services mean the specific tasks, functions, responsibilities, Deliverables and other professional services to be provided by Cyber Protect LLC to Company under these Terms, and as described in an applicable SOW or Order.
18. Standard means a technology specification created by a government-sponsored group, an industry-sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP and ETSI. (u)Statement of Work or SOW means a statement of work entered into from time to time by the parties that describes the Services to be performed by Cyber Protect LLC, the parties' respective obligations regarding those Services, and any other related and mutually agreed terms, conditions, and dependencies.
19. Territory means the country where Company is incorporated.
20. In these Terms, unless a contrary intention appears:
 1. a reference to a party includes its executors, administrators, successors and permitted assigns;
 2. headings are for ease of reference only and do not affect the interpretation or meaning of this Agreement;
 3. the singular includes the plural and vice versa and words importing a gender include other genders;
 4. other grammatical forms or parts of speech of defined words or phrases have corresponding meanings;

5. a reference to a clause, paragraph, exhibit, schedule, or other annexure is a reference to a clause or paragraph of or exhibit, schedule or annexure to this Agreement;
6. the words "include", "including", "such as" and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
7. when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
8. the meaning of this Agreement will be interpreted based on its entirety and not just on isolated parts.