

# MASTER SUBSCRIPTION AGREEMENT

This master subscription agreement ('MSA') governs partner's acquisition and use of Cyberguard360 ('CG360') platforms, products, websites and services, collectively Properties ('Properties'). Capitalized terms have the definitions set forth herein.

If a Partner registers for a free trial, reduced priced trial or other type trial of CG360 Properties, the applicable provisions of this agreement will also govern those trials.

Acceptance of this MSA is done by (1) executing and/or purchasing an order to use or access the Properties, (2) logging into the Properties with valid credentials and clicking a box indicating acceptance, (3) subsequently logging into the Properties with valid credentials after having initially logged in and having clicked a box indicating acceptance, or (4) using free or reduced price services, partner agrees to the terms of this agreement. If the individual accepting this agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its affiliates and/or assigns to these terms and conditions, in which case the term "partner" shall refer to such entity and its affiliates and/or assigns. If the individual accepting this agreement does not have such authority, or does not agree with these terms and conditions, such individual must not accept this agreement and may not use the services.

CG360's competitors, direct or indirect are prohibited from accessing the Properties, except with CG360's prior written consent.

CG360 Properties may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on June 6, 2020. It is effective between Partner and CG360 as of the date of Partner's accepting this Agreement.

## 1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Assigns" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity by proxy or assignment of rights pertaining thereto. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Subscription Agreement.

"Beta Services" means CG360 services or functionality that may be made available to Partner to try, at their option and, at CG360's discretion no additional charge which is clearly designated as beta, evaluation, staging, pilot, pre-release, limited release, preview, non-production, or by a similar description.

“Content” means information developed by CG360, or obtained from its third-party content providers, or publicly available sources, and made available to the Partner through the Services and/or Beta Services.

“Free Services” means Services that CG360 makes available to Partner free of charge. Free Services exclude Services offered as a free trial and Purchased Services.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Non-CG360 Application” means an application, Web-based, mobile, offline or other software, with functionality that interoperates with a Service that is provided by a Partner or a third party.

“Order Form” means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Partner and CG360 or any of their Affiliates, including any addenda and supplements thereto. By completing an Order Form hereunder, an Affiliate agrees to be bound by the terms of this MSA as if it were an original party thereto.

“Partner” means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

“Partner Data” means electronic data and information submitted by or for Partner to the Services, excluding Content and Non-CG360 Applications.

“Purchased Services” means Services that Partner or Partner’s Affiliate purchases under an Order Form or online purchasing portal, as distinguished from Free Services or those provided pursuant to a free trial.

“Services” means the products and services that are ordered by Partner under an Order Form or online purchasing portal or provided to Partner free of charge (as applicable) or under a free trial, and made available online by CG360, including associated CG360 offline or mobile components. “Services” exclude Content and Non-CG360 Applications.

“User” means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Partner to use a Service, for whom Partner has purchased a subscription (or in the case of any Services provided by CG360 without charge, for whom a Service has been provisioned), and to whom Partner (or, when applicable, CG360 at Partner’s request) has supplied credentials, such as a user identification and password (for Services utilizing authentication). Users may also include, but not be limited to any client and/or customer, the client and/or customer’s employee, their employees, consultants, contractors and agents of Partner, and third parties with which Partner transacts business.

## 2. CG360 RESPONSIBILITIES

**2.1 Provision of Purchased Services.** CG360 will (a) make the Services and Content available to Partner pursuant to this Agreement, and the applicable Order Forms, (b) provide applicable CG360 standard support for the Purchased Services to Partner at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which CG360 shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond CG360's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving CG360 employees), Internet service provider failure or delay, Non-CG360 Application, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to CG360's provision of its Services to its Partners generally (i.e., without regard for Partner's particular use of the Services), and subject to Partner's use of the Services in accordance with this Agreement and the applicable Order Form.

**2.2 Protection of Partner Data.** CG360 will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Partner Data, as described in the Privacy Policy and located at <https://cyberguard360.com/privacy>. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Partner Data (other than by Partner or Users). Excepting for Partner information to be retained by CG360 for valid or necessary business use, whose need, validity and necessity is the sole discretion of CG360, including but not limited to research, analysis, marketing, and other valid or necessary business reasons, all other Partner Data will be permanently removed the later of 30 days or as required by law or governing body of competent jurisdiction, and CG360 will have no obligation to maintain or provide any Partner Data.

Upon request by Partner, if made within 30 days after the effective date of termination or expiration of this Agreement, CG360 will make Partner Data available to Partner for export, download or by means of secure transmission thereto.

