



CyberCX UK Ltd

Terms and Conditions

G-Cloud 14

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CyberCX UK – General Terms and Conditions

1. Performance of Services

1.1 Provision of the Services

- (a) These general terms and conditions apply to:
- (i) any Proposal or Quote that is submitted to, and is accepted by, the Client; or
 - (ii) any SOW that references and incorporates these general terms and conditions.
- (b) During the Term, CyberCX agrees to perform the Services as set out in a Proposal, Quote or SOW (as relevant) and any acceptance and delivery will only be in accordance with the terms of this Agreement, and no other terms or conditions contained in any other Client document will apply or be incorporated. The Client acknowledges and agrees that the Services may be performed and invoiced by CyberCX or any of its Associated Bodies Corporate.
- (c) When performing any Services, CyberCX agrees to:
- (i) comply with all reasonable directions of the Client and all applicable Laws in performance of its obligations;
 - (ii) comply with all reasonable health and safety policies of the Client whilst on the Client's site as provided to CyberCX prior to commencing the work; and
 - (iii) use reasonable endeavours to have any specific personnel identified in a Proposal, Quote or SOW available to perform the Services and will provide the Client with reasonable notice if it intends to replace or reassign such personnel.
- (d) The Client agrees to reasonably facilitate CyberCX's supply of any Services or Products, including:
- (i) providing CyberCX with safe and timely access and authorisation to access and use the Client's Systems, personnel, facilities, site and utilities as reasonably required;
 - (ii) providing CyberCX with any requested information relevant to the provision of the Services in a timely and accurate manner;
 - (iii) ensuring the Client's Systems are virus free and backed-up prior to, and during, the performance of the Services; and
 - (iv) complying with all reasonable requests or directions of CyberCX.
- (e) Client acknowledges that, due to the nature of some Services, CyberCX's proper performance of those Services may have an impact on Client's Systems, and that the Client should create and maintain a backup of its relevant Systems prior to CyberCX commencing any work on those Systems.

1.2 Use of subcontractors

- (a) If a Proposal or SOW indicates that CyberCX will use any subcontractors, CyberCX will be liable for:
- (i) the performance of obligations by its subcontractors; and
 - (ii) provision of the Services by its subcontractors.

1.3 Provision of Products

- (a) At any time during the Term the Client may request to purchase any Products offered for sale or resale by CyberCX by submitting a purchase order to CyberCX.
- (b) The purchase order must explicitly reference these general terms and conditions (and not seek to incorporate any other terms) and set out the type and quantity of the Product/s to be purchased and the desired date for delivery of the Products.
- (c) CyberCX will provide the Client with written notification of acceptance or rejection of the purchase order, the proposed delivery date along with any variable price changes (including exchange rate, delivery or third-party pricing changes) as relevant for the purchase of the Products. Failure by CyberCX to confirm receipt of the purchase order is not an acceptance of that purchase order.
- (d) All risk in any deliverable transfers to the Client upon delivery to the Client and title passes on payment in full.

- (e) As an alternative to the above, CyberCX may provide the Client with an offer to purchase Products via the AWS Marketplace (AWSM) in certain circumstances (**Platform Offer**). A Platform Offer can only be accepted via the AWSM platform by the Client (and the Client must agree to any AWSM platform terms, and any third party vendor terms (such as an end user license agreement, EULA). Where a Platform Offer is made by CyberCX it is deemed to incorporate these terms to the exclusion of all others. To avoid any doubt, signature of a Quote, Proposal or SOW by a Client does not constitute acceptance of a Platform Offer until the Client has accepted the offer via the AWSM platform.

1.4 Access and delays

- (a) The Client will be responsible for any delays caused or contributed to by the Client, including failure to provide any information or access to any Client premises or Systems necessary for any of the Services at least 5 Business Days prior to commencement of the applicable Services.
- (b) If the Client requests CyberCX to cancel, delay, reschedule or suspend the Services with less than 3 Business Days' notice, the Client must pay CyberCX its reasonable costs associated with such cancellation, delay, rescheduling or suspension.

2. Authorisation

The Client authorises CyberCX and CyberCX's Personnel to access and use the Client's networks and Systems as reasonably required to provide the Services.

3. Specific Services Terms

To the extent the Services include:

- (a) Security Testing Services, the terms in Schedule 1 apply;
 - (b) Digital Forensic Services, the terms in Schedule 2 apply; and
 - (c) Staff Augmentation Services, the terms in Schedule 3 apply,
- and the terms of each relevant schedule will apply to the provision of those Services and take precedence over these terms to the extent of any conflict.

