

## **MANAGED SERVICES PROVIDER (MSP) LICENSE AGREEMENT**

This Agreement amends and forms a part of the underlying terms and conditions agreed by the Parties, being either the CyberArk Software License Agreement (available at <http://www.cyberark.com/EULA.pdf>), the CyberArk Software Terms of Service (SaaS) (available at <https://www.cyberark.com/terms-service-saas/>) or such other contract governing MSP's internal use of the Software and related services (and for which purposes MSP would, in the absence of this Agreement, be considered a customer of CyberArk), as more particularly detailed therein ("**Underlying Terms**").

This Agreement sets forth the terms and conditions under which MSP is entitled to license/access the Software and receive related services in respect of MSP's provision of Managed Services for the benefit of one or more third parties and on whose behalf such Software is operated by MSP (each a "**Tenant**"), in each case as more particularly detailed in Section 1.1 below. **This Agreement applies to MSP's Managed Services activities only and not to software products or services licensed or purchased for MSP's internal, resale or other purposes.** This Agreement should be considered in addition to, and not in place of, the terms contained in the Underlying Terms. To the extent that any of the terms or conditions contained in this Agreement contradict or conflict with any of the terms or conditions of the Underlying Terms, the terms of this Agreement shall supersede the Underlying Terms. Capitalized terms used but not defined herein shall have the meaning set forth in the Underlying Terms. MSP may be referred to as "Customer" or equivalent in the Underlying Terms.

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, the Parties agree as follows:

### **1. GRANT OF RIGHTS**

**1.1. Software License and Right to Access and Use.** The grant of license or the right to access and use the Software, as applicable, to MSP by CyberArk in the Underlying Terms is amended for the purpose of MSP providing Managed Services to one or more Tenants, solely for the internal business purposes of such Tenant and may not be used for the benefit of any third party other than the Tenant originally designated in the relevant Order. In particular, subject to the general provisions of the Underlying Terms and payment of all applicable fees set forth in the Order, where the Software is:

1.1.1. ***Installed by MSP on its own Dedicated Infrastructure***, CyberArk grants MSP a non-exclusive, non-transferable right to use (and to permit the Authorized Users to use) the Software and the Documentation during the agreed term of the applicable Software subscription, solely as follows: (A) MSP may install, maintain, access and use subscription-based Software licenses in accordance with the Documentation in such number as specified in the applicable Order; (B) MSP may make a reasonable number of copies of any Documentation and one archival copy of the Software; and (C) MSP shall in turn grant the Tenant a right to access and use the Software (and license with respect thereto) to the extent allowed under the Documentation, under terms not less restrictive than those set forth in this Agreement; or

1.1.2. ***Provided as Software-as-a-Service (SaaS) by CyberArk***, CyberArk grants MSP, during the subscription term specified in the relevant Order, a non-exclusive, non-transferable right to: (A) access and use (and to permit the Authorized Users to access and use) the Software for the purpose of MSP providing the Managed Services to the Tenant specified in such Order and for whom that instance has been created; (B) make available the Software to the relevant Tenant in order for the Tenant to receive the Managed Services, in each case in accordance with the Documentation, under terms not less restrictive than those set forth in this Agreement. For the avoidance of doubt, any restriction on MSP using or making available SaaS Products for the benefit of third parties is waived solely in respect of the Tenant specified in the Order, subject to the terms herein.

**1.2. Licensed Marks.** CyberArk grants to MSP a non-exclusive, non-transferable, non-sublicensable right for the term to use CyberArk's trade names, trademarks, service marks, and logos ("**Licensed**

**Marks**) to the extent reasonably necessary to market and advertise the Managed Services. MSP shall comply with CyberArk's Partner Marketing Guide at all times (the current version of which is available on CyberArk's Partner Community and on request) and include in all advertising materials all Licensed Marks together with all applicable proprietary rights' notices.

