Terms of Service

This Terms of Service ("Agreement") is entered into by and between **Secure Cyber Defense, LLC**, an Ohio limited liability company with a principal place of business at **201 Tyler Way, Moraine, OH 45439** ("Secure Cyber Defense"), and the customer ("Customer") identified in an Online Order (defined below) or a mutually executed Secure Cyber Defense quote, Order Form, or Statement of Work ("SOW"). Secure Cyber Defense and Customer may be referred to individually as a "Party" or collectively as the "Parties." This Agreement is hereby fully incorporated into the Online Order or SOW.

WHEREAS, Secure Cyber Defense provides certain hardware, software, professional services, and managed services to its customers, including penetration testing;

WHEREAS, Customer desires to purchase or rent specific hardware, software, professional services, and managed services as identified in the Online Order or SOW; and

WHEREAS, Secure Cyber Defense desires to perform such services for Customer.

THEREFORE, BY MAKING A PURCHASE, COMPLETING AN ONLINE ORDER, OR CHECKING THE CHECKBOX THAT YOU HAVE READ THIS AGREEMENT, YOU AGREE AND ACKNOWLEDGE ON YOUR OWN BEHALF THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THIS AGREEMENT AND TO COMPLY WITH ALL APPLICABLE LAWS INCLUDING, WITHOUT LIMITATION, ALL FEDERAL, STATE AND LOCAL TAX AND TARIFF LAWS, REGULATIONS, AND/OR DIRECTIVES. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO MAKE A PURCHASE OR COMPLETE AN ONLINE ORDER OR SOW.

1. **Services, Hardware, Online Orders and SOWs**:

   a. Customer and Secure Cyber Defense desire to provide a means by which Customer can engage Secure Cyber Defense to perform certain professional services or managed services ("Services") for Customer through its employees, subcontractors, and consultants, as described in each applicable Online Order or SOW, upon the terms and conditions specified herein. Professional services may include the implementation of certain software or services, and managed services may include the managing or maintenance of Customer systems, as each are further described in a Online Order or SOW. Additionally, the Customer may have access to Secure Cyber Defense's support ticket and informational portal (the "Customer Portal").

   b. No work shall be performed until an Online Order is submitted or an SOW governing the work has been executed. "Online Orders" are initiated when Customer submits an order or purchase for our Services on our website(s).

      i. By placing an Online Order, you affirm that you are of legal age to enter into a binding agreement for the Services, and acknowledge that you are bound by this Agreement. You may not use the Services if you (a) do not agree to this Agreement, (b) are not the older of (i) at least 18 years of age or (ii) legal age to form a binding contract with Secure Cyber Defense, or (c) are prohibited from accessing or using the Services by applicable law. Each Online Order is subject to, governed by, and incorporates by reference, this Agreement. Secure Cyber Defense shall provide the Services in accordance with the terms and subject to the conditions set forth herein. To the extent this Agreement contradicts with any terms in any applicable Online Order or our Terms of Use, which is fully incorporated herein, this Agreement shall control.

   c. Each Online Order or SOW may include, as applicable, a complete and detailed description of the project which Customer wishes Secure Cyber Defense to undertake, the assumptions upon which the Online Order or SOW was developed, anticipated milestones (if applicable), expected deliverables and specifications ("Specifications") and pricing for such project. To avoid doubt, Secure Cyber Defense will not perform any Services except under an Online Order or SOW. The customer will be under no obligation to pay for any Services performed or expenses incurred by Secure Cyber Defense that were not authorized in a Online Order or SOW, except in cases where the Customer provided email authorization to start requirements gathering. Specific analysis and preparation work before or for the development of the Online Order or SOW and all such work shall be incorporated in the final Online Order or SOW.

d. For Services provided under SOWs, both Parties must sign all SOWs. All adequately executed SOWs constitute a material part of this Agreement and are incorporated by reference. The last adequately executed SOW shall govern in a conflict between SOWs. This Agreement shall rule over all SOWs in case of a dispute.

e. Implementation and Delays. In the event that an Online Order or SOW includes any estimates, forecasts, approximations or requirements of or by Secure Cyber Defense relating to the purchase of Services or Hardware, such as the estimated hours for implementation or set-up of the Services or Hardware, Customer acknowledges and agrees that such estimates, forecasts, approximations or requirements: i) are estimates only; ii) are not guaranteed; and iii) are based on the information provided by Customer to Secure Cyber Defense. Secure Cyber Defense shall not be responsible for any delays in the performance of the Services nor the failure to meet any obligations under an Online Order or SOW which are caused by the Customer or its personnel. For any Services for which Customer's participation is contemplated, Customer and Secure Cyber Defense shall agree upon the dates to perform such Services. Any initial implementation or set-up period of the Services or Hardware will be provided in the Online Order or SOW. Any delay in such implementation or set-up that is caused by Customer, or any other unforeseen complications will not delay or excuse any payment from Customer to Secure Cyber Defense under the applicable Online Order or SOW. For the avoidance of doubt, Customer shall pay the entire agreed upon amount to under the applicable Online Order or SOW unless such delay is directly caused by Secure Cyber Defense's gross negligence or willful misconduct, in which case, such payment will be pro-rated.