4. Governance Risk, Compliance and Privacy Advisory

- (a) The Client is responsible for ensuring that the selection and use of Products and Services satisfies all of the Client's legal, regulatory and compliance obligations.
- (b) Unless set out in a Proposal, Quote or SOW, CyberCX is not responsible for any of the Client's legal, regulatory or compliance obligations.

5. Term

Unless otherwise terminated in accordance with clause 13, this Agreement commences on the earlier day of CyberCX providing the Services, the acceptance by CyberCX of a Client purchase order or as otherwise agreed in writing and continues for the duration set out in the applicable Proposal, Quote or SOW (**Term**).

6. Invoices & Payments

- (a) The Client agrees to pay CyberCX for the provision of the Services and for the supply of any Products, as set out in a valid tax invoice issued by CyberCX.
- (b) The Client agrees to pay CyberCX for all travel and related expenses reasonably incurred by CyberCX to meet the Client's written direction or delivery requirements.
- (c) CyberCX will issue invoices as set out in an applicable Proposal, Quote or SOW, or otherwise at the end of the month in which the

Services are delivered, or in respect of Products and Third Party Material, upon acceptance of a purchase order for the Products.

- (d) The Client must pay all invoices within 30 days of the invoice date by electronic funds transfer to an account specified by CyberCX.
- (e) All fees and prices are provided exclusive of all applicable taxes, duties, value added tax and government charges (**Taxes**). If Taxes are payable for, or charged on, any supply made by CyberCX under this Agreement, Client must pay an amount equal to the amount of Taxes charged on such supply, at the same time as the amounts due.
- (f) The Client may not set-off, counterclaim or deduct any amount from an amount owing to CyberCX, unless it has notified CyberCX in writing of any disputed invoices within 5 Business Days of receipt detailing the amount and the reason for the dispute. In such circumstances the Client must pay CyberCX the portion of the invoiced amounts not in dispute on the due date for payment.

7. Intellectual Property

7.1 Background IP

Each party retains all title and ownership in its own its Background IP.

7.2 Intellectual Property in Deliverables and provision of Services

- (a) Subject to clauses 7.1 and 7.3, all intellectual property rights in the Deliverables, the Services and any other material created by or for CyberCX in delivering the Services remain the property of CyberCX.
- (b) Subject to clause 7.3, CyberCX grants to the Client a non-exclusive, non-transferable, non-sub licensable, royalty-free (excluding any payments due under clause 6) licence for the Term (except for documentary Deliverables for which the license will be perpetual) to use throughout the world, intellectual property rights in the Deliverables, the Services and any other material created by CyberCX in delivering the Services for the sole and limited purpose of enjoying the benefit of the Services as set out in the Proposal, Quote or SOW.

7.3 Third party intellectual property

- (a) In providing the Services, CyberCX may provide the Client with software, Services or Deliverables that are, or include, software, services or other material which is owned by or is proprietary to a third party (**Third Party Material**). The Client agrees that:
 - (i) all Third Party Material, including Services, is provided 'as is' by CyberCX as reseller as facilitator;
 - (ii) its use or acceptance of any Third Party Material is conditional on the Client's acceptance of the third party licensor's licence agreement or terms of use (**Third Party Licence**); and
 - (iii) title in any Third Party Material remains at all times with the third party unless provided otherwise in a Third Party Licence.

8. Confidentiality

- (a) Each party agrees that where it, its Personnel, or its Associated Bodies Corporate, are the recipient of Confidential Information (**Recipient**) of the other party (**Disclosing Party**), the Recipient must:
 - (i) treat all Confidential Information as confidential and not use it except as reasonably necessary for the purposes of this Agreement;
 - (ii) hold the Confidential Information in strict confidence and not disclose it to any third party (subject to any legal requirement on the Recipient to disclose the Confidential Information), except to a member of that party's Personnel who needs such Confidential Information in order to perform his or her duties and provided that such member has a legal or contractual obligation to maintain the confidentiality of such Confidential Information;

