# CyFlare Master Service Level Agreement

Effective October 2021

This CyFlare Master Services Agreement (the "MSA") is a legal agreement entered into by and between CyFlare LLC ("CyFlare") and the Customer identified on an SOW ("Customer"). It governs any statements of work, order forms, quotes, or other ordering document executed by Customer ("SOW") and Solution Terms ("Solution Terms") that reference this MSA or purchases of a CyFlare subscription. This MSA is effective on the date Customer executes the SOW or submits a matching purchase order to CyFlare, as applicable (the "Effective Date"). This MSA permits the Customer to purchase subscriptions to the Services, as defined below, identified in the SOW and sets forth the terms and conditions under which those Services will be delivered. The MSA consists of the terms and conditions set forth below, any attachments or exhibits identified herein, and any SOWs that reference this Agreement.

BY EXECUTING, WHETHER MANUALLY OR ELECTRONICALLY, AN SOW, DELIVERING A PURCHASE ORDER OR OTHER CONFIRMATION TO CYFLARE DOCUMENTING ACCEPTANCE OF AN SOW, OR OPERATING, DOWNLOADING, INSTALLING, REGISTERING, OR OTHERWISE USING THE SERVICES, OR CLICKING AN "I ACCEPT" OR "CONTINUE" BUTTON ASSOCIATED WITH THIS MSA, CUSTOMER (OR ITS AUTHORIZED AGENT, IF APPLICABLE) EXPRESSLY AND EXPLICITLY ACKNOWLEDGES AND AGREES THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS MSA AND ACCEPTS THE OFFER TO SUBSCRIBE TO THE SERVICES PURSUANT TO THE TERMS HEREIN. IF YOU ARE AN EMPLOYEE OR OTHER REPRESENTATIVE ACCEPTING THIS MSA ON BEHALF OF THE CUSTOMER, YOU HEREBY REPRESENT AND WARRANT TO CYFLARE THAT YOU ARE (A) AUTHORIZED TO ENTER INTO THIS MSA ON BEHALF OF THE CUSTOMER; AND (B) YOU ARE OVER 18 YEARS OLD. IF THE CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS IN THIS MSA OR IS NOT AUTHORIZED TO ENTER INTO THIS AGREEMENT, DO NOT ACCEPT THE SOW, ISSUE A PURCHASE ORDER OR OTHER CONFIRMATION, OR OTHERWISE USE THE SERVICES.

## Section 1. Services

**1.1 Definition.** "Services" means (a) physical or virtual appliances ("Equipment"), (b) software, including any add-ons offering enhanced features and functionality made generally available to CyFlare customers from time to time (collectively, the "Software"), and/or (c) support, onboarding services, and/or additional professional services and consulting ("Professional Services") that are ordered by Customer from CyFlare and described in one or more SOWs signed by CyFlare and Customer. Subject to the terms and conditions of this MSA, CyFlare will make the Services available during the Term as set forth in an SOW. In the event of any inconsistency or conflict between the terms of the MSA and the terms of any SOW, the terms of the SOW control.

**1.2 Change in Services.** If the Customer desires changes to an SOW, the Customer shall submit to CyFlare a written request in accordance with the change order process defined in the applicable SOW. The parties may execute additional SOWs describing Services, which will become part of this MSA upon execution by CyFlare and the Customer. If additional SOWs are executed, then the Customer shall pay CyFlare for all services performed before the additional SOW before CyFlare begins work on the new SOW.