f. Hardware. If Customer is purchasing or renting certain hardware ("Hardware") from Secure Cyber Defense, the Hardware and Rental Exhibit attached hereto shall apply. Including the Hardware and Rental Exhibit attached hereto, the Hardware purchase or rental shall be further described in a separate SOW between Customer and Secure Cyber Defense.

g. Schedule of Support Services. During the Term, Secure Cyber Defense shall provide applicable Services in accordance with the service levels as further specified in the Schedule of Support Services attached hereto.

h. Cybersecurity Penetration Tests. If Customer's Services include a cybersecurity penetration test, Secure Cyber Defense will conduct the selected number of External Penetration Tests and Vulnerability Scans ("Test") at the domain(s) or other location(s) specified by Customer in a Online Order or SOW. The Test may be run using a 3rd Party Service and reports will be delivered directly to Customer. Remediation of the items detailed in the Test are not included with the Services but are available through an additional engagement with Secure Cyber Defense. The Test is governed by the terms and conditions of our Rules of Engagement for Penetration Testing, which is incorporated herein by reference and available at the following URL: Rules of Engagement. The Customer represents and warrants that it holds all necessary ownership rights, licenses, or administrative control over the domain(s) specified in the Online Order or SOW.

2. **Changes to SOWs**: Either Party may request changes that affect the scope or duration of the Services relating to any SOW, including changes in the Specifications and deliverables. Each Party also may request a change in the schedule without changing the scope of the applicable SOW. If a Party requests any such change, Secure Cyber Defense shall notify the Customer if it believes that an adjustment in the fees to be paid to Secure Cyber Defense for the applicable SOW, or an adjustment to the applicable schedule, is required. The Parties shall then negotiate a reasonable and equitable adjustment in any applicable fees, deliverables, Services, schedule, or Specifications in good faith. Secure Cyber Defense shall continue to perform according to the existing SOW. Each Party shall be bound by any change requested by the other Party when such change has been accepted in writing by both Parties. The scope of work change form will be provided for acceptance by both Parties.

3. **Fees, Prices, and Payment**:

a. Fees. The Customer is solely responsible and liable for and shall pay Secure Cyber Defense, all Fees, and related Taxes for all services in accordance with the applicable Online Order or SOW. "Fees" means the price paid for services associated with the appropriate Online Order or SOW. "Taxes" means the applicable federal, state, and municipal sales, use, value-added, property, excise, import, foreign, withholding, or other governmental taxes, duties, charges, levies, tariffs, or assessments of any nature whatsoever, now, or hereafter legally imposed. The customer shall not be responsible for any taxes based on Secure Cyber Defense's income, property, and employees.

b. Invoices and Payments. Secure Cyber Defense shall render electronic invoices for all orders; the Customer shall pay the Fees in accordance with this Section and the applicable Online Order or SOW. For SOWs, unless otherwise specified in an applicable SOW, payment terms shall be net thirty (30) days from the invoice date. For Online Orders, unless otherwise specified in the applicable Online Order, Secure Cyber Defense will automatically withdraw the Fees of the Services from your specified financial account, credit or debit card, or other payment method. Payments shall be in United States Dollars (USD) unless otherwise agreed upon in writing and made to the account information specified on the applicable

Online Order or SOW. The Customer accepts any foreign exchange rate fluctuation (positive or negative). The Customer shall pay all amounts due under this Agreement without setoff, deduction, recoupment, or withholding of any kind, whether under this Agreement, applicable law, or otherwise.

i. Customer acknowledges that some Services (including support services and Hardware services) are provided by Secure Cyber Defense vendors. Customer also acknowledges that if a quote or any payment under an accepted quote for any Renewal Term is delayed, it may cause some Services to lapse and may require re-installation/re-integration by the Secure Cyber Defense vendor. Therefore, notwithstanding the forgoing, for any Renewal Term for the Services under an existing Online Order or SOW, the Parties agree to the following:

1. Secure Cyber Defense shall provide a quote of the Renewal Term Fees within sixty (60) or ninety (90) days of the end of the prior Term.

2. Customer shall accept or deny the quote within thirty (30) days of receipt of the quote. Once Customer accepts the quote, Secure Cyber Defense shall issue an invoice to Customer, which is due and payable net thirty (30) days from the invoice date.

3. Should Customer deny the proposed quote or delay accepting or denying the quote, Secure Cyber Defense shall have the option, at its sole discretion, to (1) terminate the applicable Services at the end of the current Term or (2) offer an updated quote or invoice that includes increased Fees to account for added costs and fees required by Secure Cyber Defense vendors.

