

Terms of Service

This agreement (“**Agreement**”) is between a user or member of the Cyber Essentials Canada Portal (“**The Cyber Essentials Canada Portal**”) and Opportunities New Brunswick (“**ONB**”), the owner and operator of The Cyber Essentials Canada Portal. This Agreement covers your use of The Cyber Essentials Canada Portal and any printed materials and electronic documents relating to The Cyber Essentials Canada Portal (the “**Documents**”).

1. Introduction

Your use of The Cyber Essentials Canada Portal and the Documents constitutes your acceptance of this Agreement. Any person creating an account to use The Cyber Essentials Canada Portal has been explicitly asked to read and accept the terms of this Agreement, and you acknowledge and agree that you have done so.

If you do not agree with the terms of this Agreement, we will not license The Cyber Essentials Canada Portal or the Documents to you and you must (i) discontinue use of The Cyber Essentials Canada Portal and the Documents with immediate effect, (ii) make no further use of The Cyber Essentials Canada Portal or the Documents and (iii) not create, or cease to continue to create, an account to use The Cyber Essentials Canada Portal, and that you discontinue any further use of The Cyber Essentials Canada Portal or the Documents.

ONB may change any of the terms of this Agreement at any time, without your consent. The posting of the modified Agreement on The Cyber Essentials Canada Portal shall be sufficient notice of such changes and ONB shall not be required to provide you with any further or direct notice of such changes. All changes will become effective when ONB posts the modified Agreement on The Cyber Essentials Canada Portal. If you do not agree to any such changes, you may terminate your account. Continued use of The Cyber Essentials Canada Portal and the Documents by you will constitute your acceptance of the terms of the modified Agreement.

1.1. What is The Cyber Essentials Canada Portal?

The Cyber Essentials Canada Portal is a website, operating on Microsoft architecture, designed to help users understand cybersecurity best practices that may apply to their business/organization. It also serves to allow its users to create an inventory of their organization’s digital assets and cybersecurity policies and practices within the portal itself. Pre-approved third-party assessors (upon the end-user granting permission) are granted access to perform an assessment of the responses provided and recommend certification under a government-backed and approved cybersecurity certification program.

1.2. Who is a User?

User also includes any person who views or accesses pages within the <https://portal.cyberessentialscanada.ca/> (whether logged in or not) or who creates an account to use The Cyber Essentials Canada Portal or the Documents.

Where you are a corporation, partnership, organization or other entity other than a natural person, you agree to cause your affiliates, associates, officers, directors, employees, agents

and other representatives (“**Representatives**”) that use or are proposed to use The Cyber Essentials Canada Portal or the Documents to agree to the terms of this Agreement, and you agree not to permit any Representatives that do not agree to the terms of this Agreement to use The Cyber Essentials Canada Portal or the Documents. Notwithstanding the foregoing, every natural person who views or accesses pages within the <https://portal.cyberessentialscanada.ca/> (whether logged in or not) or who creates an account to use The Cyber Essentials Canada Portal or the Documents shall be deemed to be a User for the purposes of this Agreement.

1.3. What is a cybersecurity best practice?

A cybersecurity best practice, as defined herein, is a defined activity, rule, or business practice that an organization observes in the endeavor to protect its digital assets. In the case of The Cyber Essentials Canada Portal, such best practices are specifically defined by the Cyber Essentials governing certification requirements (<https://www.cyberessentials.ncsc.gov.uk/>) and/or the Government of Canada’s Baseline Cyber Security Controls for Small and Medium Organizations (<https://cyber.gc.ca/en/guidance/baseline-cyber-security-controls-small-and-medium-organizations>).

1.4. What is a digital asset?

A digital asset is defined as a devices and software that are within this boundary and that meet the conditions below:

- Accept incoming network connections from untrusted internet-connected hosts;
- Establish user-initiated outbound connections to arbitrary devices via the internet;
- Control the flow of data between any of the above devices and the internet.

1.5. What is a cybersecurity policy?

A cybersecurity policy is defined as an official corporate document outlining a formal set of rules, processes, and procedures by which those people who are given access to the company technology and information assets must abide.

1.6. What is a pre-approved third-party assessor?

A pre-approved third-party assessor (or “**Certification Body**”) is defined as is a company that has been accredited by the Cyber Essentials Canada Authority and has been granted jurisdiction to conduct certification assessments on behalf of the Authority. The Certification Body Organization must also maintain Cyber Essentials certification themselves.

