

## SAPPHIRE TECHNOLOGIES LIMITED

### **PART B – SECURITY CONSULTANCY SERVICES SUPPLEMENTAL TERMS AND CONDITIONS**

#### **1. SECURITY CONSULTANCY SERVICES**

##### **1.1 Consultative Services:**

- 1.1.1 We assume no responsibility under this Contract other than to perform Our Security Consultancy Services in good faith.
  - 1.1.2 You acknowledge and agree that the Services We provide under this clause are consulting only, and any and all decisions taken by You, including without limitation whether or not to follow any advice provided by Our consultant (whether verbally or in writing), is solely Your responsibility.
  - 1.1.3 You acknowledge and agree that the effectiveness of the Services provided in this clause and the success of any actions undertaken by Our consultant in the provision of the Services are not guaranteed or warranted by Us and/or Our consultant in any respect whatsoever.
  - 1.1.4 Penetration Testing and Vulnerability Assessments shall only cover the listed IP Addresses and Host names You provide to Us and are detailed in the Cover Sheet.
- 1.2 If limitations on testing are not included in the Cover Sheet or Contract Change Note they are not deemed to apply.
- 1.3 You are responsible for the accuracy of all information that You provide to Us including in the Cover Sheet and You warrant, undertake and represent to Us that You will with all due and proper care and diligence, and having regard to the nature of the Services to be provided, verify and ensure the accuracy of all such information and of Our lawful right to use it, on Your behalf, in providing the Services, in the manner detailed in this Contract.
- 1.4 You acknowledge that
- (a) the threat of malicious attacks is constantly evolving and it is recommended that You regularly commission services of the type detailed in this Contract and
  - (b) any test is only an overview of a moment in time and limited to the matters set out in the Cover Sheet.

#### **2. YOUR OBLIGATIONS**

- 2.1 You shall ensure that Your Customer Representative is available to Us at all reasonable times to co-ordinate any testing activities that form part of the Services.

- 2.2 All of Your Personnel who are informed of any testing or other activities that form part of the Services shall keep such information strictly confidential and shall not disclose it, to ensure the validity of the test results.
- 2.3 Unless specifically requested by You in writing or documented in the Cover Sheet, We shall not attempt to exploit Your Security vulnerabilities and shall use our reasonable endeavours to prevent permanent damage to Your Test Systems. You acknowledge, however, that the aim of the Services is to test Your cyber defences, as well as Your ability to detect and respond to a range of internal and external malicious attacks and that in the course of performing the Services service interruption is possible. It is Your responsibility to restore Your Test Systems to a secure configuration after We test.
- 2.4 You will sign and return to Us a completed Letter of Authorisation before We commence the Services, confirming that We are lawfully authorised to perform the Services on Your behalf and You have and shall at all times maintain all necessary or desirable Measures in place to lawfully permit Us to perform the Services without being in breach of any Applicable Law or Requirement.
- 2.5 You will ensure that Our access to the Site is provided in a safe manner and from risk to any person's health and wellbeing.
- 2.6 You warrant, represent, and undertake to Us that:
  - 2.6.1 You have implemented or obtained, and shall continue to maintain all Measures necessary or desirable for Us to lawfully provide the Services to You without being in breach of any Applicable Law or Requirement;
  - 2.6.2 that Your employment contracts and policies lawfully permit Us to carry out the Services on Your behalf, pursuant to the terms of this Contract without being in breach of any Applicable Law or Requirement;
  - 2.6.3 You shall at all times comply with all relevant Applicable Law including Data Protection Legislation, the Human Rights Act 1998, the Computer Misuse Act 1990, the Serious Crime Act 2015, the Police and Justice Act 2006, the Terrorism Act 2000, EU Directive 2013/40/EU, the Digital Economy Act, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, Investigatory Powers Act 2016, and any other relevant and Applicable Law which relate to the provision and receipt of the Services and/or You ensuring that We may lawfully perform the Services on Your behalf, pursuant to the terms of this Contract.
  - 2.6.4 You hereby authorise Us (and Our Personnel) to access Your Computer Assets and Test Systems for the purpose of performing the Services and such access and our performance of the Services in accordance with the terms of this Contract shall be lawful and not constitute a breach of any Applicable Law.
  - 2.6.5 All information You obtain as a result of the Services will be used by You lawfully and for Your own internal business purposes only, in accordance with all Applicable Law and Requirements.