4. Notwithstanding Section 3(c) below, should Customer fail to pay the invoice pursuant to Section 3(b)(i)(2) above, such Fees shall immediately include a late fee payment at a rate of 1% of the Fees due for each day after the due date through and including the date paid.

c. Late Payments. Suppose Secure Cyber Defense does not receive any amount due from the Customer within ten (10) days' notice of late payment. In that case, Secure Cyber Defense shall be entitled to receive the amount due, plus interest thereon at the rate of 1.5% per month (or the highest rate permissible under applicable law), on all amounts there were not paid on or before the due date. In addition, the Customer shall also pay all Secure Cyber Defense's reasonable collection costs, including, but not limited to, reasonable attorney's fees.

d. Invoice Disputes. Secure Cyber Defense shall not collect interest on delinquent payments in the event the Customer provides Secure Cyber Defense notice that the Customer disputes such charges, in good faith, and provides Secure Cyber Defense with written notice of such dispute before the due date and pays all undisputed bills or the undisputed portion of an invoice on time and cooperates diligently to resolve the dispute.

e. Taxes. All fees referenced in this Agreement are exclusive of any Taxes. The Customer shall be solely responsible for and shall add, charge, collect, and remit any Taxes associated with, based on, or due because of (a) any amounts paid by the Customer to Secure Cyber Defense pursuant to this Agreement; (b) the provision of the Services.; and (c) any purchase or rental of Hardware. If Secure Cyber Defense pays any such Taxes, the Customer shall immediately indemnify and hold harmless for the amount paid plus any interest, penalties, or other expenses (including legal fees and disbursements) incurred in connection therewith. The Customer shall provide Secure Cyber Defense with any relevant sales tax numbers or exemption certificates upon request by Secure Cyber Defense.

f. Errors. The Customer shall promptly notify Secure Cyber Defense of all suspected and known errors, bugs, or other problems associated with the Services or Hardware of which the Customer becomes aware through Secure Cyber Defenses' support ticketing system.

g. Secure Cyber Defense Costs and Expenses. For any Services provided under a mutually executed SOW, the Customer is solely responsible for all costs and expenses (including travel and other fees incurred by its Representatives) incurred directly or indirectly by Secure Cyber Defense or any person arising from, connected with, or relating to Secure Cyber Defense's provision of services and the performance of its obligations under this Agreement.

h. Fee Changes. Notwithstanding anything to the contrary, upon providing notice to Customer, Secure Cyber Defense shall be permitted to increase the Fees for any Renewal Term (defined below) by up to ten percent (10%) over the prior Fee (whether it be the Initial Term Fee or a prior Renewal Term Fee).

i. Payment Methods. For Online Orders, all amounts payable for the Services are non-cancelable and non-refundable. Customer agrees to pay invoiced Fees in U.S. dollars. Customer represents and warrants that (i) the credit or debit card information or other payment information supplied is true, correct, and complete, (ii) Customer is duly authorized to use such payment information for the purchase, (iii) charges incurred by Customer will be honored by its financial institution, and (iv) Customer will pay charges incurred by Customer at the posted prices, including all applicable taxes, if any.

4. <u>Term, Termination, and Suspension</u>

a. **Term**. The initial term of the Agreement shall commence on the Effective Date and continue for as long as any Online Orders or SOWs under it are in effect (the "**Initial Term**"), unless terminated earlier by either Party under this Agreement. The term of each Online Order or SOW will be detailed in the applicable Online Order or SOW. Thereafter, the Term of the Agreement shall automatically renew for a period as indicated in the Online Order or SOW unless terminated by either Party by providing ninety (90) days written notice prior to the end of the then-current Term (each, a "**Renewal Term**"). For purposes of this Agreement, the Initial Term and the Renewal Term are referred to collectively as the **"Term."**

b. **Termination**.

i. For Cause. Either Party may terminate this Agreement or any Online Order or SOW if the other Party makes an assignment for the benefit of creditors; a receiver is appointed; a petition in Bankruptcy is filed concerning the Party and is not dismissed within thirty (30) days; or is adjudicated bankrupt. A Party may terminate a Online Order or SOW in case of a material breach by the other Party, provided such breach continues uncured for thirty (30) days after written notice of such breach.

ii. Cessation of Usage; Payments. Immediately upon expiration or termination of this Agreement, Secure Cyber Defense will cease providing the Services, and the Customer will cease use of any Services. Upon termination or expiration of this Agreement or any Online Order or SOW, the Customer will pay to Secure Cyber Defense all Fees for Hardware and/or Services for the remainder of the Term as provided in the Online Order or SOW without any right to a refund of any prepaid fees; *provided that*, if Customer terminates this agreement for cause as provided in Section 4(b)(i) above, the Customer shall only be responsible for the Fees for Hardware or Services ordered up to the date of termination without any right of deduction or offset and Secure Cyber Defense shall provide a refund of any unused prepaid Fees.

c. **Termination for Inactivity**. Secure Cyber Defense reserves the right, in its sole discretion, to terminate this Agreement with no notice if there is no activity on the project or the Customer fails to meet the Customer responsibilities and actions identified in a Online Order or SOW for a period of one hundred and twenty (120) consecutive days at any time during the Term.