CyFlare, LLC
600 Fishers Station Rd, Suite 125
Victor, NY 14564

**P:** +1 877-729-3527
**E:** sales@cyflare.com

**1.3 Equipment.** If the SOW specifies that the Customer will receive Equipment, then the Customer is responsible for installing the Equipment at the location(s) specified by CyFlare and for the implementation of appropriate data protection practices related to the protection of any information included on such Equipment while the Equipment is located within Customer's environment. The Equipment is a part of the Services and included with the subscription to the Services for use by Customer during the Term. If Customer attempts to install or use the Equipment at a location other than determined by Customer and communicated to CyFlare during onboarding or at any time thereafter, the Solutions may fail to function or may function improperly. In the event Customer installs, uses, or relocates the Equipment, the Customer will promptly notify CyFlare so that Equipment deployment information can be updated within the Customer's account. Other than normal wear and tear, the Customer is directly responsible for loss, repair, replacement, and other costs, damages, fees to repair the Equipment. The Customer is responsible for all additional costs and expenses associated with shipping the Equipment to its designated locations and returning the Equipment to CyFlare upon the termination of the Term. Such additional costs and expenses may be reflected in an SOW from time to time following shipment of the Equipment and will be invoiced by CyFlare. The Customer understands and agrees if the Equipment is shipped outside of the United States or Canada (or such other locations identified by CyFlare), the Customer is responsible for acting as the importer of record.

**1.4 Software and Services.** Provided Customer is in compliance with the terms of this MSA, including payment of Fees, CyFlare grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive right and/or license during the Term to, to the extent applicable given the Service: (i) install the object code form of the Software (including any related to virtual Equipment, if applicable), but only in connection with Customer's use of the Service and otherwise in accordance with this MSA, and/or access and use the Services for up to the number of licenses set forth in an SOW, (ii) obtain and use CyFlare's Services in conjunction with Customer's use of the Service, (iii) obtain onboarding services from CyFlare to install the Equipment, (iv) load Customer's users and associated information into the applicable Service, and (v) access the CyFlare ONE Platform. Customer acknowledges that any changes Customer makes to its infrastructure or the configuration of the Software or Service after initial deployment may cause the Software or Service to cease working or function improperly. CyFlare will have no responsibility for the impact of any such Customer changes. The Customer understands that depending on the Software or Service deployed; Software may consume additional CPU and memory in the Customer's environment while running in production.

## Section 2. Fees and Payment

**2.1 Fees.** The Customer will pay the fees specified in any SOWs (the "Fees"). In addition, any overages in a given month shall be billed the following month. Overages are any actual usage of Services that exceeds the utilization subscribed to by the Customer under any SOW(s) as measured on a monthly basis.

**2.2 Payment; Taxes.** CyFlare will invoice the Customer for Fees as outlined in an SOW. The Customer will pay all invoiced Fees within the timeframe specified in an SOW. If payment terms are not mentioned in an SOW, the Customer shall pay net thirty (30) days from the date of the invoice. Any late payments are subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less. If Customer fails to make any payments due under this MSA or an applicable SOW, CyFlare shall notify Customer of such nonpayment. If a payment that is due remains unpaid for fifteen (15) days after CyFlare provides the Customer with notice of such nonpayment, CyFlare may cease providing the Services without any liability to CyFlare. Fees do not include local, state, or federal taxes or duties of any kind, and any such taxes will be assumed and paid by the Customer, except for taxes on CyFlare based on CyFlare's income or receipts. If Customer believes that CyFlare has billed Customer incorrectly, Customer must contact CyFlare no later than thirty (30) days after the

closing date on the first billing statement in which the error or problem appeared to receive an adjustment or credit. Inquiries should be directed to CyFlare's customer support department.

## Section 3. Term and Termination

**3.1 Term.** This MSA commences on the Effective Date and will remain in effect through the Initial Term and all Renewal Terms, as specified in the SOW unless otherwise terminated in accordance with this section (the Initial Term and all Renewal Terms collectively the "Term"). If the SOW does not specify, the Initial Term will be one year from the execution of the SOW and will automatically renew for successive one-year periods, subject to the then-current terms and price at the time of renewal, unless the Customer provides CyFlare with notice of termination at least sixty (60) days before the end of the Term.