1.7. What is a cybersecurity certification program?

A cybersecurity certification program is an official confirmation of compliance to a cybersecurity standard, which is confirmed by external review.

2. Licence and Fees

2.1. In consideration of the payment of the Fees, and your agreement to abide by the terms and condition of this Agreement, ONB licences use of The Cyber Essentials Canada Portal and the Documents to you, subject to the terms on the basis of this Agreement. ONB does not sell The Cyber Essentials Canada Portal or the Documents to you. ONB remains the owner of The Cyber Essentials Canada Portal and the Documents.

2.2. You may:

2.2.1. use The Cyber Essentials Canada Portal on one or more compatible devices owned or controlled by you during the term for which the licence hereunder has been granted only; and

2.2.2. use any Documents in support of the use if The Cyber Essentials Canada Portal permitted hereunder and make such a number of copies of the Documents as are reasonably necessary for its lawful use.

2.3. You acknowledge that the use of The Cyber Essentials Canada Portal and the Documents is restricted to your internal business only, and that you may not use The Cyber Essentials Canada Portal or the Documents to provide services to third parties, or to any subsidiary or holding company owned by you.

2.4. The annual Fees payable for access to The Cyber Essentials Canada Portal and the Documents as notified by ONB from time to time (“**\$1750.00 CAD**”) shall be due and payable annually in advance by you, at the then current rate notified by ONB prior to the expiry of the then current term. If we have not received payment by the due date, without prejudice to any other rights or remedies we may have, we may disable your login name(s) and password(s), account(s) and access to The Cyber Essentials Canada

Portal and the Documents until receipt of all outstanding sums in full and/or we may, at our option, charge interest at a rate of 4% above the then current Bank of Canada base rate from time to time from the due date until the date of payment in full of all outstanding sums. The Fees are exclusive of any value added tax which shall be payable in addition. You acknowledge that ONB shall be entitled to increase the Fees at the start of each new Term of use of The Cyber Essentials Canada Portal and the Documents.

3. Basic Terms

- 3.1. You must be 16 years or older to use The Cyber Essentials Canada Portal and the Documents.
- 3.2. You are responsible for any activity that occurs under your username.
- 3.3. You are responsible for keeping your password secure. You will ensure that you keep and maintain the security of any and all user login(s) and password(s) to access The Cyber Essentials Canada Portal and the Documents, and will keep all user login(s) and password(s) confidential.
- 3.4. Your use of The Cyber Essentials Canada Portal and the Documents is subject to ONB's Privacy Policy <https://onbcanada.ca/privacy-policy/> , the terms of which are incorporated herein.
- 3.5. You may not use The Cyber Essentials Canada Portal, or the Documents and the services offered thereunder for any illegal (whether in your jurisdiction or ONB's jurisdiction) or any other unauthorized purpose or to abuse, canvass, threaten, impersonate or intimidate others.
- 3.6. You are solely responsible for your conduct and any data, text, information, screen names, graphics, photos, profiles, audio and video clips and links ("**Content**") that you submit, post, and display on The Cyber Essentials Canada Portal.
- 3.7. You must not:
 - 3.7.1. upload, post, email, create, store, distribute or otherwise transmit Content that is unlawful, harmful, harassing, offensive, threatening, libellous, defamatory, discriminatory, offensive, vulgar, obscene, pornographic, illegal, invasive of another's privacy or racially, ethnically or otherwise objectionable or violates or infringes any party's intellectual property or this Agreement;
 - 3.7.2. upload, post, email, create, store, distribute or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or fiduciary relationship;
 - 3.7.3. upload, post, email, create, store, distribute or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "Junk Mail", "Spam", "chain letters", "pyramid schemes", or any other form of solicitation;