d. **Suspension**. Notwithstanding any other provisions of this Agreement, and without limiting Secure Cyber Defenses' rights or remedies under this Agreement or otherwise, Secure Cyber Defense may, at its option, suspend the Customer's use or access to the Services, Hardware, or Customer Portal if: (a) The Customer is in breach of the Agreement (including, but not limited to, failure to make timely payment); (b) Secure Cyber Defense believes that such use poses a security risk to the Customer Portal, to other Customers, or end users of Secure Cyber Defenses' Services; (c) it is necessary to prevent damage to, or degradation of, Secure Cyber Defenses' systems; (d) such use or access violates any law, regulation, court order, or other governmental requests; or (e) Secure Cyber Defense suspects fraud or abuse. Nothing in this Section limits Secure Cyber Defenses' right to terminate for cause, as outlined in this Agreement, or Secure Cyber Defenses' ability to terminate this Agreement if the Customer is acting, or has acted, in a manner that violates applicable law.

e. **Survival.** Notwithstanding anything herein to the contrary, any provisions that by their nature should apply beyond the Term of this Agreement or that are necessary to the interpretation or enforcement of this Agreement will survive the termination of this Agreement for any reason and remain in full force and effect, including, but not limited to Sections 4, 5, 6, 7, 9, 10, 12, and 13.

5. <u>Relationship of Parties</u>: The Parties agree that the relationship created by this Agreement is that of a customer-independent contractor and is not that of employer-employee for any purpose, including employee benefits, employee taxes, and employee insurance. Nothing herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the Parties. Neither Party shall have the authority to make any statement, representation, or commitment of any kind or to take any action that shall be binding on the other Party except as authorized in writing by the

Party to be bound. Each Party shall remain responsible and shall indemnify and hold harmless the other Party for the withholding and payment of all federal, state, and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness, and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to themselves and their respective people.

6. <u>Confidentiality</u>:

a. Confidential Information: During the Term, each Party may disclose (the "Disclosing Party") to the other Party (the "Receiving Party") certain nonpublic, confidential, and proprietary information that is conspicuously marked as being confidential or proprietary or that the Receiving Party knows, or under the circumstances reasonably should know, is considered the confidential or proprietary information of the Disclosing Party ("Confidential Information"). Confidential Information shall be deemed to include the following information of the respective Parties, without limitation: (i) the terms and conditions of this Agreement; (ii) customer lists, the names of customer contacts, business plans, technical data, product ideas, personnel, contracts and financial information; (iii) patentable subject matter or any information regarding a pending patent application, trade secrets, techniques, processes, know-how, business methodologies, schematics, employee suggestions, development tools and processes, computer printouts, computer programs, design drawings and manuals, and improvements; (iv) information about either Party's costs, profits, markets and sales; or (v) plans for future development and new product concepts; (vi) all documents, books, papers, drawings, models sketches, and other data of any kind and description, including electronic data recorded or retrieved by any means, that have been or will be disclosed, as well as written or oral instructions or comments. Notwithstanding the foregoing, Confidential Information does not include information that; (a) is or becomes publicly available through no breach by the Receiving Party of this Agreement; (b) was previously known to the Receiving Party before the date of disclosure, as evidenced by contemporaneous written records; (c) was acquired from a third party without any breach of any obligation of confidentiality; or (d) was independently developed by a Party hereto without reference to Confidential Information of the other Party. The Parties' obligations under this Section shall survive for three (3) years after termination, cancellation, or expiration of this Agreement.

b. Protection of Confidential Information. Except as expressly provided in this Agreement, the Receiving Party will not use or disclose any Confidential Information of the Disclosing Party without the Disclosing Party's prior written consent, except disclosure to and subsequent uses: (a) by the Receiving Party's employees, agents, or consultants on a need-to-know basis ("Representatives"), provided that such employees, agents, or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as the Receiving Party's obligations under this Section; (b) as required pursuant to a subpoena or other similar order of any court or government agency provided, however, that the Party receiving such subpoena or order will promptly inform the other Party in writing and provide a copy thereof (unless notice is precluded by the applicable process), and will only disclose that Confidential Information as necessary to comply with such subpoena or order. Subject to the foregoing nondisclosure and non-use obligations, the Receiving Party will use at least the same degree of care and precaution that it uses to protect the confidentiality of its own Confidential Information and trade secrets of similar nature, but in no event less than reasonable care. The Receiving Party will promptly notify the Disclosing Party in writing in the event the Receiving Party becomes aware of any actual or suspected unauthorized use or disclosure of the Disclosing Party's Confidential Information.

c. Injunctive Relief. In the event of a breach or threatened breach of the Receiving Party's confidentiality obligations, the Receiving Party acknowledges that the Disclosing Party may suffer immediate and irreparable harm for which money damages may be inadequate and impossible to calculate and waives any requirement that a bond be posted or that the Disclosing Party be required to demonstrate irreparable harm as conditions to obtaining injunctive relief.

d. Return of Confidential Information. Upon written request of the Disclosing Party, the Receiving Party will discontinue all use of the Disclosing Party's Confidential Information received in connection with this Agreement and will either return to the Disclosing Party or destroy, in the Receiving Party's discretion, all of the Disclosing Party's Confidential Information, including all copies in whole or in part and, except to the extent infeasible to do so, any materials that contain any of the Disclosing Party's Confidential Information. The Receiving Party may retain 1 copy of each item solely for evidentiary purposes and record retention requirements.