**2.3 CG360 Personnel.** CG360 will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with CG360's obligations under this Agreement, except as otherwise specified in this Agreement.

**2.4 Beta Services.** From time to time, CG360 may make Beta Services available to Partner at no charge. Partners may choose to try such Beta Services or not in its sole discretion. Beta Services are provided 'As Is' with representations, warranties or guarantees. However, Beta Services are governed by the Privacy Policy and located at <https://cyberguard360.com/privacy>.

**2.5 Free Trial.** If Partner registers on CG360's or an Affiliate's website for a free trial, CG360 will make the applicable Service(s) available to Partner on a trial basis free of charge until the earlier of (a) the end of the free trial period for which Partner registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by Partner for such Service(s), or (c) termination by CG360 in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any

such additional terms and conditions are incorporated into this MSA by reference and are legally binding.

ANY DATA THE PARTNER ENTERS INTO THE SERVICES, AND ANY REPORTS OR OTHER INFORMATION OR CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR PARTNER, DURING PARTNER'S FREE TRIAL WILL BE PERMANENTLY LOST UNLESS PARTNER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL OR EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. IF PARTNER PURCHASES A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, PARTNER MUST EXPORT PARTNER DATA BEFORE THE END OF THE TRIAL PERIOD OR PARTNER DATA WILL BE PERMANENTLY LOST.

NOTWITHSTANDING THE SECTIONS BELOW ENTITLED "*REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS*" AND "*INDEMNIFICATION BY CG360*", DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND CG360 SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE CG360'S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, CG360 AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO PARTNER THAT: (A) PARTNER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET PARTNER'S REQUIREMENTS, (B) PARTNER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, PARTNER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO CG360 AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF PARTNER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY PARTNER OF THIS AGREEMENT AND ANY OF PARTNER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

PARTNER SHALL REVIEW THE APPLICABLE SERVICE'S DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICES BEFORE MAKING A PURCHASE.

However, Free Trial services are governed by the Privacy Policy and located at <https://cyberguard360.com/privacy>.

**2.6 Free Services.** CG360 may make Free Services available to Partners. Use of Free Services is subject to the terms and conditions of this Agreement and governed by the Privacy Policy located at <https://cyberguard360.com/privacy>. In the event of a conflict between this section and any other portions of this Agreement, this section shall control. Free Services are provided to Partners without charge up to certain limits as described in Order Form. Usage over these limits requires Partner's purchase of additional resources or services which may be triggered automatically by Partner through self-service configurations. Partner agrees that CG360, in its sole discretion and for any or no reason, may terminate Partner's access to the Free Services or any part thereof. Partner agrees that any termination of Partner's access to the Free Services may be without prior notice, and Partner agrees that CG360 will not be liable to Partner or any third party for such termination. Partner is solely responsible for exporting Partner Data from the Free Services prior to termination of Partner's access to the Free Services for any reason,

provided that if CG360 terminates Partner's account, except as required by law CG360 will provide Partner a reasonable opportunity to retrieve its Partner Data.

NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY CG360" SECTION BELOW, THE FREE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND CG360 SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE CG360'S LIABILITY WITH RESPECT TO THE FREE SERVICES SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, CG360 AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO PARTNER THAT: (A) PARTNER'S USE OF THE FREE SERVICES WILL MEET PARTNER'S REQUIREMENTS, (B) PARTNER'S USE OF THE FREE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED THROUGH THE FREE SERVICES WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, PARTNER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO CG360 AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF PARTNER'S USE OF THE FREE SERVICES, ANY BREACH BY PARTNER OF THIS AGREEMENT AND ANY OF PARTNER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

### 3. USE OF SERVICES AND CONTENT

**3.1 Subscriptions.** Unless otherwise provided in the applicable Order Form, (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal, (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Partner agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by CG360 regarding future functionality or features.

**3.2 Usage Limits.** Services and Content are subject to usage limits specified in Order Forms. If Partner exceeds a contractual usage limit, CG360 may work with Partner to seek to reduce Partner's usage so that it conforms to that limit. If, notwithstanding CG360's efforts, Partner is unable or unwilling to abide by a contractual usage limit, Partner will execute an Order Form for additional quantities of the applicable Services or Content promptly upon CG360's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.