- 3.7.4. modify, adapt or hack The Cyber Essentials Canada Portal or the Documents or modify another website so as to falsely imply that it is associated with The Cyber Essentials Canada Portal;
- 3.7.5. upload, post, email, create, store, distribute or otherwise transmit any worms or viruses or any code of a destructive nature;
- 3.7.6. use or attempt to use any “deep link”, “scraper”, “robot”, “bot”, “spider”, “data mining”, “computer code” or any other automated or manual device, program, tool, algorithm, process or methodology having any similar processes or functionality to access, acquire, copy, or monitor any portion of The Cyber Essentials Canada Portal or any data or content found on or accessed through The Cyber Essentials Canada Portal without the express written consent of ONB or where such copying is incidental to normal use of The Cyber Essentials Canada Portal, or where it is necessary for the purpose of back-up or operational security;
- 3.7.7. disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of The Cyber Essentials Canada Portal, nor attempt to do any such thing;
- 3.7.8. sell, rent, lease, sub-license, loan, translate, merge, adapt, vary or modify The Cyber Essentials Canada Portal or the Documents;
- 3.7.9. provide or otherwise make available The Cyber Essentials Canada Portal or the Documents in whole or in part (including without limitation program listings, object and source program listings, object code and source code), in any form to any other person;
- 3.7.10. make alterations to, or modifications of, the whole or any part of The Cyber Essentials Canada Portal or the Documents, nor permit The Cyber Essentials Canada Portal or the Documents or any part of them to be combined with, or become incorporated in, any other programs;
- 3.7.11. interfere or attempt to interfere with the proper working of The Cyber Essentials Canada Portal, the Documents or any activities conducted on or through The Cyber Essentials Canada Portal in any manner;
- 3.7.12. access, store, distribute or transmit any viruses, malicious code, Trojan horse, worm or any other similar thing or device that is designed or has the effect of preventing, impairing or adversely affecting the operation of The Cyber Essentials Canada Portal, hardware or networks; or
- 3.7.13. take or attempt any action that, in the sole discretion of ONB, imposes or may impose what ONB deems to be an unreasonable or disproportionately large burden on The Cyber Essentials Canada Portal or the infrastructure of The Cyber Essentials Canada Portal.

- 3.8. You understand and agree that ONB cannot be responsible for the Content posted on The Cyber Essentials Canada Portal, you may be exposed to such materials and you use The Cyber Essentials Canada Portal and the Documents at your own risk. The Cyber Essentials Canada Portal, the Documents, the services offered thereunder and Content are provided “as is” and without warranties of any kind either express or implied, including without limitation implied warranties of merchantability or fitness for a particular purpose. You acknowledge that The Cyber Essentials Canada Portal has not been developed to meet any individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of The Cyber Essentials Canada Portal as described in the Documents meet your requirements.
- 3.9. Violation of any of these terms will result in the termination of your The Cyber Essentials Canada Portal account. Violations will be determined at the sole discretion of ONB.
- 3.10. You should print a copy of this licence for future reference.

4. Availability

- 4.1. ONB will make commercially reasonable efforts to make The Cyber Essentials Canada Portal and the Documents available 24 hours a day, seven days a week, except for planned maintenance, which may be carried out between 8:00 p.m. and 6:00 a.m. (New Brunswick time), and any unscheduled maintenance, which may be carried out on giving reasonable notice to you.
- 4.2. If you notify us in writing of any defect or fault in the The Cyber Essentials Canada Portal as a result of which it fails to perform substantially in accordance with the Documents, and provided that you make available all the information that may be necessary to help us provide technical support, including sufficient information to enable us to recreate the defect or fault, we will make all commercially reasonable efforts to provide technical support of The Cyber Essentials Canada Portal to you. Such technical support shall be available by email communication in the English or French language, and any other language that may be available from time to time, during ONB’s regular business hours, subject to further restrictions, which may be set forth at the The Cyber Essentials Canada Portal website or otherwise published by ONB and provided or made available to you.

5. General Conditions

- 5.1. We reserve the right to modify or terminate The Cyber Essentials Canada Portal and the Documents for any reason, without notice at any time.
- 5.2. We reserve the right to refuse service to anyone for any reason at any time.
- 5.3. We may, but have no obligation to, remove Content and accounts containing Content that we determine in our sole discretion are unlawful, offensive, threatening, libellous, defamatory, obscene or otherwise objectionable or that violates any third party’s intellectual property or other rights or this Agreement.

6. Terms of Access and Viewing

6.1. Copyright Terms and Conditions

6.1.1. Content on The Cyber Essentials Canada Portal may be owned by ONB, or by The Cyber Essentials Canada Portal users that upload information, including yourself.