7. Proprietary Rights.

a. As between the two Parties, Secure Cyber Defense owns and retains all rights, title, and interest in all Intellectual Property Rights, too, and associated with all software, technology, or any pre-existing materials used to provide the Services, related documents, and information, and all derivative works based on the foregoing, including, but not limited to, modifications or derivative works created at the request of the Customer or its authorized personnel. This is not a work-made-for-hire agreement. Except for the limited access and license granted in this Agreement, Customers and their authorized personnel shall not acquire any right, title, or interest in or to any software, technology, or any pre-existing materials provided by Secure Cyber Defense for use by the Customer as part of the Services.

b. For purposes of this Agreement, "Intellectual Property Rights" means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

c. Customer Content. Customer acknowledges that Customer's use of the Services may require the processing and transmission of reports, information, files, documents, data, or other content provided by Customer to Secure Cyber Defense ("Customer Content"). Customer shall own all title, intellectual property, and contractual rights in and to sharing the Customer Content with Secure Cyber Defense. Notwithstanding the foregoing, when Customer or its authorized personnel uploads, submits, or stores Customer Content through the Services, Customer grants Secure Cyber Defense a worldwide license to use, host, store, reproduce, modify, and create derivative works from the Customer Content to solely provide, support, and improve the Services. Secure Cyber Defense is not responsible for any electronic communications and/or Customer Content which are delayed, lost, altered, intercepted, or stored during the transmission of any data by means of third-party networks (other than third parties providing computing or storage services under this Agreement on behalf of Secure Cyber Defense). Customer represents and warrants that it has all necessary rights in, and obtained all necessary consents to, the Customer Content under applicable law to grant Secure Cyber Defense the rights granted under this Section 7(c).

d. Privacy and Information Security. Secure Cyber Defense shall maintain appropriate administrative, technical, and physical safeguards to protect Confidential Information and Client Content, including personally identifiable information of data subjects as required by applicable data protection laws. To the extent that Secure Cyber Defense collects personal data governed by applicable data protection laws requiring execution of a data processing agreement or other similar agreement, Secure Cyber Defense and Customer shall incorporate, as necessary, such data processing agreement, including lawful standard contractual clauses (if required), into this Agreement as if fully rewritten herein.

e. Feedback. Secure Cyber Defense encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to Secure Cyber Defense's services and related resources. Secure Cyber Defense shall own all rights, title, and interest, including all Intellectual Property Rights, in and to any improvements to the Services or any new programs, upgrades, modifications or enhancements developed by Secure Cyber Defense in connection with rendering the Services to Customer, even when refinements and improvements result from Customer's feedback or request.

8. Notices:

a. All notices required or permitted to be given under this Agreement shall be in writing (effective upon receipt by addressed Party) and shall be served by personal delivery or by registered or certified mail, postage prepaid and return receipt requested, addressed as set forth below, or to such other address(es) as either Party may from time to time notify the other of in writing:

If to Secure Cyber Defense:	**If to Customer**
Secure Cyber Defense, LLC ATTN: Shawn Waldman 201 Tyler Way Moraine, OH 45439	As provided in the Online Order or SOW.

937.388.4405
accounting@secdef.com

9. Representations and Warranties.

a. Mutual Representations and Warranties. Each Party represents and warrants that (i) it has all requisite power, authority, and approvals to enter, execute, and deliver this Agreement; and (ii) the execution of this Agreement by and the performance of its obligations and duties hereunder do not and will not violate any agreement to which it is a party or by which it is bound.

b. Secure Cyber Defense. Secure Cyber Defense represents and warrants that it has all the power, authority approvals, and capability to perform the Services. Secure Cyber Defense further warrants that the Services shall be provided with promptness, due care, skill, and diligence in a professional and workmanlike manner consistent with the practices and high professional standards utilized in well-managed operations. Secure Cyber Defense shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence, and skill to perform the Services; and shall have, at the appropriate time, the resources; capacity; expertise; and ability in terms of equipment, Software, know-how, and personnel to provide the Services.

c. Customer. Customer will provide commercially reasonable cooperation with Secure Cyber Defense to enable Secure Cyber Defense to provide the Services and/or Hardware to Customer. If Customer has access to the Customer Portal, Secure Cyber Defense shall authorize access to and assign unique passwords and usernames to Customer's authorized personnel ("Client Accounts"). Customer shall be responsible for any activity occurring through the Client Accounts, including unauthorized activity. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Services, Hardware and/or Customer Portal and shall promptly notify Secure Cyber Defense in the event of any unauthorized access or use of the Services, Hardware and/or Customer Portal and any loss or theft or unauthorized use of any of the Customer Accounts. Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, and regulations applicable to Customer's use of the Services, Hardware and/or Customer Portal including without limitation those related to privacy, electronic communications, and anti-spam legislation.

d. SECURE CYBER DEFENSE EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR ONLINE ORDER OR SOW, THE SERVICES, HARDWARE, AND ALL THIRD-PARTY MATERIALS (IF APPLICABLE) ARE PROVIDED ON A "WHERE IS" AND "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, PROVIDED THAT SECURE CYBER DEFENSE WILL PASS THROUGH ANY THIRD-PARTY WARRANTIES TO THE CUSTOMER TO THE EXTENT PERMISSIBLE. **SECURE CYBER DEFENSE DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT ITS SERVICES OR ANY HARDWARE SHALL MEET THE NEEDS OF ANY CUSTOMER OR USER OR BE FREE FROM ERROR, OR THAT SERVICES SHALL BE UNINTERRUPTED.**

10. LIMITATION OF LIABILITY: IN NO EVENT SHALL SECURE CYBER DEFENSE BE LIABLE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR ABOUT THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES WAS DISCLOSED TO SECURE CYBER DEFENSE OR COULD HAVE BEEN REASONABLY FORESEEN BY SECURE CYBER DEFENSE UNLESS SUCH DAMAGES RELATE TO BREACH OF CONFIDENTIALITY, WILLFUL TORT OR GROSS NEGLIGENCE.