**1.3. Non-CyberArk Products and Services.** MSP, and/or any of its Affiliates, owns all right, title and interest in the Managed Services and in the underlying intellectual property thereof. Nothing in this Agreement shall be construed to grant CyberArk any rights in the Managed Services or its underlying intellectual property beyond those expressly provided for herein. MSP will be solely and exclusively responsible for the Managed Services that MSP provides to the Tenant pursuant to this Agreement and for all representations, warranties, covenants or guarantees granted by Partner to the Tenant in relation to the Software and/or the Managed Services. MSP is responsible for Tenant's use of the Software in accordance with the terms of this Agreement and for any non-compliance by Authorized Users.

**1.4. Restrictions on Use.** For the avoidance of doubt, Section 1.1 above is in addition to any restrictions or limitations on use contained in the Underlying Terms, which shall remain in full force and effect. Except for the licenses/ rights granted under this Agreement, all rights, title, and interest in and to the Software and Documentation are hereby reserved by CyberArk, its Affiliates or licensors.

## **2. IMPLEMENTATION AND SECURITY REQUIREMENTS**

MSP shall deploy and use the Software strictly in accordance with the Documentation, CyberArk's reasonable security standards as provided to MSP from time to time in writing (including but not limited to CyberArk's Managed Services Program, Case Submission Standard Information Requirements and the relevant security fundamentals documentation) and prevailing best industry practice for a managed services solution and related systems (such as ISO 27001, SOC 2, SSAE or relevant replacement or successor standards then in force). In the event that MSP wishes to deviate from any of the requirements stated therein, it will provide CyberArk with a written request describing the proposed change, including a risk analysis of the desired implementation model. CyberArk will, in its sole discretion, determine if the deviation is approved or rejected and notify MSP of its decision within ten (10) business days of MSP's complete request. MSP agrees that all Software licenses/rights granted under this Agreement shall be operated and maintained exclusively by MSP's duly qualified personnel which are CyberArk certified engineers, in a safe and reasonable manner and in accordance with the Documentation.

## **3. MAINTENANCE & SUPPORT**

**3.1. CyberArk-provided Support.** Notwithstanding anything stated to the contrary in the relevant Maintenance & Support Services schedule contained or referred to in the Underlying Terms, CyberArk shall: (1) in respect of Software installed by MSP on its own Dedicated Infrastructure, provide Maintenance Services to MSP in relation to such Software as may be generally made available by CyberArk to its managed service provider partners, pursuant to CyberArk's then applicable maintenance and support terms; and (2) in respect of SaaS Products, make available to MSP technical support in accordance with CyberArk's then applicable support terms (a current copy of each such document is available on request).

**3.2. MSP-provided Support.** In each case, MSP shall provide its own maintenance and support services to the Tenant. MSP shall use all reasonable endeavors to attend to Support tickets which are categorized as Level 1 and Level 2 without reliance on the CyberArk Maintenance Services. Notwithstanding the foregoing, CyberArk will respond to all reasonable requests for Maintenance Services which are categorized as Level 1 and Level 2, provided such requests are submitted to CyberArk in accordance with Case Submission Standard Information Requirements. For the avoidance of doubt, CyberArk shall not provide Maintenance Services directly to any Tenant.

## **4. PRICING**

**4.1. Initial Purchase.** MSP shall purchase the Software, comprising the appropriate number of licenses/ rights for the relevant Authorized Users, together with such Dedicated Infrastructure, if applicable, required by MSP to deliver the Managed Services to those Authorized Users (having due regard to the number of Tenants), in advance at the beginning of the Software license period.

**4.2. Orders, Payment & Fees.** MSP shall issue an Order to CyberArk that contains all relevant

information, including but not limited to the desired Software, full corporate entity name and address of Tenant (and any other third party beneficiary of the Software purchased pursuant to that Order, where the Tenant is defined as a managed service platform), term of license and the quantity of Software products required. CyberArk will invoice MSP upon delivery of the ordered Software. The license fees for the Software shall be as set forth in CyberArk's then-current applicable formal price list for Managed Services or as otherwise set out in the relevant quote ("**License Fees**"). It is clarified that such price list shall be applicable solely to Software purchased under Managed Services, and MSP may not apply such price list to any of its other resale activities. All License Fees payable under this Agreement are non-refundable and, unless stated otherwise in the applicable Order, include Maintenance Services as more particularly detailed below. MSP shall pay in accordance with the payment terms set forth in the relevant quote or Underlying Terms, as appropriate.