**3.2 Termination for Cause.** A Party may terminate this MSA for cause (a) upon notice to the other Party of a material breach if such breach remains uncured after fifteen (15) days from the date of the breaching Party's receipt of such notice; or (b) 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.

**3.3 Termination for Convenience and Early Termination Charges.** If this MSA or any SOW is canceled or terminated by Customer for convenience before the end of the Initial Term or Renewal Term, Customer shall pay CyFlare immediately upon termination an early termination charge equal to any outstanding charges up to the date of such termination and the monthly recurring charges associated with the terminated SOW multiplied by the number of months then remaining in the terminated Term.

**3.4 Cancellation.** A Party may terminate the MSA and an applicable SOW either (i) in accordance with the renewal provisions of the SOW or (ii) if such provisions are not specified, by providing notice to the other Party of termination sixty (60) days before the end of the then-current Term.

**3.5 Effect of Termination and Survival.** Upon termination or cancellation of an SOW or this MSA (a) with respect to termination of the entire MSA, all SOWs will concurrently terminate, (b) Customer will have no further right to use the Services under the terminated or canceled SOWs and CyFlare will remove Customer's access to same, and (c) unless otherwise specified in writing, Customer will not be entitled to any refund of fees paid. The following Sections will survive termination: Section 2 (Fees and Payment), Section 4 (Confidentiality), Section 5 (Intellectual Property Rights), Section 6.3 (Disclaimers), Section 7 (Indemnification), Section 8 (Limitation of Liability), and Section 10 (Miscellaneous). Termination of this MSA will not limit a Party's liability for obligations accrued as of or before such termination or for any breach of this MSA.

## Section 4. Confidentiality

As used herein, the "Confidential Information" of a Party (the "Disclosing Party") means all financial, technical, or business information of the Disclosing Party that the Disclosing Party designates as confidential at the time of disclosure to the other Party (the "Receiving Party") or that the Receiving Party reasonably should understand to be confidential based on the nature of the information or the circumstances surrounding its disclosure. For the sake of clarity, the Parties acknowledge that Confidential Information includes the terms and conditions of this MSA. Except as expressly permitted in this MSA, the Receiving Party will not disclose, duplicate, publish, transfer or otherwise make available Confidential Information of the Disclosing Party in any form to any person or entity

without the Disclosing Party's prior written consent. The Receiving Party will not use the Disclosing Party's Confidential information except to perform its obligations under this MSA, such obligations including, in the case of CyFlare, to provide the Services. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required by law, provided that the Receiving Party: (a) gives the Disclosing Party prior written notice of such disclosure so as to afford the Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure (if such notice is not prohibited by applicable law); (b) uses diligent efforts to limit disclosure and to obtain confidential treatment or protective order; and (c) allows the Disclosing Party to participate in the proceeding. Further, Confidential Information does not include any information that: (i) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (iii) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party.

## Section 5. Intellectual Property Rights

"Intellectual Property Rights" means any and all (a) rights associated with works of authorship, including but not limited to copyrights, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents and (c) all other intellectual property rights in any jurisdiction throughout the world. To the fullest extent permitted by law, CyFlare retains ownership in all Intellectual Property rights relating to or incorporated in any Deliverable. Upon full payment for the Deliverable, according to the applicable SOW, CyFlare grants the Customer a perpetual, non-exclusive, and non-transferable license to use the Deliverable and the related Intellectual Property Rights solely part of the Deliverable. Customer shall retain sole ownership of all Intellectual Property Rights in connection with any original material it provides to CyFlare for use within a Deliverable. If termination occurs under Section 3, CyFlare shall retain ownership in all Intellectual Property Rights and other components comprising work in the process up to the date of termination. After a termination under Section 3 and upon full payment for the work in process, CyFlare will grant the Customer a perpetual, non-exclusive, and non-transferable license to use the work in process. In no event will CyFlare be liable for any claims related to or arising from Customer's improper use of the Deliverable, work in process, or components that comprise the Deliverable or work in process.