IN ADDITION, SECURE CYBER DEFENSE'S LIABILITY, IF ANY, ON ANY CLAIM FOR DAMAGES ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT WHICH HAS BEEN PAID TO SECURE CYBER DEFENSE BY THE CUSTOMER DURING THE (6) SIX-MONTH PERIOD PRECEDING THE DATE OF WORK IN DISPUTE EVENT GIVING RISE TO SUCH CLAIM UNDER THE APPLICABLE ONLINE ORDER OR SOW. NO ACTION ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, MAY BE BROUGHT BY THE CUSTOMER MORE THAN ONE YEAR AFTER DELIVERY TO THE CUSTOMER.

11. Insurance: For Services under a mutually executed SOW, each Party shall secure and maintain Cyber Liability Insurance for this Agreement. This will include coverage for transmission of a virus, hacker damage, theft or unauthorized disclosure of confidential information, theft of digital ID, cyber business interruption, cyber extortion, and third-party and first-party coverage in the amount minimal $1,000,000 policy per occurrence/aggregate limit required.

12. Indemnification:

a. Mutual Indemnification. Each Party (as the "Indemnifying Party") will indemnify and hold harmless the other Party, its shareholders, members, directors, officers, and employees (as the "Indemnified Party"), against all damages, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) (but excluding any indirect, special, consequential, punitive, or exemplary damages) ("Losses") incurred by an Indemnified Party resulting from any third-party claim, demand, suit, cause of action, or proceeding ("Third-Party Claim") arising out of or incurred in connection with (i) any personal injury or property damage arising out of the Indemnifying Party's negligence or willful misconduct; (ii) the Indemnifying Party's violation of any law, rule or regulation; and (iii) any Third-Party Claim that the Indemnifying Party's materials infringe such third party's United States patent, United States trademark, United States trade secret, or United States copyright.

b. Indemnification Procedure. In the event of a claim under this Section 12, the Indemnified Party will (i) give the Indemnifying Party prompt written notice of any such claim; (ii) allow the Indemnifying Party to solely control the defense and all related settlement negotiations for any such claim; and (iii) at the Indemnifying Party's expense, reasonably cooperate with the Indemnifying Party in such defense and settlement negotiations. The Indemnified Party will have the right to observe the defense of the claim at its own expense and with counsel of its own choosing. The Indemnifying Party will not settle or compromise any claim without the Indemnified Party's prior written consent unless such settlement or compromise: (A) unconditionally and completely releases all Indemnified Parties, (B) does not contain any stipulation to, admission, or acknowledgment of any wrongdoing by any Indemnified Party, and (C) does not impose any obligations on the Indemnified Parties other than solely the payment of money damages paid wholly by the Indemnifying Party.

c. Third-Party Infringement Claim. If a Third-Party Claim is made pursuant to Section 12(a)(iii) above, in Secure Cyber Defense's sole discretion, Secure Cyber Defense may at its cost, (i) modify or replace any such infringing Services or other material so that it no longer infringes or misappropriates, (ii) obtain a license for Customer's continued use of that portion of the Services in accordance with this Agreement, or (iii) if (i) or (ii) above are not reasonably available, terminate Customer's rights for that portion of the Services upon thirty (30) days written notice. The obligations set forth in this Section 12(c) do not apply to the extent a Third-Party Claim arises out of or is related to (1) Client's breach of this Agreement, or (2) the combination of any Services with any materials or services not provided by Secure Cyber Defense and the combination of such is the cause of the claim.

13. **Governing Law; Venue**: Unless otherwise stated in the Online Order or SOW, this Agreement shall be governed, construed, and enforced by the laws of the State of Ohio, excluding its conflict of law provisions. The Parties agree that the exclusive jurisdiction or any lawsuit related to or arising under this Agreement shall be in the state and federal courts of Montgomery County, Ohio.

14. **Arbitration**: Unless otherwise stated in the Online Order or SOW, except for claims of non-payment or claims under Section 9 or Section 10 of this Agreement, any dispute, controversy, or claim arising in connection with this Agreement shall be settled by arbitration by one arbitrator, who shall be appointed under the rules of the American Arbitration Association ("AAA"). The arbitration shall be held in Dayton, Ohio, and conducted following the laws of the AAA.