**3.3 Partner Responsibilities.** Partner will (a) be responsible for Users' compliance with this Agreement and Order Forms, (b) be responsible for the accuracy, quality and legality of Partner Data, the means by which Partner acquired Partner Data, Partner's use of Partner Data with the Services, and the interoperation of any Non-CG360 Applications with which Partner uses Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify CG360 promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, and Privacy Policy incorporated herein and located at

<https://cyberguard360.com/privacy>, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-CG360 Applications with which Partner uses Services or Content. Any use of the Services in breach of the foregoing by Partner or Users that in CG360's judgement threatens the security, integrity or availability of CG360's services, may result in CG360's immediate suspension of the Services, however CG360 will use commercially reasonable efforts under the circumstances to provide Partner with notice and an opportunity to remedy such violation or threat prior to any such suspension.

**3.4 Usage Restrictions.** Partner will not (a) make any Service or Content available to anyone other than Partner or Users, or use any Service or Content for the benefit of anyone other than Partner or its Affiliates, unless expressly stated otherwise in an Order Form, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-CG360 Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-CG360 Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access or use any of CG360 intellectual Property except as permitted under this Agreement or an Order Form, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form, (j) frame or mirror any part of any Service or Content, other than framing on Partner's own intranets or otherwise for its own internal business purposes, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

**3.5 Removal of Content and Non-CG360 Applications.** If Partner receives notice that Content or a Non-CG360 Application must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or the Acceptable Use and External Facing Services Policy, Partner will promptly do so. If Partner does not take required action in accordance with the above, or if in CG360's judgement continued violation is likely to reoccur, CG360 may disable the applicable Content, Service and/or Non- CG360 Application. If requested by CG360, Partner shall confirm such deletion and discontinuance of use in writing and CG360 shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if CG360 is required by any third-party rights holder to remove Content, or receives information that Content provided to Partner may violate applicable law or third-party rights, CG360 may discontinue Partner's access to Content through the Services.

## 4. NON-CG360 PRODUCTS AND SERVICES

**4.1 Non-CG360 Products and Services.** CG360 or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-CG360 Applications and implementation and other consulting services. Any acquisition by Partner of such products or services, and any exchange of data between Partner and any Non-CG360 provider, product or service is solely between Partner and the applicable Non-CG360 provider. CG360 does not warrant or support Non-CG360 Applications or other Non-CG360 products or services, whether or not they are designated by CG360 as “certified” or otherwise, unless expressly provided otherwise in an Order Form. CG360 is not responsible for any disclosure, modification or deletion of Partner Data resulting from access by such Non-CG360 Application or its provider.

**4.2 Integration with Non-CG360 Applications.** The Services may contain features designed to interoperate with Non-CG360 Applications. CG360 cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Partner to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-CG360 Application ceases to make the Non-CG360 Application available for interoperation with the corresponding Service features in a manner acceptable to CG360.

## 5. SUBSCRIPTIONS, FEES AND PAYMENT

**5.1 Fees.** Partner will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content subscriptions purchased and not actual usage and (ii) payment obligations are non-cancelable and fees paid are non-refundable.

**5.2 Subscriptions and Renewals.** After any trial period, unless otherwise superseded as specified in Order Forms, all subscriptions will automatically renew at the then advertised price of a full subscription. Thereafter, the subscription will auto-renew for the greater of 1 month or any renewal term as specified in Order Forms.

**5.3 Invoicing and Payment.** Partner will provide CG360 with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to CG360. If Partner provides credit card information to CG360, Partner authorizes CG360 to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in the “Term of Purchased Subscriptions” section below. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, CG360 will invoice Partner in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due net 1 days from the invoice date. Partner is responsible for providing complete and accurate billing and contact information to CG360 and notifying CG360 of any changes to such information.

**5.4 Overdue Charges.** If any invoiced amount is not received by CG360 by the due date, then without limiting CG360’s rights or remedies, (a) those charges may accrue late

interest at the lessor rate of 2.0% of the outstanding balance per month, or the maximum rate permitted by law, and/or (b) CG360 may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the “Invoicing and Payment” section above.

**5.5 Suspension of Service and Acceleration.** If any charge owing by Partner under this or any other agreement for services is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Partner has authorized CG360 to charge to Partner’s credit card), CG360 may, without limiting its other rights and remedies, accelerate Partner’s unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for Partners paying by credit card or direct debit whose payment has been declined, CG360 will give Partner at least 10 days’ prior notice that its account is overdue, in accordance with the “CG360 Notice” section below for billing notices, before suspending services to Partner.