- (iii) immediately notify the Disclosing Party in writing if the Recipient suspects that any Confidential Information may have been accessed by any unauthorised party;
 - (iv) use, at a minimum, the same degree of care with respect to its obligations under this Agreement as it employs with respect to its own confidential or proprietary information, but in no event less than reasonable care; and
 - (v) upon request by the Disclosing Party or termination of this Agreement, promptly deliver to the Disclosing Party any Confidential Information in its custody, control or possession.
- (b) Nothing in this Agreement requires a party to return or destroy any information contained in systems, archives or backups which cannot be practicably deleted, which must be retained as required by Law, any accounting standard or the rules of any stock exchange or for sound corporate governance purposes.
 - (c) Unless otherwise agreed in writing by the Disclosing Party, the obligations of confidentiality in clause 8(a)(i) do not apply to the extent the Confidential Information:
 - (i) has been lawfully disclosed to the Recipient by a third party free from obligations of confidentiality; or
 - (ii) is in the public domain (other than through a breach of this Agreement).
 - (d) The provisions of this clause 8 shall continue in force indefinitely following the termination of this Agreement.

9. Privacy

- (a) Both parties agree to comply with the Data Protection Laws in relation to the provision and use of the Services.
- (b) Where the Client discloses Personal Data (**Client Personal Data**) to CyberCX, or permits CyberCX to collect, access, or handle or process Client Personal Data under this Agreement, the Client represents and warrants that it has: obtained (and will maintain) any authorisations or consents from relevant individuals; (ii) identified a valid basis (and condition, if required) for processing, and (iii) provided all necessary privacy information to the relevant individuals, in each case in order to ensure that such processing of the Client Personal Data by or on behalf of CyberCX and the Client under this Agreement is compliant with all applicable Data Protection Laws (**Necessary Authorisations**).
- (c) CyberCX will only collect, access, use, disclose or handle Client Personal Data to the extent necessary for performance of the Services.

10. Data Security

- (a) CyberCX will take reasonable technical and administrative precautions within its own control to prevent any Security Breach of CyberCX's Systems.
- (b) During the Term, CyberCX will maintain its ISO 27001 certification (or certification for such replacement or successor standard) in respect of its Systems. On reasonable request of the Client, CyberCX will provide a copy of its ISO 27001 certificate to the Client.
- (c) Each party shall promptly notify the other of any Security Breach and provide reasonable assistance to the other in managing such Security Breach and/or handling any requests in relation to Personal Data.

11. Warranties

- (a) Each party warrants:
 - (i) it has the power, capacity and authority to enter into and observe its obligations under this Agreement; and
 - (ii) this Agreement has been duly executed by that Party and is a legal and binding agreement, enforceable against it in accordance with the terms of this Agreement.

- (b) The Client warrants that, unless expressly stated otherwise in a Quote, Proposal or Statement of Work, it is not the trustee of any trust. Where a Quote, Proposal or Statement of Work indicates that the Client is the trustee of a trust, the Client warrants that:
- (i) it enters into this Agreement in its own right and as trustee of each trust stated in that Quote, Proposal or Statement of Work;
 - (ii) the relevant trust has been duly established and subsisting;
 - (iii) the relevant trust is solvent and able to pay all of its debt when they fall due;
 - (iv) no administrators, receivers or trustees in bankruptcy have been appointed to the relevant trust or threatened to be appointed in the past 2 years;
 - (v) the Client is the duly appointed, current and only trustee of the relevant trust;
 - (vi) as trustee, the Client has the power to enter into and perform its obligations under this Agreement;
 - (vii) it has a sufficient right of indemnity out of the assets of the trust in respect of its obligations under this Agreement;
 - (viii) no breach of the trust deed exists or would arise as a result of entering into this Agreement;
 - (ix) on request, it will provide CyberCX with a copy of the trust deed for each relevant trust (including any deeds of variation, amendment or restatement).
- (c) Except as set out in an Agreement, to the extent permitted by law CyberCX makes no warranty or representation, express or implied, in relation to the Services, Products or any third-party hardware or software and accordingly, the terms implied by sections 3,4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement. In relation to third party hardware or software, CyberCX will ensure Client enjoys the benefit of, and Client agrees to comply with, the relevant third party's standard terms and conditions.
- (d) CyberCX warrants that:
- (i) it (and its Personnel) will provide the Services by exercising the same degree of skill, care and diligence that would be exercised by a professional services provider of similar size in the same industry in similar circumstances; and
 - (ii) its Personnel are appropriately trained and experienced to provide the Services.
- (e) Nothing in this Agreement excludes, restricts or modifies any condition, guarantee, warranty, right or remedy conferred on the parties by any Law that cannot be excluded, restricted or modified by agreement.
- (f) CyberCX shall use all reasonable endeavours to meet any performance dates specified in the relevant Statement of Work, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