**4.3. Indirect Orders.** Where MSP places its Order with CyberArk's authorized reseller pursuant to an independent commercial agreement ("**Indirect Order**"), then CyberArk grants the rights described in this Agreement in consideration for and subject to (a) MSP's agreement to comply with the pricing and payment terms of the Indirect Order, to be separately agreed between MSP and CyberArk's authorized reseller, and (b) MSP's agreement to comply with its obligations set forth in this Agreement (including the restrictions on use of the license/access and use rights). Notwithstanding the foregoing, the final sales price or rate shall be freely and independently determined between CyberArk's authorized reseller and MSP. For the avoidance of doubt, in the case of such an Indirect Order, any indication in this Agreement of an agreement between MSP and CyberArk for the price payable by MSP for such Indirect Order shall be null and void and not form a binding part of this Agreement and the provisions of this Agreement or the Underlying Terms related to payment terms, pricing, and/or order procedures shall not apply.

## 5. TERM

**5.1. Initial Term.** The initial term of the Software licenses/rights shall be for a minimum period of one (1) year. Thereafter, the Parties may renew these licenses for subsequent terms and at fees as negotiated and mutually agreed to in writing by the Parties prior to any renewal term.

**5.2. Termination.** This Agreement shall remain in force unless or until terminated by either Party pursuant to this section. Either Party may terminate this Agreement immediately upon notice to the other Party if the other Party: (i) materially breaches this Agreement or the Underlying Terms and fails to remedy such breach within thirty (30) days after receiving written notice of the breach from the other Party; (ii) commences bankruptcy or dissolution proceedings, has a receiver appointed for a substantial part of its assets, or ceases to operate in the ordinary course of business; or (iii) is required to terminate or cease provision of any products or services in order to remain compliant with applicable law or regulations, in which case such termination will not constitute a breach of this Agreement by the terminating party. Where an existing Software subscription is not renewed pursuant to Section 5.1 such subscription shall expire at the end of the then-current term.

**5.3. Effect of Expiry or Termination.** Without prejudice to any other consequence of termination stipulated in the Underlying Terms, upon termination of the Agreement or expiration of a particular subscription, all rights granted to MSP in connection with such Agreement or subscription (as appropriate) shall immediately terminate and MSP shall remove or destroy or have no further right of access (and where necessary procure from third parties confirmation of such removal and destruction and cessation of access) all installed or provided Software. Further, CyberArk will cease to provide any Maintenance Services in respect of the terminated or expired subscription. This Section 5 is without prejudice to any other termination rights set out in the Underlying Terms. Any accrued rights and obligations will survive termination.

## 6. WARRANTY

In addition to any warranties and associated disclaimers set out in the Underlying Terms, each Party represents and warrants to the other that it has full power and authority to enter into this Agreement and to perform its obligations hereunder. Further, each Party shall procure and maintain in full force and effect throughout the term of this Agreement comprehensive insurance policies and in amounts that would be considered adequate in accordance with good industry practice. MSP represents and warrants that: (i) it has and will maintain all relevant ownership or license rights to perform the Managed Services; (ii) the

Managed Services will not materially damage or compromise the normal and intended operation of the Software; (iii) it will perform the Managed Services in compliance with all applicable data protection and privacy laws; and (iv) to the extent that the Managed Services incorporate open source software programs that are made available by third parties under their respective open source licenses as indicated in MSP's published documentation ("**MSP Third Party Materials**"), such MSP Third Party Materials will not negatively affect the performance of its obligations herein and the inclusion of such MSP Third Party Materials in the Managed Services will not create or impart any obligation on CyberArk or the Software.

## **7. INDEMNIFICATION**

**7.1. CyberArk Infringement Indemnity.** CyberArk shall defend and indemnify MSP against third-party claims in accordance with the indemnification terms of the Underlying Terms.