**5.6 Payment Disputes.** CG360 will not exercise its rights under the “Overdue Charges” or “Suspension of Service and Acceleration” section above if Partner is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

**5.7 Taxes.** CG360's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, accessible by any jurisdiction whatsoever (collectively, “Taxes”). Partner is responsible for paying all Taxes associated with its purchases hereunder. If CG360 has the legal obligation to pay or collect Taxes for which Partner is responsible under this section, CG360 will invoice Partner and Partner will pay that amount unless Partner provides CG360 with a valid tax exemption certificate authorized by the appropriate taxing authority. So as to leave no doubt, CG360 is solely responsible for taxes assessable against it based on its income, Property and employees.

## 6. PROPRIETARY RIGHTS AND LICENSES

**6.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, CG360, its Affiliates, its licensors and Content Providers reserve all of their right, title and interest in and to the Services and Content, including all of their related intellectual Property rights. No rights are granted to Partner hereunder other than as expressly set forth herein.

**6.2 Access to and Use of Content.** Partner has the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement. All rights of use and Content cease immediately upon the termination of the this Agreement, and, excepting for information owned by the Partner or their Users, all documentation, including but not limited to policies, procedures, documentation, reports, fliers, tent cards, security shorts, risk assessments, work plans, etc., any and all material or collateral must be returned to CG360 immediately, or destroyed and acceptable proof of same provided to CG360 upon request.

**6.3 License by Partner to CG360.** Partner grants CG360, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any



Non-CG360 Applications and program code created by or for Partner using a Service or for use by Partner with the Services, and Partner Data, each as appropriate for CG360 to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Partner chooses to use a Non-CG360 Application with a Service, Partner grants CG360 permission to allow the Non-CG360 Application and its provider to access Partner Data and information about Partner's usage of the Non-CG360 Application as appropriate for the interoperation of that Non-CG360 Application with the Service. Subject to the limited licenses granted herein, CG360 acquires no right, title or interest from Partner or its licensors under this Agreement in or to any Partner Data, Non-CG360 Application or such program code.

**6.4 License by Partner to Use Feedback.** Partner grants to CG360 and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Partner or Users relating to the operation of CG360's or its Affiliates' services.

## 7. CONFIDENTIALITY

**7.1 Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Partner includes Partner Data; Confidential Information of CG360 includes the Services and Content, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**7.2 Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal

counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, CG360 may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-CG360 Application Provider to the extent necessary to perform CG360's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

**7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

**8.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**8.2 CG360 Warranties.** CG360 warrants that during an applicable subscription term (a) this Agreement and the Order Forms will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Partner Data, (b) CG360 will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Integration with Non-CG360 Applications" section above, CG360 will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Partner's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.

**8.3 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## 9. MUTUAL INDEMNIFICATION

**9.1 Indemnification by CG360.** CG360 will defend Partner against any claim, demand, suit or proceeding made or brought against Partner by a third party alleging that any Purchased Service infringes or misappropriates such third party's intellectual Property rights (a "Claim Against Partner"), and will indemnify Partner from any damages, attorney fees and costs finally awarded against Partner as a result of, or for amounts paid by

Partner under a settlement approved by CG360 in writing of, a Claim Against Partner, provided Partner (a) promptly gives CG360 written notice of the Claim Against Partner, (b) gives CG360 sole control of the defense and settlement of the Claim Against Partner (except that CG360 may not settle any Claim Against Partner unless it unconditionally releases Partner of all liability), and (c) gives CG360 all reasonable assistance, at CG360's expense. If CG360 receives information about an infringement or misappropriation claim related to a Service, CG360 may in its discretion and at no cost to Partner (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching CG360's warranties under "CG360 Warranties" above, (ii) obtain a license for Partner's continued use of that Service in accordance with this Agreement, or (iii) terminate Partner's subscriptions for that Service upon 30 days' written notice and refund Partner any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Partner; (2) a Claim Against Partner arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by CG360, if the Services or use thereof would not infringe without such combination; (3) a Claim Against Partner arises from Services under an Order Form for which there is no charge; or (4) a Claim against Partner arises from Content, a Non-CG360 Application or Partner's breach of this Agreement, the Documentation or applicable Order Forms.

