

CyberCatch Subscription Agreement and Terms of Use

This Subscription Agreement and Terms of Use (“Agreement”) is made between CyberCatch, Inc., (“CyberCatch,” “we,” “us,” or “our”) and the entity you represent or you individually, if you do not specify an entity. The terms “you,” “your,” and “Customer” refer to the legal entity you represent or you individually, as applicable. CyberCatch and Customer are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.” The effective date of this Agreement is the date on which we provide you with confirmation of your subscription or the date on which your subscription renews, as applicable (“Effective Date”).

1. Definitions.

1.1. “Confidential Information” means any nonpublic or proprietary information or data, including without limitation technical data, trade secrets, research, product plans, products, services, customer lists, market data, software, developments, inventions, processes, formulas, technology, designs, drawings, marketing plans or techniques, distribution and sales methods and systems, sales and profit figures, finances and other business information, administrative strategic planning, user information.

1.2. “CyberCatch Services” or “Services” means any of the services hosted by CyberCatch, including Virtual CISO services, to which you subscribe under this Agreement.

1.3. “Personnel” means employees, agents, contractors or third party auditor personnel of Customer, authorized by Customer to access or use the CyberCatch Services on behalf and for the benefit of Customer.

1.4. “Term” means the term of this Agreement as set forth in Section 6.1.

2. Use of CyberCatch Services.

2.1. Right to access and use CyberCatch Services. Subject to the terms and conditions of this Agreement, CyberCatch grants to Customer the right to (a) access and use the Services for the sole purpose of enabling Customer to comply with applicable cybersecurity mandates, standards, and best practices for which the Services were designed and for no other purpose, and (b) to permit Personnel to access and use the features and functions of the Services. Subject to Customer’s payment of the Service

Fees (as defined below) and all other amounts that may be payable with respect to the Services, CyberCatch shall, during the then-current Term, make any such updates and upgrades available to Customer if and when generally released to CyberCatch users. Any such updates and upgrades provided under this Agreement shall be deemed to constitute part of the Services and shall be subject to all of the terms and conditions set forth in this Agreement. Customer acknowledges that CyberCatch and its licensors own all right, title, and interest, including all patent, copyright, trade secrets, trademark, moral rights, and other intellectual property rights in and to the Services, including without limitation the Services, and any and all derivative works thereof, and CyberCatch expressly reserves all rights not expressly granted to Customer.

2.2. Acceptable use. Customer shall not, and shall not allow any third party to, copy, modify, adapt, translate, publicly display, publish, create derivative works of or distribute the Services. Customer will not use the Services for any purposes beyond the scope of or otherwise not in accordance with the rights granted in Section 2.1 above. Customer acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code or any derivative works of any of the Services. Customer shall duplicate all proprietary notices and legends of CyberCatch upon any and all copies of the Services authorized to be made by Customer, if any, and shall not remove, alter or obscure any such proprietary notice or legend. Without limiting the foregoing, Customer will not:

2.2.1. authorize or permit access or use of the Services by or for persons other than Customer and Personnel;

2.2.2. assign, sublicense, sell, lease or otherwise transfer or convey the access granted hereunder;

2.2.3. modify, copy, reproduce, publish, post, distribute, perform, create any derivative works of, sell or transfer the Services (or any component thereof);

2.2.4. decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Services is compiled or interpreted;

2.2.5. use the Services to perform or support unlawful or unauthorized activities;

2.2.6. scan or test the vulnerability of any CyberCatch system or network or tamper with or circumvent any security or authentication measure; or

2.2.7. access the Services by or through methods other than CyberCatch's publicly supported interfaces (for example, by using an automated process to "scrape" web pages).

3. Fees.

3.1. During the Term, Customer shall pay CyberCatch the fees described in the Pricing Plan for the Services ordered as consideration for the right to access and use the Services (collectively, the "Service Fee"). Customer shall pay the Service Fee as described in the Pricing Plan for the Services ordered, which are incorporated by reference into this Agreement.

3.2. CyberCatch may increase the Service Fee subsequent to the expiration of the then-current Term, subject to the restrictions hereunder, in its sole discretion. CyberCatch shall notify Customer at least sixty (60) days prior to the expiration of the then-current Term of any increases to the Service Fee.

3.3. If, during any twelve (12)-month period during the Term, Customer fails to make any payment due to CyberCatch pursuant to this Agreement within fifteen (15) days following the due date for such payment, such failure shall be construed a material breach of this Agreement.