**7.2. MSP Infringement Indemnity.** MSP shall defend and indemnify CyberArk against all third-party claims, suits and proceedings resulting from or relating to: (1) any claim that the Managed Services or a part thereof violates, misappropriates, or infringes such third party's patent, copyright, trademark, trade secret, or other proprietary rights; (2) MSP's or Tenant's modification of the Software (whether or not in breach of Section 1 (Grant of License) of this Agreement); or (3) any personal injury and/or tangible property damage suffered by a Tenant or third party in connection with the performance of the Managed Services (each, a "**Managed Services Claim**"), and all related losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees). MSP's defense and indemnification obligations herein will become effective upon, and are subject to, (a) CyberArk's prompt notification to MSP of any Managed Services Claim in writing, and (b) CyberArk providing MSP with full and complete control, authority and information for the defense of the Managed Services Claim, provided that MSP will have no authority to enter into any settlement or admission of CyberArk's wrongdoing on CyberArk's behalf without CyberArk's prior written consent (not to be unreasonably withheld). At MSP's request, CyberArk shall reasonably cooperate with MSP in defending or settling any Managed Services Claim.

The indemnification obligations of either Party arising under this Section 7 shall not be subject to the maximum aggregate liability amount set out in the Underlying Terms.

## **8. COMPLIANCE WITH LAWS; ANTI-BRIBERY AND CORRUPTION; EXPORT CONTROL**

**8.1. Compliance with laws.** Each Party undertakes to comply fully with, and to cause its employees, directors, officers, agents, business partners, third-party representatives and any other entities or persons acting on its behalf in connection with the subject matter of this Agreement to comply with, all applicable laws, rules, regulations, ordinances, codes and/or orders, including without limitation all anti-bribery and anti-corruption laws and regulations and data protection and privacy laws in the relevant jurisdiction(s). Each Party shall not be engaged by or associated with (a) any business or activity that results or is likely to result in a conflict of interest with the other Party or which may adversely affect the other Party or its reputation; or (b) any deceptive, misleading or unethical practices that are or might be detrimental to the other Party or the activities described in this Agreement.

**8.2. Anti-bribery and Corruption.** Each Party undertakes that neither it nor any entity or person acting on its behalf has given, promised to give, offered to give, or will give, promise to give, or offer to give, any loan, gift, donation, payment, or other items of value directly or indirectly, whether in cash or in kind, to or for the benefit of any government officials or employees, political parties, public international organizations, politicians, or private individuals or entities to obtain or retain business or to secure any improper advantage for that Party. Should any such conduct occur in any form the affected Party shall immediately notify the other Party of the occurrence upon being aware of or notified on such.

**8.3. Application of Export Controls.** The exportation and use of the Software and Documentation is subject to compliance with: (i) the U.S. Export Administration Act, as amended, and the rules and regulations promulgated from time to time thereunder, including the Export Administration Regulations, (ii) the Export Control Reform Act and any regulations implemented thereunder, (iii) the laws of the State of Israel, and (iv) the laws of any country or organization of nations within whose jurisdiction MSP (or the Authorized Users) and/or Tenant operates or does business. Neither Party shall export or re-export the Software or any part thereof directly or indirectly other than in compliance with applicable export law, including where necessary without first obtaining required permission to do so from the appropriate

governmental agencies.

**8.4. No Presence on Restricted Lists.** MSP represents, on behalf of itself and its employees, agents and contractors, that it is not listed on the Specially Designated Nationals and Blocked Persons list maintained by the U.S. Treasury, Office of Foreign Assets Control, the Denied Persons or Denied Entities lists maintained by the U.S. Department of Commerce, Bureau of Industry and Security, the Debarred Persons List maintained by the U.S. Department of State, Office of Defense Trade Controls, any successors to the foregoing, or any similar lists maintained by any agency of the United States government. MSP will ensure that no Tenant who would receive Managed Services or would have access to or benefit from the Software or Services in any way is listed on any of the foregoing lists.