**9.2 Indemnification by Partner.** Partner will defend CG360 and its Affiliates against any claim, demand, suit or proceeding made or brought against CG360 by a third party alleging (a) that any Partner Data or Partner's use of Partner Data with the Services, (b) a Non-CG360 Application provided by Partner, or (c) the combination of a Non-CG360 Application provided by Partner and used with the Services, infringes or misappropriates such third party's intellectual Property rights, or arising from Partner's use of the Services or Content in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form (each a "Claim Against CG360"), and will indemnify CG360 from any damages, attorney fees and costs finally awarded against CG360 as a result of, or for any amounts paid by CG360 under a settlement approved by Partner in writing of, a Claim Against CG360, provided CG360 (a) promptly gives Partner written notice of the Claim Against CG360, (b) gives Partner sole control of the defense and settlement of the Claim Against CG360 (except that Partner may not settle any Claim Against CG360 unless it unconditionally releases CG360 of all liability), and (c) gives Partner all reasonable assistance, at Partner's expense. The above defense and indemnification obligations do not apply if a Claim Against CG360 arises from CG360's breach of this Agreement or applicable Order Forms. Furthermore, it is understood that some Content may include Personally Identifiable Information, as defined by applicable law in the broadest sense, including, but not limited to user identification and password, other credentials unique to an individual or individuals, other information such as address and other domicile information, biometric information, technological information such as a IP or MAC address, etc., that may be protected by applicable law as they pertain to the owner of such Personally Identifiable Information and/or the disclosing party. CG360 only and exclusively provides access to such information, and only on an Opt-In basis. Access to and/or use thereof by the Partner or its Users is the sole responsibility of the Partner. It is the Partners, whether accessed or used by the Partner or their Users, sole responsibility to ensure that the use or disclosure of Personally Identifiable Information complies with

appropriate and applicable law(s). Therefore, Partner will defend CG360 and its Affiliates against any claim, demand, suit or proceeding made or brought against CG360 in connection with the use or disclosure of Personally Identifiable Information in the manner, means and expense as detailed above. At no time, and for no reason will CG360 be liable for such claims and the Partner unconditionally holds CG360 harmless and indemnifies CG360 against any and each "Claim Against **CG360**". To leave no doubt, third parties includes any individual, individuals, legal entity, Government, governmental body, law enforcement, etc.; any and all entities that can bring action or make a claim are included therein.

**9.3 Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claim described in this section.

## 10. LIMITATION OF LIABILITY

**10.1 Limitation of Liability.** EXCEPTING FOR CLAIMS ARISING FROM ACCESS TO OR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION, ACTS WHERE THE PARTNER HAS ASSUMED EXCLUSIVE AND COMPLETE LIABILITY PURSUANT TO SECTION 9.2, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY PARTNER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT PARTNER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

**10.2 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## 11. TERM AND TERMINATION

**11.1 Term of Agreement.** This Agreement commences on the date Partner first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

**11.2 Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of

promotional or one-time priced subscriptions will be at CG360's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

**11.3 Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**11.4 Refund or Payment upon Termination.** Except for a breach of this Agreement, no refunds will be due nor owing to the partner. Where CG360 has not met its obligations hereunder, CG360 will refund Partner any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by CG360 in accordance with the "Termination" section above, Partner will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Partner of its obligation to pay any fees payable to CG360 for the period prior to the effective date of termination.

**11.5 Surviving Provisions.** The sections titled "Free Services," "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Removal of Content and Non-CG360 Applications," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement, and the section titled "Protection of Partner Data" will survive any termination or expiration of this Agreement for so long as CG360 retains possession of Partner Data.

## 12. GENERAL PROVISIONS

**12.1 Export Compliance.** The Services, Content, other CG360 technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. CG360 and Partner each represent that it is not named on any U.S. government denied-party list. Partner will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.

**12.2 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**12.3 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between CG360 and Partner regarding Partner's use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Partner purchase order or in any other Partner order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form and (2) this

Agreement. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

**12.4 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

**12.5 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**12.6 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**12.7 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**12.8 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, CG360 will refund Partner any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.9 CG360 Contracting Entity, Notices, Governing Law, and Venue.** The CG360 entity entering into this Agreement, the address to which Partner should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Partner is domiciled.

<b>CyberGuard360</b>	<b>Partner</b>
88 Danbury Road, Suite 1D Wilton CT 06897 T: (914) 202-0227 E: <a href="mailto:accounting@cyberguard360.com">accounting@cyberguard360.com</a>	<b>Name and Contact Information As Provided in the Order Form or Subsequently Updated in the Portal or Other Means by Authorized Individual</b>

**12.10 CG360 Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Partner will be addressed to the relevant billing contact designated by Partner. All other notices to Partner will be addressed to the relevant Services system administrator designated by Partner.

**12.11 Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**Acceptance Term**

I have read, understand, and agree to comply with the above policies and procedures. I am aware that violations of these policies may subject me to disciplinary action, including termination of employment. By clicking the checkbox and pressing submit I am electronically acknowledging that I have received the policies and procedures, and I have read each policy and I agree to comply with each of the policies and procedures. Failure to read each policy is not an excuse for violating it.