6.1.2. Regardless of the source of ownership, the following general terms and conditions apply:

6.1.2.1. you expressly acknowledge and agree that The Cyber Essentials Canada Portal and the Documents contain content which are comprised of information, text, software, photos, video, graphics, music, sounds and other material that are protected by copyrights, trademarks, trade secrets, patents or other proprietary rights (“**Intellectual Property Rights**”), that these Intellectual Property Rights, registered or otherwise, are valid and protected in all forms, media and technologies existing now or developed later, and that all right, title and interest in and to the Content, including without limitation all Intellectual Property Rights, belong solely and exclusively to the owner of such content; and

6.1.2.2. we will undertake commercially reasonable efforts to obey all relevant copyright laws. ONB will review claims of copyright infringement received and remove Content deemed by us, acting in our sole discretion, to have been posted or distributed in violation of any such laws.

6.1.3. To make a copyright related claim please send to [email address] or [mailing address].

6.2. ONB’s Intellectual Property

6.3. ONB claims Intellectual Property Rights over The Cyber Essentials Canada Portal and all documentation related thereto, including without limitation the Documents, and including all help files, FAQs, on-screen text and help, demos, and other related materials, as well as all marketing materials, agreements, and other materials created and published by ONB for use by users of The Cyber Essentials Canada Portal and the Documents.

6.4. You acknowledge and agree that all Intellectual Property Rights in The Cyber Essentials Canada Portal and the Documents anywhere in the world belong to ONB, that rights in The Cyber Essentials Canada Portal and the Documents are licensed (not sold) to you, and that you have no rights in, or to, The Cyber Essentials Canada Portal or the Documents, other than the right to use them in accordance with the terms of this Agreement.

6.5. You acknowledge that you have no right to have access to The Cyber Essentials Canada Portal in source code form or in unlocked coding or with comments.

6.6. The integrity of The Cyber Essentials Canada Portal is or may be protected by technical protection measures (“**TPM**”) so that the Intellectual Property Rights, including copyright, in The Cyber Essentials Canada Portal are not misappropriated, and you agree not to, and not to attempt in any way to, remove or circumvent any such TPM, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in your possession for private or commercial purposes any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of such TPM.

6.7. The trademarks, logos, and service marks (“**Marks**”) displayed on The Cyber Essentials Canada Portal and in the Documents are the property of ONB. You are not permitted to use the Marks unless you have the prior written consent of ONB.

6.8. Your Data

6.8.1. You will own all right, title and interest in and to all of your Content, and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of the your Content.

6.8.2. We will archive and back up data accessed and stored via The Cyber Essentials Canada Portal in accordance with good practice. In the event of any loss or damage to your Content, our sole responsibility is to restore it to the latest clean backup that we are storing in accordance with our storage processes. You acknowledge that ONB is not responsible for any loss, destruction or alteration to any of your Content caused by any third party other than a third party ONB instructs to perform any services in connection with The Cyber Essentials Canada Portal.

6.8.3. If, and to the extent that we process any personal data on behalf of you when performing our obligations under this Agreement, you shall be the data controller and we shall be a data processor and in any such case:

6.8.3.1. you acknowledge and agree that the personal data may be transferred or stored outside Canada in order to provide The Cyber Essentials Canada Portal and deliver our obligations under this Agreement;

6.8.3.2. you shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with this agreement on your behalf;

6.8.3.3. you shall ensure that all relevant third parties, including your Representatives, have been informed of, and have given appropriate consent to such use, processing, and transfer as required by all applicable data protection legislation; and

6.8.3.4. we shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by you from time to time; and each party shall take appropriate technical and organisational

measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6.9. Terms of Technical Viewing Requirements

- 6.9.1. ONB cannot guarantee that any portion of The Cyber Essentials Canada Portal or the Documents, including Content distributed through The Cyber Essentials Canada Portal, will function in every browser or on every platform. Whenever possible, ONB will provide information about the recommended or minimum browser type, browser settings, plug-ins or platform characteristics required to view any portion of The Cyber Essentials Canada Portal, the Documents and any Content distributed through The Cyber Essentials Canada Portal.
- 6.9.2. Before purchasing a license for The Cyber Essentials Canada Portal, please check the minimum viewing requirements. However, ONB will not guarantee that The Cyber Essentials Canada Portal, the Documents and any Content distributed through The Cyber Essentials Canada Portal will function as described in the requirements.
- 6.9.3. You shall be responsible for obtaining and maintaining all telephones, network access computer hardware and software, and other equipment needed for access and use of The Cyber Essentials Canada Portal and the Documents and for any and all charges related thereto. It is your responsibility to check your computer and software configuration to determine whether you will be able to view The Cyber Essentials Canada Portal, the Documents and any Content distributed through The Cyber Essentials Canada Portal prior to enrolling or purchasing.