3.4. In the event that Customer disputes any amounts due under this Agreement, it shall notify CyberCatch in writing within seven (7) days of the amounts in dispute and the reasons for disputing such amounts. Otherwise, all terms in question shall be accepted without objection

and shall be final and binding for all purposes. The Parties will negotiate in good faith to attempt to resolve any payment disputes.

4. Confidentiality.

4.1. Mutual Confidentiality Obligations. Each Party shall: (a) use the Confidential Information of the other Party only for the purposes of this Agreement; (b) hold in confidence and protect the Confidential Information of the other Party from dissemination to, and use by, any third party; (c) not create any derivative work from Confidential Information of the other Party; (d) restrict access to the Confidential Information to such of its employees, agents, and/or consultants who have a need to have access and who have been advised of and have agreed in writing or are otherwise required to treat such information as confidential; and (e) return or destroy all Confidential Information of the other Party in its possession immediately upon termination or expiration of this Agreement. A breach of this Section 4.1 shall be construed as a material breach of this Agreement.

4.2. Confidentiality Exceptions. The foregoing restrictions shall not apply to Confidential Information that the receiving Party proves through clear and convincing evidence: (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the receiving Party; (c) is already in the receiving Party's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (d) is approved for release or disclosure in writing by an authorized officer of the disclosing Party without restriction; (e) is required to be publicly disclosed by the receiving Party pursuant to applicable freedom of information laws; or (f) is reasonably disclosed to a government official or attorney for investigating or reporting a suspected violation of law pursuant to the Defend Trade Secrets Act of 2016. Each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure shall first have given written notice to the other Party (if permitted) and made a reasonable effort to obtain a protective order, or (ii) to establish a Party's rights under this Agreement, including to make court filings.

5. CyberCatch Intellectual Property Rights.

5.1. The Parties agree that all: (a) trademarks, signs, logos, trade dress, service marks, trade names and brand names, and all registrations and applications thereof and all goodwill associated with the foregoing; (b) copyrights, copyright registrations and copyright applications, and all other rights associated with the foregoing and the underlying works of authorship, including moral rights and all similar rights to protect or preserve the integrity of a work or to be associated as the author of a work; (c) patents and patent applications, existing or future, and all international proprietary rights associated therewith; (d) industrial designs, integrated circuit topographies, mask works and mask work registrations; (e) improvements, enhancements, inventions (whether patentable or not), design and detail drawings, look and feel, graphic design elements and user interface; (f) order of operations, order of content presentment and related configuration; (g) ideas, concepts, know-how, discoveries, improvements, data, trade secrets, shop and royalty rights; (h) source code, object code, computer and/or product software and all

parts thereof; (h) the CyberCatch Services; and (i) other information, technical or otherwise, which was developed, made, or supplied by or for CyberCatch in connection with the Services (collectively "CyberCatch Intellectual Property"), is and will remain the sole and exclusive property of CyberCatch (or its licensors, if any). Customer shall, with respect to CyberCatch Intellectual Property provided to Customer hereunder: (i) treat it as Confidential Information of CyberCatch; (ii) not use it for any purpose other than those expressly authorized under this Agreement; and (iii) not make it available to any third parties. A breach of this Section 5.1 shall be construed as a material breach of this Agreement.

5.2. The CyberCatch logo is a trademark of CyberCatch. Our trademarks and trade dress may not be used in any manner for any purpose without our express written consent. All other trademarks appearing in association with our Services are property of their respective owners.

5.3. Customer shall inform CyberCatch promptly in writing of any actual or alleged infringement of any CyberCatch Intellectual Property by a third party and provide any and all available evidence thereof.

5.4. Customer shall fully cooperate and assist in all respects with the defense of any CyberCatch Intellectual Property infringement claim, including to testify when requested and to make available all relevant records, papers, information, samples, specimens, and the like.

6. Term and Termination.

6.1. Term. The term of this Agreement shall commence on the Effective Date and shall continue thereafter for a period of three (3) years (the "Initial Term"), unless earlier terminated in accordance with Section 6.2 of this Agreement. Upon the expiration of the Initial Term, this Agreement will automatically renew for an additional one (1) year (the "Renewal Term" and together with the Initial Term, the "Term").

6.2. Termination.

6.2.1. If a Party breaches any provision of the Agreement, then the non-breaching Party may give written notice to the breaching Party of such breach (which written notice must describe, in reasonable detail, the alleged breach). If such breach(es) cannot be cured, then the non-breaching Party may terminate the Agreement immediately upon the delivery of such notice. If such breach(es) can be cured, but remain(s) uncured more than thirty (30) calendar days after receipt of such written notice, then the non-breaching Party may terminate the Agreement immediately after the conclusion of such thirty (30) calendar day cure period. Notwithstanding the foregoing, CyberCatch reserves the right to immediately terminate this Agreement upon your material breach of this Agreement.