**8.5. CyberArk Vendor Code of Conduct.** Without limitation to the other provisions of this Section 8, MSP agrees that it has read CyberArk's Vendor and Business Partner Code of Conduct (available at: <https://www.cyberark.com/Vendor-Business-Partner-Code-of-Conduct.pdf>) and confirms that it shall at all times maintain appropriate measures, processes and policies to ensure compliance with its requirements.

## 9. GENERAL PROVISIONS

**9.1. Entire Agreement.** This Agreement, together with the Underlying Terms and each Order, represent the entire agreement between MSP and CyberArk with respect to the subject matter hereof, and supersede all prior proposals, representations and agreements, whether written or oral, with respect thereto. Any waiver, amendment, or modification of any right or remedy, in whole or in part under this Agreement, or any additional or different terms in any purchase orders, acknowledgments or other documents other than the Order, will not be effective unless expressly agreed to by both parties in writing or electronic form.

**9.2. Assignment.** Neither Party may assign any of its rights or obligations under this Agreement without the other Party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign any and all of its rights and obligations under this Agreement to a successor in interest in the event of a merger or acquisition or to an Affiliate, upon prior written notice to the other Party. For the avoidance of doubt, where MSP delegates or assigns any obligations described herein to an Affiliate or an assignee (as permitted under this Agreement), that third party must at all times meet the standards and be subject to the terms specified in Section 2 (Implementation and Security Requirements).

**9.3. Parties' Relationship.** The relationship of the Parties is that of independent contractors. This Agreement does not create an employee-employer relationship, agency, partnership or similar relationship between the Parties, and MSP may not present itself as CyberArk's agent or representative and neither Party may create any obligations or responsibilities on behalf of or in the name of the other Party. Except where expressly agreed to the contrary, each Party shall bear all of its own costs and expenses incurred in performing its obligations herein.

**9.4. Supporting Information.** During the term of this Agreement and for a period of five (5) years thereafter, MSP shall cooperate with CyberArk and provide such information reasonably required by CyberArk to demonstrate MSP's compliance with the terms of this Agreement. Without prejudice to any other rights or remedies available to CyberArk, any underpayment of MSP revealed by such review shall be paid promptly to CyberArk, together with reasonable interest commencing on the initial date of the underpayment.

## 10. DEFINITIONS AND INTERPRETATION

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

**"Affiliate"** means a company controlling, controlled by or under common control with a Party (an entity will be deemed to have control if it owns over 50% of another entity).

**"Authorized Users"** means employees, agents, consultants, contractors, or vendors (including those of the Tenant, where relevant) authorized by MSP to use the Software solely for MSP's delivery or Tenant's

receipt of the Managed Services to the Tenant, subject to the terms and conditions of this Agreement.

**“Dedicated Infrastructure”** means a single, separate CyberArk vault infrastructure product used by MSP in the operation of Software for provision of Managed Services to a single, designated Tenant.

**“Maintenance Services”** means the maintenance and support services as may be generally made available by CyberArk to Managed Services MSPs pursuant to CyberArk’s then applicable maintenance and support terms (available to review upon request).

**“Managed Services”** means a service whereby MSP provides day-to-day operations and management of all, or a portion of, Tenant’s network, applications and data processing operations and purchases the same for and on behalf of the Tenant from CyberArk.

**“Order”** means CyberArk’s quote accepted by MSP via MSP’s purchase order or other formal ordering document submitted to CyberArk (directly or indirectly through CyberArk’s authorized reseller) to order CyberArk’s products or services, which references the Software, services, pricing, payment terms, quantities and other applicable terms set forth in an applicable CyberArk quote or ordering document.

**“SaaS”** means Software-as-a-Service solutions which are installed in a cloud environment (as opposed to Dedicated Infrastructure) and made available to MSP by CyberArk for the purposes of MSP’s Managed Services activities (and **“SaaS Products”** shall be construed accordingly).

**“Software”** means the computer software products licensed to MSP under this Agreement (including, as the context requires, SaaS) specified in the Order as further described in the Documentation. For the purposes of SaaS only, Software includes any updates to the SaaS as made available by CyberArk in its sole discretion, and any software, systems and locally-installed software agents and connectors that interact with the SaaS as may be provided by CyberArk in connection with the SaaS.