7. Termination of Accounts

7.1. Termination of User Accounts

- 7.1.1. You may terminate your The Cyber Essentials Canada Portal account at any time and without cause by utilizing the functionality of The Cyber Essentials Canada Portal. You will not be entitled to a refund for any Fees paid upon your cancellation of your account.
- 7.1.2. ONB may, in its sole and absolute discretion, and with or without notice, suspend your access to all or any part of The Cyber Essentials Canada Portal or the Documents, or terminate this Agreement and thus your rights to use The Cyber Essentials Canada Portal and the Documents, for any conduct or use (whether by you or anyone else having access under your login name(s) and password(s)) that ONB believes is harmful to other users, The Cyber Essentials Canada Portal's Content providers or to The Cyber Essentials Canada Portal or the interests of ONB .
- 7.1.3. The termination process will include without limitation the following actions:
 - 7.1.3.1. Removal of your account and profile from The Cyber Essentials Canada Portal;

- 7.1.3.2. Removal of your membership and access to “community” services associated with The Cyber Essentials Canada Portal;
 - 7.1.3.3. Termination of all notifications to your email account;
 - 7.1.3.4. Termination of access to all Content that is protected by password restriction; and
 - 7.1.3.5. Removal of all of your personal records.
- 7.1.4. As part of the termination process, ONB has the right to take one or more of the following actions at its discretion:
- 7.1.4.1. Remove contributions you have made to The Cyber Essentials Canada Portal discussion forums, question/answer forums, comments, and ratings; unless some or all of these are deemed to be in violation of this Agreement; and
 - 7.1.4.2. Remove certain records of your history in The Cyber Essentials Canada Portal.

7.2. Effect of Termination

Upon Termination of this Agreement, for any reason:

- 7.2.1. all rights granted to you under this Agreement shall immediately cease;
- 7.2.2. you must immediately cease all activities authorised by this Agreement; and
- 7.2.3. you must immediately delete or remove The Cyber Essentials Canada Portal from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of The Cyber Essentials Canada Portal and Documents then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

7.3. General Statement of Termination

It may be impossible to delete an account or Content without some residual information remaining in our system due to the presence of ONB maintained backups and records of deletions. ONB reserves the right not to delete information in order to comply with applicable local laws or regulations. In particular, you acknowledge and agree that this Agreement is subject to applicable provincial laws, including without limitation the *Right to Information and Protection of Privacy Act* (New Brunswick) and the *Public Records Act* (New Brunswick).

8. Liability

8.1. Limited Warranty

8.1.1. We warrant that services will be performed with reasonable skill and care, and providing that The Cyber Essentials Canada Portal is used on compatible devices:

8.1.1.1. The Cyber Essentials Canada Portal will, perform substantially in accordance with the functions described in the Documents; and

8.1.1.2. the Documents correctly describe the operation of The Cyber Essentials Canada Portal in all material respects.

8.2. Limitation of Liability

8.2.1. The warranty does not apply if the defect or fault in The Cyber Essentials Canada Portal results from:

8.2.1.1. any modifications or customisation of The Cyber Essentials Canada Portal not made or authorised by ONB;

8.2.1.2. incorrect or unauthorised use of The Cyber Essentials Canada Portal or use not in accordance with the Documents;

8.2.1.3. any fault in the hardware upon which The Cyber Essentials Canada Portal is run;

8.2.1.4. any programs used in conjunction with The Cyber Essentials Canada Portal;

8.2.1.5. use of The Cyber Essentials Canada Portal on devices other than compatible devices specified in any response to a written email request as to compatibility from us; and

8.2.1.6. the environment where The Cyber Essentials Canada Portal is used which shall include without limitation a poor Wi-Fi network or internet connection used to run The Cyber Essentials Canada Portal.

8.2.2. ONB does not warrant that The Cyber Essentials Canada Portal will be uninterrupted or error free; nor does ONB make any warranty as to the results that may be obtained from your use of The Cyber Essentials Canada Portal or the Documents, or as to the accuracy, reliability, completeness, or content of **any** information, third party website, software, Content or merchandise that may be provided through The Cyber Essentials Canada Portal.