12. Liability

- (a) Subject to any Third Party License CyberCX indemnifies the Client for any direct Loss suffered by the Client arising from any third party claim that the Client's use of the Deliverables or other materials provided to the Client by CyberCX in the performance of its Services under an Agreement (other than Third Party Material) infringes the rights, including intellectual property rights, of a third party except CyberCX will not be liable for any such Loss caused or contributed to by
- (i) any modification of the Deliverables or materials provided by CyberCX;
 - (ii) use of the Deliverables or materials provided by CyberCX not in accordance with any directions given by CyberCX;
 - (iii) the Client's breach or failure to comply with, any Third Party Licence; or

- (iv) the Client's (and its Personnel's) failure to take all reasonable steps to mitigate any Loss on becoming aware of any such third-party intellectual property claims, and is subject to:
 - (v) for Third Party Material, any restrictions or limitations imposed by the Third Party Licence in respect of this indemnity; and
 - (vi) the Client (and its Personnel, where relevant) permitting CyberCX to manage any relevant claim or action in the name of the Client (or any relevant Personnel).
- (b) CyberCX's total aggregate liability to the Client in respect of any and all Losses incurred by the Client (whether for breach of contract, in tort (including negligence) or otherwise) arising out of or in connection with the carrying out of the Services or supply of the Products under this Agreement is limited to the amount paid by the Client to CyberCX under the applicable Proposal, Quote or SOW in the 12 months preceding the event giving rise to the Loss, to a maximum of £150,000.
- (c) CyberCX's limit on liability in clause 12(b) does not apply to the following Losses:
- (i) personal injury or death of a party or person to the extent caused by CyberCX;
 - (ii) for fraud or fraudulent misrepresentation on the part of CyberCX;
 - (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (iv) damage to tangible property caused by CyberCX's negligent act or omission;
 - (v) breach of clause 8 (Confidentiality) by CyberCX;
 - (vi) under the indemnity in clause 12(a);
 - (vii) breach of clause 9 (Privacy) by CyberCX, for which CyberCX's total aggregate liability is limited to a maximum of £1,000,000; or
 - (viii) any other liability that cannot be limited or excluded by applicable law.
- (d) Notwithstanding anything in this Agreement, CyberCX will not be liable under this Agreement for any indirect or consequential Loss that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the Loss or any loss of profits, loss of production, loss of revenue, loss of business, loss of goodwill, damage to reputation, loss of opportunity, loss or corruption of data or wasted overheads.

13. Termination

- (a) Either party may terminate the Agreement with immediate effect if the other party is:
- (i) in material breach of the Agreement and such breach is incapable of remedy, or such breach is remediable but that defaulting party fails to remedy the breach within 14 days of receiving notice of the breach;
 - (ii) subject to an Insolvency Event; or
 - (iii) subject to an Event of Force Majeure that continues for a period of at least 90 days.
- (b) Upon termination of this Agreement for any reason:
- (i) CyberCX will cease providing the Services and Products;
 - (ii) the Client must pay to CyberCX all outstanding amounts for Services actually performed or Products ordered by the Client or amounts that CyberCX has paid or owes to third parties that it cannot reasonably get out of paying in connection with an Agreement; and
 - (iii) the Client must pay for any termination fees specified in a Proposal, Quote or SOW.
- (c) Termination of this Agreement does not affect a liability or any obligation of a party arising prior to termination nor affect any damages or other remedies which a party may be entitled under this Agreement.

- (d) On expiry or termination of this Agreement:
- (i) Clauses 8 (Confidentiality), 8(d) (Privacy), 10(Data Security), 11 (Warranties), 12 (Liability), 14(b) (Termination) and 14 (Non-solicitation) continue in full force and effect; and
 - (ii) all rights, obligations and liabilities a party has accrued before expiry or termination continue.

14. Non-solicitation

During the Term and for a period of 12 months after completion of the Term, the Client must not offer work to, solicit or induce for employment, employ, or contract with, CyberCX's Personnel who are involved with the provision of the Services, without first obtaining the written consent of CyberCX (which may be withheld by CyberCX at its absolute discretion). This clause does not apply to a bona fide publicly listed job advertisement by the Client.