6.2.2. This Agreement shall automatically and immediately terminate without the requirement of any written notice if: (i) either Party makes an assignment for the benefit of creditors; (ii) either Party is subject to the appointment of a receiver of a substantial portion of its assets; (iii) either Party ceases its active business operations;

(iv) either Party files for protection under the United States Bankruptcy Code or similar laws; or (v) an involuntary filing is made against either Party under the United States Bankruptcy Code or similar laws.

6.2.3. Effect of Termination; Survival. Upon termination of this Agreement: (a) except as otherwise set forth in this Section 6.2.3, all rights and obligations of both Parties shall terminate; (b) Customer shall pay to CyberCatch all Service Fees due but unpaid hereunder within fifteen (15) calendar days after the effective date of termination of this Agreement; and (c) within ten (10) calendar days after the effective date of termination, the Parties shall comply with the obligations to return all of the other Parties' Confidential Information retained under this Agreement, as set forth in Section 4.1 above. Notwithstanding the foregoing, the provisions of Sections 1, 2, 3.1, 3.3, 4, 5, 7, 8, 9, 10, 11, and 13 of this Agreement shall survive any termination of the Agreement.

7. Representations and Warranties. Each Party acknowledges and agrees that: (a) it is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its formation; (b) it has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement; (c) the execution, delivery, and performance of its obligations under this Agreement shall not violate any applicable agreement, law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect to which it is subject; and (d) this Agreement is a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms and conditions. If you are an individual, you represent that you are at least eighteen (18) years old.
8. Disclaimer of Warranties. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES, INCLUDING WITHOUT LIMITATION THE CYBERCATCH SERVICES, ARE NOT LEGAL ADVICE AND ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND CYBERCATCH HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, TRADE PRACTICE, OR USAGE. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS SOLELY RESPONSIBLE FOR RESOLVING OR REMEDIATING ANY AND ALL CONTROL DEFICIENCIES OR FAILURES THAT MAY BE REPORTED IN CONNECTION WITH USE OF THE CYBERCATCH SERVICES AND CYBERCATCH DISCLAIMS ANY LIABILITY FOR CUSTOMER'S FAILURE TO TIMELY RESOLVE OR REMEDIATE ANY SUCH CONTROL DEFICIENCIES OR FAILURES.
9. Indemnification. Each Party (as "Indemnifying Party") shall indemnify, hold harmless, and defend the other Party and its officers, directors, employees, agents, affiliates, subsidiaries (and their respective officers, directors, employees, agents, and affiliates), successors and permitted assigns (collectively, "Indemnified Party") against any and all third party losses, damages, liabilities, deficiencies, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees (collectively, "Losses"), arising out of or resulting from any intentional or grossly negligent act or omission of Indemnifying Party in connection with the performance of its obligations under this Agreement, except to the extent such act or omission arises out of the negligence of the other Party.

10. Limitation of Liability. EXCEPT TO THE EXTENT ARISING FROM BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, OR LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE, OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT TO THE EXTENT ARISING FROM BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWABLE BY LAW, EACH PARTY'S TOTAL LIABILITY FOR ANY DAMAGES, LOSSES OR CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR OTHERWISE) ARISING UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL FEES ACTUALLY PAID BY CUSTOMER TO CYBERCATCH FOR THE SERVICES DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM(S). NOTWITHSTANDING THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY UNAUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION PROXIMATELY CAUSED BY THE UNLAWFUL OR MALICIOUS CONDUCT OF A THIRD PARTY, PROVIDED THAT THE PARTY ALLEGED TO HAVE RELEASED CONFIDENTIAL INFORMATION MAINTAINED DURING THE RELEVANT TIME PERIOD A COMMERCIALY REASONABLE SYSTEM OF CONTROLS DESIGNED TO PREVENT UNAUTHORIZED ACCESS TO AND DISCLOSURE OF CONFIDENTIAL INFORMATION.

11. Our Privacy Policy contains information regarding how we collect, use, and share the data you provide to us and that we collect from you. Our Privacy Policy applies to all Services and is incorporated by reference into this Agreement. Our Privacy Policy is located at <https://cybercatch.com/privacy-policy/>

12. CyberCatch reserves the right at any time to modify or discontinue, temporarily or permanently, the Services or any part thereof. CyberCatch shall not be liable to Customer or any third party for any modification or discontinuance of the Services. Notwithstanding the foregoing, CyberCatch shall use commercially reasonable efforts to notify Customer prior to any such modification.