8.2.3. ONB exercises no editorial control over Content distributed and published through The Cyber Essentials Canada Portal. We do not pre-screen third-party Content. The views and opinions expressed in such information do not necessarily reflect those of ONB or any of its Representatives or Her Majesty the Queen In Right of the Province of New Brunswick or any of its Representatives.

- 8.2.4. ONB assumes no responsibility for any Content or any material outside of The Cyber Essentials Canada Portal which may be accessed through any hypertext or other computer “links”.
- 8.2.5. No statement, information or advice, including without limitation statements regarding capacity, suitability for use or performance, whether made by ONB or any of its Representatives or any reseller or otherwise, which is not contained in this Agreement, shall be deemed to be a warranty by ONB for any purpose or give rise to any liability of ONB whatsoever, and you agree that you will not rely on any such statement, information or advice.
- 8.2.6. The Cyber Essentials Canada Portal may contain public forums (the “**Forums**”) where feedback and other comments can be reported directly to The Cyber Essentials Canada Portal. Information that is voluntarily submitted to the Forums is used to improve The Cyber Essentials Canada Portal’s services. ONB reserves the right to utilize this information for marketing purposes, for instance by displaying selected comments on The Cyber Essentials Canada Portal, in the Documents or in other communications. Use and participation in the Forums is a specific consent to ONB utilizing a user displayed comment for marketing purposes. If ONB chooses to display a user-submitted comment, it will either display it anonymously, stripping away all personally identifiable information, or request permission directly from you before displaying any such personally identifiable information.
- 8.2.7. ONB shall not under any circumstances be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with you for:
 - 8.2.7.1. loss of profits, sales, business, or revenue;
 - 8.2.7.2. business interruption;
 - 8.2.7.3. loss of anticipated savings;
 - 8.2.7.4. loss or corruption of data or information;
 - 8.2.7.5. loss of business opportunity, goodwill or reputation; or
 - 8.2.7.6. any indirect or consequential loss or damage.
- 8.2.8. ONB’s maximum aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the sums paid by you to us for the licence of The Cyber Essentials Canada Portal.
- 8.2.9. Nothing in this Agreement shall limit or exclude either party’s liability for, as applicable:
 - 8.2.9.1. death or personal injury resulting from your negligence;

8.2.9.2. fraud or fraudulent misrepresentation; or

8.2.9.3. any other liability that cannot be excluded or limited by Applicable Laws (as hereinafter defined).

8.2.10. **EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 8, UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE OF ONB OR ANY THIRD PARTY, SHALL ONB BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES THAT ARISE FROM LOSS OF ANTICIPATED REVENUE, LOSS OF INFORMATION OR MATERIAL OF ANY KIND, LOST PROFITS, LOSS OF BUSINESS AND INJURY TO PROPERTY, EVEN IF ONB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) THAT ARISE IN CONNECTION WITH OR RESULT FROM YOUR USE OF OR INABILITY TO USE ONB INCLUDING, BUT NOT LIMITED TO, YOUR RELIANCE ON ANY MATERIALS, CONTENT, INFORMATION, WEBSITES, SOFTWARE OR PRODUCTS OBTAINED ON The Cyber Essentials Canada Portal WEBSITE, OR MISTAKES, OMISSIONS, INTERRUPTIONS, COMMUNICATIONS FAILURE, DELETION OF FILES OR E-MAIL, ERRORS, DEFECTS, VIRUSES, TROJAN HORSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, OR THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO YOUR RECORDS, PROGRAMS OR WEBSITES.**

8.3. Indemnification by You

You agree to defend, indemnify and hold harmless ONB and its related parties and Her Majesty the Queen In Right of the Province of New Brunswick and its Representatives from any claims and expenses related to any violation of this Agreement by your use of The Cyber Essentials Canada Portal or the Documents, or in connection with the placement or transmission by you of any material on The Cyber Essentials Canada Portal, except as expressly authorized in this Agreement.

8.4. Indemnification by ONB

8.4.1. We shall defend you against any claim that The Cyber Essentials Canada Portal or the Documents infringes any Canadian copyright, trade mark, database right or right of confidentiality, and shall subject to section 8.4.3, indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that we are given prompt notice of any claim and sole control of the defence and, you cooperates in the defence or settlement of the claim.