15. Modern Slavery

- (a) CyberCX complies with the Australian *Modern Slavery Act 2018* (Cth), publishing an annual report on Australia's Modern Slavery Register.
- (b) As at the date of entering into this Agreement, CyberCX:
 - (i) has no knowledge of any modern slavery offence currently occurring within its organisation or supply chains; and
 - (ii) take reasonable commercial steps to identify the risk of and prevent modern slavery offences.
- (c) If CyberCX becomes aware of any modern slavery offence (or of any charges laid or orders made in relation to a modern slavery offence) within its organisation or supply chain that directly or adversely impact the obligations in this Agreement, CyberCX will notify the Client in writing.

16. Miscellaneous

- (a) If any provision of this Agreement is deemed to be unenforceable, invalid or illegal, the interpretation is to be applied to reflect the intention of the parties as far as possible whilst not affecting the validity of the remainder of the Agreement.
- (b) Neither party may assign its rights under this Agreement without the other party's prior written consent, provided however CyberCX can assign its rights under this Agreement to one of its Associated Bodies Corporate if it wants for so long as it requires to do so.
- (c) Unless otherwise provided for, in the event of any inconsistency between the terms of this master agreement and the terms of an applicable Proposal, Quote or SOW, the following descending order of priority shall apply: (1) an amendment agreed in writing between CyberCX and the Client; (2) the terms contained an applicable Proposal, Quote or SOW; (3) any document annexed to or incorporated by referenced into the agreement; and (4) this Agreement.
- (d) The Client acknowledges and agrees that, depending on the Services to be provided, (i) some or all of the Services may be provided by CyberCX Personnel located outside of the United Kingdom, situated in Australia, New Zealand, and/or the United States. Client data may be stored or accessed from locations outside of the United Kingdom for the purpose of these CyberCX Personnel providing the Services from these locations.
- (e) Client agrees that if it procures any Third Party Material through CyberCX, CyberCX may be required to provide the relevant third party certain Client data to facilitate the supply of that Third Party Material.
- (f) All notices and consents must be sent by email to, in the case of the Client, the email address for the Client or its representative set out in a Proposal, Quote or SoW, and in the case of CyberCX, the CyberCX representative set out in the Proposal, Quote or SOW, with any legal notices or notice of dispute, copied to legal@cybercx.com.au.
- (g) This Agreement is governed by the laws of England and Wales.

- (h) CyberCX will not be liable for any delay or failure to supply the Services or Products if such a delay or failure was due to an Event of Force Majeure.
- (i) Any dispute relating to the subject matter of this Agreement shall be submitted to mediation prior to any other dispute resolution process being invoked. The parties will agree a mediator within 21 days of either party giving the other written notice of intention to invoke mediation. If the parties cannot agree on a mediator then the dispute will be referred to the Centre for Effective Disputes Resolution (**CEDR**). All mediation proceedings will be conducted in accordance with the CEDR Model Mediation Procedure.
- (j) No party is authorised to bind another party and nothing in this Agreement is construed as creating a relationship of principal and agent, partners, trustee and beneficiary, or employer and employee.
- (k) This Agreement may only be amended or replaced with the written agreement of all parties.
- (l) This Agreement constitutes the entire agreement between the parties and supersedes any prior conduct, arrangement, representation, agreement or understanding in relation to its subject matter.
- (m) This Agreement can be signed in counterparts. If an electronic signature is used, it shall have the same effect as a handwritten signature.
- (n) Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

17. Definitions and interpretation

17.1 Definitions

All capitalised terms have either the meanings given to that term in the Proposal, Quote or SOW, the definitions in this clause 17.1 or where otherwise set out in the Agreement:

Agreement means these general terms and conditions and, as relevant:

- (a) the Proposal, Quote or SOW to which they are attached, referenced or attached (including any agreed written variation); or
- (b) any purchase order submitted and accepted in accordance with clause 1.3,

each of the above creating and forming a separate and binding Agreement;

Associated Bodies Corporate is as defined in the *Companies Act 2006*;

Background IP means a party's intellectual property rights in any materials developed independently of, or prior to, the provision of the Services and the Deliverables and includes any third party licensed intellectual property;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the location where the Services are being provided (unless expressed otherwise in a Proposal, Quote or SOW);

Client means the customer who has requested the Services to be performed by CyberCX;

Client Data means the data owned or supplied by the Client which is accessed by CyberCX (including its Associated Bodies Corporate) or its subcontractors in the course of performing the Services;