13. General Provisions.

13.1. Entire Agreement; Waiver. This Agreement, together with the Pricing Plan for the CyberCatch Services you subscribed to, which are incorporated herein by this reference, sets forth the entire agreement and understanding between the Parties with regard to the subject matter hereof and supersedes all prior agreements, negotiations, and discussions, whether oral or written, with respect to the subject matter of this Agreement. No waiver of any obligation under this Agreement shall be valid unless in writing and signed by an authorized representative of the Party whose rights are prejudiced by such waiver. No delay or omission by either Party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either Party of any of the obligations to be performed by the other Party or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other obligation.

13.2. Amendment. CyberCatch may, from time to time, modify this Agreement and will notify Customer in accordance with Section 13.8. If Customer does not agree to the modified Agreement, Customer agrees to stop accessing and using the Services. Customer's continued use of the services after any such modification constitutes customer's acceptance of the modification.

13.3. Force Majeure. Except for payment obligations under this Agreement, neither Party shall be liable for any delay or failure in performance due to an act of God, earthquake, labor disputes, illegal data breaches, changes in law regulation or government policy, riots, war, fire, public health crisis such as widespread contagion or pandemic, or other difficulties which are beyond such Party's reasonable control (each a "Force Majeure Event"). In the event a Party is prevented from performing its obligations hereunder due to a Force Majeure Event, such Party shall resume its obligations as soon as is reasonably possible after such Force Majeure Event ceases.

13.4. Relationship. The relationship created by this Agreement shall be that of independent contractors without the authority given to either Party to bind or act as agent for the other or its employees for any purpose. Nothing in this Agreement shall be construed: (a) to create or imply any joint venture, franchise, agency, employment or partnership relationship; (b) to give any Party hereto the right to obligate or bind the other; (c) to create any duties or obligations between the Parties except as expressly set forth herein; or (d) to grant any direct or implied licenses or any other right other than as expressly set forth herein.

13.5. Export Controls. Customer will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of the Services, including without limitation the Cybersecurity Compliance Solution, to any country for which any export license or approval is required under the laws of Canada, the United States or any other country unless the appropriate export license or approval has first been obtained.

13.6. Compliance with Law. The Parties agree that this Agreement and all activities in any way relating to it shall be conducted in compliance with applicable federal and provincial laws and regulations.

13.7. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and deemed to have been given: (a) when hand delivered; (b) three (3) business days after being sent by registered or certified mail, return receipt requested and postage prepaid; or (c) one (1) business day after deposit with a nationally recognized overnight courier; or (d) upon dispatch if sent by e-mail, addressed as follows or as a Party may otherwise notify to the other in

accordance with this Section 13.7 (provided that such notice of change of address or recipient shall be deemed given only when received):

If to CyberCatch:

CyberCatch, Inc.
4445 Eastgate Mall, Suite 200
San Diego, CA 92121

E-mail: info@cybercatch.com

If to Customer:

Notices to Customer will be sent to Customer's contact address as identified on Customer's account. CyberCatch may send notices and other information to Customer by email or other electronic form.

13.8. Attorneys' Fees. Should any action (whether informal, litigation, arbitration or otherwise) be instituted by any Party to enforce, interpret or recover upon any provision of the Agreement, the non-prevailing Party (as determined by the applicable Court or arbitrator) shall pay to the prevailing Party, as an element of the costs of such action and not as damages, the prevailing Party's costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred in connection with investigating, bringing, prosecuting and/or defending (as applicable) such action.

13.9. Assignment; Successors and Assigns. The Parties agree that Customer may not assign or transfer the Agreement or its rights or obligations under the Agreement to any third party without first obtaining the written consent of CyberCatch. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

13.10. Severability. In the event of the invalidity of any provisions of this Agreement, the Parties agree that such invalidity shall not affect the validity of the remaining provisions of this Agreement. The Parties agree to attempt, in good faith, to replace any invalid provision with valid provisions which most closely approximate the purpose and economic effect of the invalid provision.

13.11. Construction and Headings. Each Party has sought the guidance of, or has had a reasonable opportunity to seek the guidance of, independent legal counsel. Therefore, this Agreement shall not be strictly construed against the drafting Party or Parties. The headings in this Agreement are intended solely for convenience or reference and shall be given no effect in the construction or interpretation of this Agreement.