## Section 6. Representations, Warranties, and Disclaimers

**6.1 Authority.** Each Party represents that it has validly entered into this MSA and has the legal power to do so.

**6.2 Warranties.** CyFlare warrants that during an applicable Term (a) this MSA will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Service Data; and (b) the Services will perform materially in accordance with the applicable documentation provided within the Services. For any breach of a warranty in this section, the Customer's exclusive remedies are those described in Section 3 (Term and Termination) herein.

**6.3 Disclaimers.** (a) EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT AND ANY SOW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. The Services are designed to monitor systems to detect cyber security breaches. The Company does not represent that it will prevent any breach, and Company will have no liability with respect to any breach of the Client's systems. Cyber threats are ever-evolving and designed to evade detection. The Company does not represent that it will detect every breach, and Company will have no liability for failure to detect any breach.

## Section 7. Indemnification

Each Party shall defend, indemnify, and hold harmless the other Party, including its affiliates and each of their respective officers, directors, shareholders, employees, representatives, agents, successors and assigns from and against all claims of third parties, and all associated suits, proceedings, judgments, penalties, fines, cost and expenses, including reasonable attorneys' fees and expenses, to the extent arising out of such Party's negligence or willful misconduct in performing any of its obligations under this MSA.

## SECTION 8. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL EITHER PARTY TO THIS MSA, OR THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, SUPPLIERS, OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY AFFILIATE FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (BEING DATA LOST IN THE COURSE OF TRANSMISSION VIA CUSTOMER'S SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF CYFLARE), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ANY AFFILIATE IN CONNECTION WITH THIS MSA OR THE SERVICES REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS MSA, CYFLARE'S AGGREGATE LIABILITY TO THE CUSTOMER, ANY CUSTOMER AFFILIATE, OR ANY THIRD PARTY ARISING OUT OF THIS MSA OR THE SERVICES WILL IN NO EVENT EXCEED THE FEES PAID BY THE CUSTOMER DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE THE RISKS UNDER THIS MSA BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF CYFLARE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. CYFLARE HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE CUSTOMERS WITH THE RIGHTS TO ACCESS AND USE THE SERVICES PROVIDED FOR IN THIS MSA. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN WILL APPLY IN AGGREGATE TO THE CUSTOMER AND ITS AFFILIATES AND SHALL NOT BE CUMULATIVE. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO CLAIMS OR DAMAGES RESULTING FROM CYFLARE'S IP CLAIMS INDEMNITY OBLIGATIONS IN THIS MSA. Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or for personal injury or death, which means that some of the above limitations may not apply to the Customer. IN THESE JURISDICTIONS, CYFLARE'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. Any claims or damages that Customer may have against CyFlare will only be enforceable against CyFlare and not any other entity or its officers, directors, representatives, or agents.

CyFlare, LLC
600 Fishers Station Rd, Suite 125
Victor, NY 14564

**P:** +1 877-729-3527
**E:** sales@cyflare.com

## Section 9. Export/Import Compliance

The Customer agrees to comply with all applicable export and import laws and regulations. Without limiting the foregoing: (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) the U.S. government has designated a country that is subject to a U.S. government embargo or that as a "terrorist supporting" country, (ii) Customer will not (and will not permit any of its users to) access or use the Solutions in violation of any U.S. export contracts, economic sanctions, embargos, or other trade prohibitions or restriction, and (iii) Customer will not directly or indirectly export, re-export, or release the Solutions to, or make the Solutions accessible from, any country, jurisdiction, or person to which export, re-export, or release is prohibited by applicable law; and (iv) Customer will not submit to CyFlare, directly or through the Solutions, any information that is controlled under the U.S. International Traffic in Arms Regulations. The Customer will comply with all applicable laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Solutions available outside the United States.