Confidential Information means any and all information (in any form or media) of a confidential nature that is made available directly or indirectly, and before, on or after the date of this Agreement including financial, client, employee and supplier information, product specifications, policies and procedures, processes, statements, formulae, trade secrets, Client Data, drawings and data which is not in the public domain (except by virtue of a breach of the confidentiality obligations arising under this Agreement);

Cyberattack means any breach of (or attempted or threatened breach of) or unauthorised access to the Client's Systems, including identity or intellectual property theft, exploitation of ICT systems, phishing, spamming, denial-of-service (including distributed), stolen hardware, or website defacement;

CyberCX means CyberCX UK Ltd and any of its Associated Bodies Corporate;

Data Protection Laws means:

- (a) for users in the European Union, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, known as the General Data Protection Regulation;
- (b) for users in the United Kingdom, the General Data Protection Regulation as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time) (the UK GDPR), and the Data Protection Act 2018; and
- (c) all other applicable laws relating to the processing of Personal Data.

Deliverables means the materials, reports and other deliverables to be provided by CyberCX as set out in the relevant Proposal, Quote or SOW.

Digital Forensic Services includes:

- (d) digital forensic investigation;
- (e) digital forensic analysis;
- (f) forensic reporting and opinions;
- (g) threat hunting;
- (h) cyber threat intelligence and risks assessment; and
- (i) any other activities carried out for, or on behalf of, the Client under a Proposal, Quote or SOW;

Event of Force Majeure means any event or circumstance, or a combination of events or circumstances, which is beyond the reasonable control of an affected party (but does not excuse any obligation to make payment);

Insolvency Event means:

- (a) bankruptcy proceedings are commenced against the relevant party, or the relevant party is declared bankrupt;
- (b) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the relevant party or to the whole or any part of the relevant party's assets or business, including where a party is the trustee of a trust, any of the assets or undertakings of the trust;
- (c) a relevant party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (d) a relevant party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the relevant party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- (f) a relevant party suspends, or threatens to suspend, or ceases or threatens to cease or carry on all or a substantial part of its business;
- (g) if the relevant party is in a partnership, the partnership is dissolved or an application is made to dissolve the partnership;
- (h) the relevant party is or becomes unable to pay its debts as they fall due or is presumed pursuant to the *Insolvency Act 1986* to be unable to pay its debts as they fall due;
- (i) a relevant party has something having substantially similar effect to any of the events specified above occur in any jurisdiction under or in respect of any law; or
- (j) a relevant party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy;

Laws means all laws including rules of common law, statutes, regulations, subordinate legislation, proclamations, ordinances, by laws, rules, regulatory principles and requirements, mandatory codes of conduct, writs, orders, injunctions, judgments and any awards, which are applicable from

time to time in the jurisdiction in which CyberCX or its Personnel perform their obligations under this Agreement;

Loss means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis;

Personal Data has the meaning given to that term in the Data Protection Laws;

Personnel means, in relation to a party, its employees, Associated Bodies Corporate, secondees, officers, agents, advisers and contractors;

Product means any products or goods supplied pursuant to the Agreement;

Proposal means a proposal prepared by CyberCX for Services and/or Products to be provided to the Client that references or incorporates these general terms and conditions;

Quote means a quote prepared by CyberCX for Services and/or Products to be provided to the Client that references or incorporates these general terms and conditions;

Security Breach means any unauthorised access to, or alteration of data that a party is responsible for or in control of;

Security Testing Services means penetration testing (including both physical and electronic penetration testing), red teaming, purple teaming, intrusion techniques, code reviews, security threats and risks assessment and any other security testing or assessment activities carried out for a Client under a Proposal, Quote or SOW;

Services means the services to be provided to the Client by CyberCX, as set out in a relevant Proposal, Quote, or SOW;

Staff Augmentation means the use of CyberCX Personnel to fill, or augment the capacity and capability within the Client's business;

Statement of Work or SOW means a statement of work setting out the Services and/or Products to be provided to the Client and which has been signed by both CyberCX and the Client;

Systems includes networks, software, applications, computers, servers, mobile devices, cloud services (including storage, software, platforms and infrastructure as a service), industrial control systems, and any other IT systems or equipment.

Term has the meaning given to that term in clause 5;

Third Party Licence has the meaning given to that term in clause 7.3(a)(ii);

Third Party Material has the meaning given to that term in clause 7.3(a); and

17.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Agreement includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression at any time includes reference to past, present and future time and performing any action from time to time;
- (j) no provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision;
- (k) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them; and
- (l) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally.