8.4.2. In the defence or settlement of any claim, ONB may procure the right for you to continue using The Cyber Essentials Canada Portal, replace or modify The Cyber Essentials Canada Portal or any Documents so that they become non-infringing or, if such remedies are not reasonably available, Terminate this agreement on two business days' notice to you, and repay the unused portion of the Fees but without

additional liability or obligation to pay liquidated damages or other additional costs to you.

8.4.3. In no event shall ONB, its related parties, Her Majesty the Queen In Right of the Province of New Brunswick or its Representatives, be liable to you to the extent that any alleged infringement is based on:

8.4.3.1. a modification of The Cyber Essentials Canada Portal or the Documents by anyone other than ONB; or

8.4.3.2. any use of The Cyber Essentials Canada Portal or the Documents in a manner contrary to the instructions given by ONB; or

8.4.3.3. any continued use of The Cyber Essentials Canada Portal or the Documents after notice of any alleged or actual infringement.

8.4.4. This section 8.4 states your sole and exclusive rights and remedies, and ONB's entire obligations and liability, for infringement of any Intellectual Property Rights or right of confidentiality.

9. Events Outside Our Control

9.1. You are responsible for procuring or carrying out onsite testing to check that the devices on which The Cyber Essentials Canada Portal is to be used are compatible devices. We accept no responsibility or liability in respect of any issues arising from the use of The Cyber Essentials Canada Portal which is directly or indirectly attributable to the location where it is attempted to be used.

9.2. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Agreement that is caused by an Event Outside Our Control. An "**Event Outside Our Control**" means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.

9.3. If an Event Outside Our Control takes place that affects the performance of our obligations under this Agreement:

9.3.1.1. our obligations under this Agreement will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and

9.3.1.2. we will use our reasonable endeavours to find a solution by which our obligations under this Agreement may be performed despite the Event outside Our Control.

10. Miscellaneous

10.1. You acknowledge that ONB will be irreparably harmed by any breach of this Agreement by you or by your unauthorized use of The Cyber Essentials Canada Portal or Content

and, further, that monetary damages may not be a sufficient remedy for such harm. You agree that ONB shall be entitled, without waiving any other rights or remedies and without further demonstration of irreparable harm or the inadequacy of monetary damages, to obtain injunctive or other equitable relief in the event of any breach of this Agreement by you or by your unauthorized use of The Cyber Essentials Canada Portal or Content.

- 10.2. In addition to being a part of the subscription form, this Agreement resides on-line at The Cyber Essentials Canada Portal under the terms of use link so that you may reference it at any time.
- 10.3. This Agreement is the entire agreement between ONB and you with respect to The Cyber Essentials Canada Portal. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in this Agreement.
- 10.4. Headings in this Agreement are for your convenience only and do not have any legal meaning or effect. If any part of this Agreement is invalid, the rest of this Agreement will remain in effect. If ONB waives or fails to enforce any term or condition of this Agreement on any one or more occasions, whether by conduct or otherwise, its waiver or failure to enforce will not mean that it must waive or cannot enforce such term or condition on any other occasion, or any other term or condition of this Agreement. The meaning of this Agreement cannot be changed by your conduct, even if repeated, or by any custom or practice of others engaged in the same or similar businesses.
- 10.5. Nothing in this Agreement is intended to create any partnership or joint venture between the parties, nor authorize either party as agent with binding authority to act on behalf of the other.
- 10.6. We may assign or otherwise transfer our rights and obligations under this Agreement to a third party, but this will not affect your rights or our obligations under this Agreement. You may not transfer your rights or obligations under this Agreement.
- 10.7. By accessing The Cyber Essentials Canada Portal, you agree that all matters relating to your use of The Cyber Essentials Canada Portal and the Documents shall be governed by and construed in accordance with the laws of New Brunswick and the federal laws of Canada applicable therein (“**Applicable Laws**”), without giving effect to any principles of conflicts of law, and that the courts of New Brunswick shall have exclusive jurisdiction to resolve all disputes arising from the use of The Cyber Essentials Canada Portal.

If you wish to contact us in writing, or if any condition in this Agreement requires you to give us notice in writing, you can send this to us by e-mail or by mail to;

40 Crowther Lane / 40 voie Crowther,
Suite 220, Knowledge Park,
Fredericton NB E3C 0J1
Canada
info@CyberNB.ca

10.8. . We will confirm receipt of this by contacting you in writing, normally by e-mail.