15. **Section Headings**: The section and subsection headings used in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

16. **Waiver**: The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

17. **Entire Agreement**: This document and its attachments and Online Orders or SOWs constitute the final and complete agreement between the Parties concerning the subject matter and supersede all other written or oral communications. This Agreement may be modified or amended only by a written signature by both Parties.

18. **Assignment**: Neither Party shall assign its rights or interest in this Agreement, including any Online Order or SOW, without the prior written consent of the other Party. Any assignment, without consent, shall be deemed void and wholly invalid. Notwithstanding the foregoing, Secure Cyber Defense shall have the right to use subcontractors to assist in providing the Services under this Agreement and applicable Online Order or SOW, provided that Secure Cyber Defense shall be responsible for any such subcontractor's work. Additionally, Secure Cyber Defense may, without notice to or consent from Customer, assign the Agreement in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets

or any similar transaction, provided that the assignee confirms in writing that it has assumed all obligations of the assignor under this Agreement.

19. **Severability**: If any provision of this Agreement shall be held invalid or unenforceable for any reason, the remaining provisions shall remain valid and enforceable. Suppose a court finds that any provision of this Agreement is invalid or unenforceable but that limiting such provision would become valid and enforceable. Such provision shall be deemed written, construed, and enforced as limited in that case.

20. **Construction**: The Parties acknowledge and agree that they have participated jointly in the negotiation and drafting of this Agreement, and in the event of an ambiguity or question of intent or a need for interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party under the authorship of any of the provisions on this Agreement.

21. **Force Majeure**: Neither Party shall be liable for damages for any delay or failure of delivery (except Customer's payment obligations hereunder) arising out of causes beyond their reasonable control and without their fault or negligence, including, but not limited to, Acts of God, epidemics or pandemics, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures ("Force Majeure Event"). Notwithstanding anything to the contrary contained herein, if either Party is unable to perform hereunder or under an Online Order or SOW for a period of fifteen (15) consecutive days due to a Force Majeure Event, then the other Party may immediately terminate this Agreement or the Online Order or SOW, as applicable, without liability, by written notice to the other.

22. **Non-Solicitation**: Customer agrees not to, directly or indirectly, solicit for its employment, hire, or otherwise engage Secure Cyber Defense's employees or subcontractors, as its employee or in any other capacity, for the performance of services or tasks of any kind for Customer during the term of this Agreement and a period of one (1) year after termination of this Agreement. This restriction shall not prohibit Customer or its affiliates from employing any person who has (i) responded to a bona fide recruitment advertisement not specifically targeted at such person; (ii) made an unsolicited approach to the Customer or its affiliates; or (iii) been subject to a non-targeted search placed by the Customer, its affiliates or on the Customer's or its affiliates behalf.

23. **Publicity:** Each Party agrees that no public or private announcements, media releases, press conferences, or similar publicity relating to any aspect of this Agreement and any services shall be made without the prior written consent of the other Party.

Hardware Rental Exhibit

This Hardware Rental Exhibit ("Exhibit") is incorporated into the Terms of Service between Customer and Secure Cyber Defense (the "Agreement"). Unless otherwise defined herein, the terms contained in this Exhibit shall have a meaning as defined in the Agreement. In the event of a conflict between the terms of this Exhibit and the Agreement, the terms of this Exhibit shall prevail.

Shipment. Secure Cyber Defense shall coordinate shipment and delivery to Customer of any Hardware as provided in an applicable Online Order or SOW. The Hardware will be delivered within a reasonable time after the date of the Online Order or SOW, subject to availability of the Hardware. Secure Cyber Defense shall not be liable for any delays, loss, or damage in transit. In addition to all other Fees stated in the Agreement or an applicable Online Order or SOW, Customer shall pay all costs associated with shipping the Hardware.

Delivery. Secure Cyber Defense shall deliver the Hardware to the location provided in an applicable Online Order or SOW (the "**Delivery Point**") using Secure Cyber Defense's standard methods for packaging and shipping such Hardware. Customer shall take delivery of the Hardware within ten (10) days of delivery. Risk of loss (and in the case of Hardware purchases, title) shall pass to Customer upon delivery at the Delivery Point. If for any reason Customer fails to accept delivery of any of the Hardware or if Secure Cyber Defense is unable to deliver the Hardware at the Delivery Point because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Hardware shall pass to Customer; (ii) the Hardware shall be deemed to have been delivered; and (iii) Secure Cyber Defense, at its option, may store the Hardware until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

Inspection and Rejection of Nonconforming Hardware.

1. Customer shall inspect the Hardware within ten (10) days of delivery at the Delivery Point ("**Inspection Period**"). Customer will be deemed to have accepted the Hardware unless it notifies Secure Cyber Defense in writing of any Nonconforming

Hardware during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Secure Cyber Defense. "**Nonconforming Hardware**" means only the following: (i) the product shipped is different than identified in this Agreement or applicable Online Order or SOW; or (ii) the product's label or packaging incorrectly identifies its contents.