## Section 10. Miscellaneous

**10.1 Entire Agreement.** This MSA and the applicable SOW(s) constitute the entire Agreement and supersede all prior agreements between CyFlare and Customer regarding the subject matter hereof.

**10.2 Assignment.** Either Party may, without the consent of the other Party, assign this MSA to any affiliate or in connection with any merger, change of control, or the sale of all or substantially all of such Party's assets provided that (1) the other Party is provided prior notice of such assignment and (2) any such successor agrees to fulfill its obligations pursuant to this MSA. Subject to the foregoing restrictions, this MSA will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**10.3 Severability.** If any provision in this MSA is held by a court of competent jurisdiction to be unenforceable, such provision will be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of this MSA will remain in effect.

**10.4 Relationship of the Parties**. The Parties are independent contractors. This MSA does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

**10.5 Notices.** All notices provided by CyFlare to Customer under this MSA may be delivered in writing (a) by nationally recognized overnight delivery service ("Courier") or U.S. mail to the contact mailing address provided by Customer on the SOW, or (b) electronic mail to the electronic mail address provided for Customer's account owner. Customer must give notice to CyFlare in writing by Courier or U.S. mail to 600 Fishers Station Drive, Suite 125, Victor, NY 14565 Attn: Legal Department. All notices shall be deemed to have been given immediately upon delivery by electronic mail; or, if otherwise delivered upon the earlier of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

**10.6 Governing Law, Jurisdiction, Venue.** This Agreement shall be governed by the laws of the State of New York without regard to the conflicts of law provisions thereof. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Ontario County, New York in English and in accordance with the JAMS International Arbitration Rules then in effect. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, each Party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a

final decision by the arbitrator(s), provided that a permanent injunction and damages shall only be awarded by the arbitrator(s). In any action or proceeding to enforce rights under this Agreement, the prevailing Party shall be entitled to recover costs and attorneys' fees.

**10.7 Publicity and Marketing.** CyFlare may use Customer's name, logo, and trademarks solely to identify Customer as a Customer of CyFlare on CyFlare's website and other marketing materials and in accordance with Customer's trademark usage guidelines, if Customer provides same to CyFlare.

**10.8 Force Majeure.** If any performance by either Party shall be prevented, hindered, or delayed by reason of any cause beyond the reasonable control of such Party (such event being hereafter called an "event"), including, without limitation, acts of God, riots, fires, floods, unusually severe weather, unavailability or performance degradation of electrical resources or the Internet, strikes or other disputes involving such Party or its subcontractors or suppliers, acts of war, insurrection, civil unrest, terrorism, elevated risk of terrorism, riot or disorder, acts of governmental authorities, changes in law or regulation, or any other cause beyond the reasonable control of such Party, whether similar or dissimilar to those expressed hereinabove, such Party shall be excused from performance to the extent that its performance is so prevented, hindered or delayed. Such excuse from performance shall extend so long as the event continues to prevent, hinder or delay the performance by such Party. The Party whose performance is affected shall give the other party notice within 48 hours of the event specifying the event, the performance affected and the anticipated date, if any, performance can be made.

**10.9 Amendments.** CyFlare reserves the right to modify this MSA in CyFlare's sole discretion provided that changes to the Service Terms shall not materially decrease the Service features and functionalities that Customer has subscribed to during the then-current Term. Should CyFlare make any modifications to the MSA, CyFlare will post the amended terms on the applicable URL links and will update the "Last Updated Date" within such documents and notify the Customer via the Customer Portal, Customer newsletter, or such other written communication method implemented by CyFlare from time-to-time of any such changes. Customer may notify CyFlare within 30 days after the effective date of the change of its rejection of such change. If Customer notifies CyFlare of its rejection during such thirty (30) day period, then Customer will remain governed by the terms in effect immediately prior to the change until the end of Customer's then-current Term. However, any subsequent renewal of the Term will be renewed under the then-current terms unless otherwise agreed in writing by the parties.