Schedule 1: SECURITY TESTING TERMS

1. Application of these Terms

- (a) These Security Testing Terms apply if security testing and assurance services are provided by CyberCX.
- (b) The Client warrants that it is aware of the nature of the Security Testing Services, in particular that the Security Testing Services may include:
 - (i) simulating or performing controlled Cyberattacks on the Client's Systems;
 - (ii) deliberate attempts to penetrate the security of the Client which may be provided by a third party;
 - (iii) red teaming (including, but not limited to, deliberately masquerading as a hostile attacker with the intention of detecting vulnerabilities) activities in relation to the Client and its premises and Systems; or
 - (iv) deliberately allowing unauthorised access to the Client's network or Systems for the purpose of analysing threat vectors and origination.

2. Acknowledgment and liability

- (a) The Client acknowledges and agrees that:
 - (i) Security Testing Services will be performed by CyberCX Personnel located in the United Kingdom, and may be performed by CyberCX Personnel located in: Australia, New Zealand, and/or the United States of America (**Overseas Personnel**);
 - (ii) in order to provide the Client with the access to expertise in a particular scenario and in a timely manner, CyberCX may be required to use its Overseas Personnel;
 - (iii) all Overseas Personnel are employed directly by CyberCX or its wholly owned international subsidiaries and are bound by CyberCX's internal security and confidentiality requirements; and
 - (iv) to the extent necessary for the scope of works, any Client Data that is retrieved and needs to be stored as a result of Security Testing Services will be held within, CyberCX's Systems, and only accessed by CyberCX Personnel on a need to know basis.
- (b) The Client accepts that the Security Testing Services:
 - (i) are sample testing activities only and cannot account for all possible ways a third party could breach the Client's security measures or Systems;
 - (ii) do not implement any security measures and will not prevent security or data breaches, or Cyberattacks;
 - (iii) could result in interruptions or degradations to the Client's Systems and accepts those risks and consequences; and
 - (iv) although carried out by professional CyberCX Personnel and tools from trusted resources, carry an element of risk that can never be fully eliminated, and the Client accepts that there is no guarantee that every vulnerability in its Systems will be identified during the Security Testing Services; and
 - (v) have the potential to activate the Client's existing security or incident response services or programs, and in such an event, the Client remains responsible for managing these at its sole cost.
- (c) In carrying out the Security Testing Services, the Client acknowledges and agrees that CyberCX:
 - (i) as agent of the Client, is considered to be party to a communication in the case of intercepting any private communication on the Client's Systems;
 - (ii) is expressly authorised by the Client to perform such Services (and all tests reasonably necessary to perform the Services) on the relevant network resources and IP addresses. The Client represents that, if it does not own

such network resources, it has requisite consent and authority to engage CyberCX to provide the Security Testing Services;

- (iii) provides no warranty or guarantee as to the outcome of the Security Testing Services, all testing has limitations, and that such testing cannot guarantee discovery of all weaknesses, noncompliance issues, or vulnerabilities; and
- (iv) may use various proprietary methods and software tools to probe network resources, and to detect actual or potential security flaws and vulnerability, which will not be revealed by CyberCX.

- (d) No other terms or any other agreement will limit the Client's authorisation or liability in clause 2(c)(a) of this Schedule.

Schedule 2: DIGITAL FORENSIC TERMS

1. Application of these Terms

- (a) These Digital Forensic Services Terms apply if digital forensic services are provided by CyberCX.
- (b) The Client warrants that it is aware of the nature of the Digital Forensic Services and that should CyberCX form a reasonable belief or identify evidence of serious criminal conduct during an engagement, CyberCX may be required to notify law enforcement.