2. If Customer timely notifies Secure Cyber Defense of any Nonconforming Hardware, Secure Cyber Defense shall, in its sole discretion, (i) replace such Nonconforming Hardware with conforming Hardware or (ii) credit or refund the Fees for such Nonconforming Hardware. Customer shall ship, at its expense and risk of loss, the Nonconforming Hardware to Secure Cyber Defense's facility as indicated in an applicable Online Order or SOW. If Secure Cyber Defense exercises its option to replace Nonconforming Hardware, Secure Cyber Defense shall, after receiving Customer's shipment of Nonconforming Hardware, ship to Customer, at Customer's expense and risk of loss, the replaced Hardware to the Delivery Point.

3. Customer acknowledges and agrees that the remedies set forth in this Section are Customer's exclusive remedies for the delivery of Nonconforming Hardware.

Hardware Fees. The Fees for the applicable Hardware shall be detailed in an applicable Online Order or SOW. Payment terms are further provided in the Agreement. Notwithstanding the Agreement, all Fees for Hardware must be pre-paid and received by Secure Cyber Defense in full prior to delivery of Hardware to Customer. Customer's obligation to pay all Hardware Fees and other amounts under this Agreement related to such Hardware is absolute and unconditional and is not subject to any abatement, counterclaim, defense, deferment, interruption, recoupment, reduction, or setoff for any reason whatsoever.

Hardware Condition. Customer, at its sole expense, shall maintain rented Hardware: in serviceable and operable condition, free of broken, damaged, or missing parts, suitable for the commercial use originally intended, ordinary wear and tear excepted.

1. in compliance with any Secure Cyber Defense or any manufacturer's (if any) specifications;

2. consistent with standard industry practice for similar equipment; and

3. in compliance with applicable law.

Risk of Loss. From the start of the Term for renting Hardware under a applicable Online Order or SOW through the expiration or earlier termination of the Term of such Online Order or SOW as to such Hardware, Customer shall bear all risk of loss, damage, destruction, theft, taking, confiscation, or requisition, partial or complete, of or to such Hardware or its use, however caused or occasioned ("**Loss**"). Customer shall notify Secure Cyber Defense in writing within ten (10) days of learning of any such Loss.

Warranties. All Hardware is covered by and subject to the terms, conditions, and limitations of the applicable manufacturer's standard warranty. Secure Cyber Defense will transfer to Customer all applicable transferable warranties which Secure Cyber Defense receives from the manufacturer of the Hardware. No warranty will apply if the Hardware (i) has been subject to abuse, misuse, neglect, accident, or modification, (ii) has been installed in unsuitable environment, (iii) has been used for purposes other than for which it was designed, or has been damaged by fire, flood, wind, lightning, or similar causes. EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION, SECURE CYBER DEFENSE HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE RELATED TO THE HARDWARE, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTY OF NONINFRINGEMENT. THE DISCLAIMER CONTAINED IN THIS SECTION DOES NOT AFFECT THE TERMS OF ANY MANUFACTURERS' WARRANTY. Customer expressly waives any claim that it may have against Secure Cyber Defense based on any product liability, or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Claim") with respect to any Hardware and also waives any right to indemnification from Secure Cyber Defense against any such Claims made against Customer by a third party. Customer acknowledges that no employee of Secure Cyber Defense is authorized to make any representation or warranty on behalf of Secure Cyber Defense that is not in this Agreement.

Hardware Rental; Ownership. To the extent that Customer rents Hardware from Secure Cyber Defense, the Term and Fees of such rental shall be provided in a separate Online Order or SOW. Such Hardware that is rented from Secure Cyber Defense shall at all times remain the sole property of Secure Cyber Defense. Secure Cyber Defense has title to the rented Hardware at all times. Customer acquires no ownership, title, property, right, equity, or interest in the rented Hardware other than its interest solely to rent the Hardware subject to all the terms and conditions of the Agreement and each applicable Online Order or SOW.

Return of Hardware. For each Online Order or SOW, if Customer does not in accordance with the terms and conditions thereof exercise any renewal option that may be available thereunder, Customer shall, at its sole expense and risk, no later than the expiration or earlier termination of the rental Term of such Online Order or SOW for any rented Hardware pursuant to it, return such Hardware to a return location that shall be designated by Secure Cyber Defense in its sole discretion no fewer than thirty (30) days following the expiration or earlier termination of the Agreement or applicable Online Order or SOW.

Termination or Expiration; Failure to Return Hardware. Upon termination or expiration of the Agreement or the applicable Online Order or SOW relating to the rented Hardware, Secure Cyber Defense shall have the following remedies if such Hardware is not returned by Customer:

1. take possession of, or render unusable, any Hardware wherever it may be located, without demand or notice, without any court order or other process of law, and without liability to Customer for any damages occasioned by such action, and no such action shall by itself constitute a termination of the Agreement or any Online Order or SOW;

2. require Customer to deliver any Hardware in the condition required under the Agreement and the applicable Online Order or SOW to a location designated by Secure Cyber Defense, and for each day that Customer fails to return any Hardware, Secure Cyber Defense may demand an amount equal to the Fees under the applicable Online Order or SOW for the rented Hardware, prorated on the basis of a thirty-day month, in effect immediately prior to such termination; or

3. proceed by court action to enforce performance by Customer of the Agreement and any or all Online Orders or Online Order or SOWs and/or to recover all damages and expenses incurred by Secure Cyber Defense by reason of such termination.