2. Acknowledgment and liability

- (a) The Client acknowledges and agrees that:
 - (i) Digital Forensic Services will be performed by CyberCX Personnel located in the United Kingdom, and may be performed by CyberCX Personnel located in: Australia, New Zealand, and/or the United States of America (**Overseas Personnel**);
 - (ii) in order to provide the Client with the access to expertise in a particular scenario and in a timely manner, CyberCX may be required to use its Overseas Personnel;
 - (iii) all Overseas Personnel are employed directly by CyberCX or its wholly owned international subsidiaries and are bound by CyberCX's internal security and confidentiality requirements; and
 - (iv) to the extent necessary for the performance of the Digital Forensic Services, any Client Data that is retrieved and needs to be stored as a result of the Digital Forensic Services will be held within CyberCX's Systems, and only accessed by CyberCX Personnel on a need to know basis.
- (b) The Client acknowledges and agrees that the Digital Forensic Services:
 - (i) subject to clause 2(b)(ii), are intended for the Client only and outputs may not be provided to any third party without CyberCX's prior written consent;
 - (ii) CyberCX may, on written request, permit the Client to share a report deliverable with a third party. The Client agrees that any report deliverable approved for sharing can only be shared on a need to know basis, and on the condition that the recipient has agreed to keep it strictly confidential and not to further disseminate;
 - (iii) are not intended to provide any specific results, other than to identify factual findings, analysis of evidence, and responses to specific questions related to the provision of our expert opinion; and
 - (iv) are not delivered against any standards or guidelines unless otherwise agreed in writing.
- (c) In carrying out Digital Forensic Services, the Client agrees that CyberCX:
 - (i) is expressly authorised by the Client to perform such Services (and all such tasks and tests reasonably contemplated by or reasonably necessary to perform the Services) and the Client does so in compliance with all relevant Laws (including Data Protection Laws);

- (ii) once engaged, is authorised to accrue reasonable costs to provide the Services and the Client accepts and will meet all costs until conclusion of the engagement or the Client instructs in writing that the Services be suspended or terminated;
- (iii) is acting on behalf of the Client, so in the case of intercepting any private communication on the Client's Systems, CyberCX as agent of the Client is considered to be party to such private communication;
- (iv) provides no warranty or guarantee as to the outcome of the Digital Forensic Services, or any resulting legal or other proceedings;
- (v) will rely on the information provided by the Client as true and correct, and that unless otherwise agreed, will not undertake any review, validation or audit to ascertain the completeness or accuracy of information provided; and
- (vi) leverages cyber threat intelligence gained through previous engagements for other clients. Through the course of our work, CyberCX may collect cyber threat intelligence, including from the Client Systems, focused on attacker tools and methods. Any external use of such cyber threat intelligence will not include information which may identify the Client organisation, networks, Systems, sensitive information, staff, customers, related parties, or include any Client confidential information.
- (d) No other terms or any other agreement will limit the Client's authorisation or liability in clause 2(c) of this Schedule.
- (d) When the Client makes a request for any CyberCX Personnel to provide Staff Augmentation Services it shall provide CyberCX with:
 - (i) the date on which the Client requires the Personnel to commence work and the duration, or likely duration of the services;
 - (ii) the position which the Client is seeking to fill, including the type of work the Personnel in that position is required to do, the location at which and the hours during which, the Personnel would be required to work, and any risk to health and safety known to the Client and what steps the Client has taken to prevent or control such risks;
 - (iii) the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by Law, or by any professional body, for the Personnel to possess in order to work in the position;
 - (iv) any expenses payable by or to the Personnel; and
 - (v) any information reasonably required by CyberCX in order for it to fulfil its obligations under the Agency Worker Regulations 2010.

Schedule 3: STAFF AUGMENTATION TERMS

1. Application of these terms

- (a) These terms apply if staff augmentation services are provided by CyberCX.
- (b) The Client warrants that it is aware of the nature of Staff Augmentation Services. In this Schedule, Staff Augmentation Services are provided on the basis that CyberCX Personnel will be working under the direction and control of the Client, and the Client remains responsible for all (project and/or work) outcomes.
- (c) The Client and CyberCX each undertake to comply with their obligations pursuant to the Agency Worker Regulations 2010, as applicable.

2. Acknowledgement and Liability

- (a) The Client acknowledges and agrees that:
 - (i) CyberCX Personnel may be engaged either at the Client premises or remotely;
 - (ii) the Client is responsible for all work output, decisions, directions or omissions of the CyberCX Personnel providing Staff Augmentation Services;
 - (iii) the Client is responsible for all project outcomes from the Staff Augmentation Services;
 - (iv) CyberCX warrants that its Personnel have the knowledge, skill and experience to perform the agreed role or tasks; and
 - (v) the only Deliverable is the provision of CyberCX Personnel to perform the agreed tasks or role.
- (b) All outputs, including any intellectual property rights in those outputs, from Staff Augmentation Services will be owned by the Client upon full payment of the relevant invoice(s).
- (c) CyberCX is responsible for the remuneration, including salary, superannuation or associated taxes of CyberCX Personnel.