- 2.6.6 Your purpose in procuring the Services is to help to prevent crime in the form of malicious attacks including cyber-attacks on Your Test Systems, data and information and Security.
- 2.6.7 You are the legal owner and person in charge of the Computer Assets, Test Systems and the data and information stored on any media on or related to the same, all of the IP addresses You provide to Us lawfully belong to You, You have the lawful right to control the operation of the Computer Assets, Test Systems, data and information which shall be the subject of the Services, where a third party router or IP address range is involved a subnet shall not overlap onto other equipment now owned by You and have the express or implied consent to intercept communications transmitted by means of a public telecommunications system with lawful authority and You hereby irrevocably and unconditionally consent to and authorise Us to:
- (a) perform the Services on Your behalf, and
  - (b) access the Computer Assets, the Test Systems and the data and information thereon,
- in accordance with the terms of this Contract, to perform the Services on Your behalf.
- 2.6.8 Where Computer Assets, Test Systems, data or information that is to be the subject of the Services, is operated or owned by any third party, You shall procure prior to the commencement of the Services that such third party signs and delivers to Us a legally binding contract in like terms to the Contract, and/or such alternative and/or additional agreements as We may from time to time require.
- 2.6.9 You shall make Us expressly aware in advance of the performance of any relevant Services, including completing such documentation and/or providing such information as We shall require, which of Your systems are critical and are to be excluded from any testing.
- 2.6.10 You (and any Personnel) are not acting for purposes which are wholly or mainly outside Your trade, business, craft, or profession.
- 2.7 You acknowledge that the provision of the Services may modify, damage, or disrupt Your Computer Assets and/or Test Systems and hereby authorise Us to access Your Computer Assets and Test Systems for the purpose of performing the Services in accordance with the terms of this Contract.
- 2.8 You acknowledge that the act of testing may generate extensive logs on Your firewall and intrusion detection system (IDS) systems and that in general such testing is designed to directly test for security vulnerabilities on specific hosts and there is no attempt made to evade detection by IDS systems. You shall ensure that such systems are configured in such a way that such traffic shall not cause any performance issues and that such systems shall not interfere with such tests.

- 2.9 You shall at all times comply with the Information Commissioner's Office ("ICO") data protection employment practices code and any other relevant codes issued by the ICO and You shall ensure that all appropriate technical and organisational measures have been taken in accordance with the Data Protection Legislation and the data protection principles to permit Us to perform the Services on Your behalf pursuant to the terms of this Contract.

### 3. INTELLECTUAL PROPERTY RIGHTS

You may use the Reports and copy and disclose the whole but not part of the Reports to those of Your employees, officers, representatives, contractors or subcontractors, Your subsidiary or holding companies and advisers who need to know the content of such Reports for Your own internal lawful business purposes provided always that You do not modify, delete, or amend any content and You comply with all Applicable Law and Requirements.

### 4. DATA PROTECTION

You hereby agree to Indemnify Us for loss of data or information caused by the activities described in this Contract. This clause 4 shall survive when the Contract ends.

### 5. LIMITATION OF LIABILITY

- 5.1 Subject always to clause 5, Our total aggregate liability under or in connection with the Contract whether arising in tort (including negligence), breach of contract, breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise shall, in the aggregate, in respect of any claim, or series of connected claims arising out of the same cause, not exceed the amount (if any) included in the special terms on the Cover Sheet or 100% of the Charges paid by You to Us under the Contract during the 12 months immediately preceding the date on which the claim arose (whichever is greater) but subject always to Clause **Error! Reference source not found.** shall never be greater than our insurance limits from time to time in force, details of which can be provided on request.

- 5.2 We exclude all liability howsoever arising:

5.2.1 as a result of any act or omission by You in following or declining to follow our advice or recommendations provided as part of the Services provided under clause 1.1; and

5.2.2 for decisions made with reliance upon advice provided by Our consultant pursuant to clause 1.1, subject to clause **Error! Reference source not found.**

- 5.3 Subject to clause 1.1 and 5.1, We shall be liable to You for any loss arising out of or in connection with any Report, in the event of Our gross negligence or wilful misconduct, but not otherwise.

- 5.4 In the performance of the Services, We may be required to take possession of Your property including Your Computer Assets and any data/information thereon. We agree to accept such property on and subject to the following conditions:
- 5.4.1 You shall accurately complete, sign and submit to Us a record of items form, or Data Recovery request in such format as We reasonably require from time to time, in relation to such property on Our receipt of it and on its return to You.
  - 5.4.2 We shall take such reasonable steps as We consider reasonable and appropriate in relation to the safety of such property whilst it is in Our possession. However, subject to clause **Error! Reference source not found.** and without prejudice to our obligations under applicable Data Protection Legislation, ownership and risk in such property shall remain at all times with You and subject to clause **Error! Reference source not found.**, and without prejudice to our obligations under applicable Data Protection Legislation, We accept no responsibility for any loss or damage to such property.
  - 5.4.3 We shall be permitted to dispose of any property left with Us unclaimed for 30 days or more, without liability to You or any third party, subject to clause **Error! Reference source not found.** Where any such property contains Your data We shall securely sanitise it or put it in an authorised UK government shredder.
  - 5.4.4 We shall not be liable for any claims regarding the physical functioning of any Computer Assets or the conditions or existence of data stored on any Computer Assets or media You supply to Us, at any time.
  - 5.4.5 You are aware of the inherent risks of damage to media that is involved when undergoing Data Recovery processes, including, risks due to destruction or damage to the media, and/or the data or information stored and inability to recover data or information, or inaccurate or incomplete data recovery, including those that may result from Our negligence and You shall assume the risk for any and all property damage that may arise as a result of the performance of Data Recovery Services by Us on Your behalf pursuant to the terms of this Contract. In the event of any damage or loss to any original media You supply to Us, our liability shall be limited to providing You with similar media of comparable capacity.

## 6. EXPRESS AUTHORITY AND INDEMNITIES

- 6.1 You acknowledge and agree that We are performing the Services on Your behalf and at Your direction and to the extent that the Services entail activities to be undertaken by Us (including our officers, employees, agents, consultants and representatives) which are in contravention or breach of any Applicable Law including the Computer Misuse Act 1990, You hereby irrevocably and unconditionally authorise and consent to Us carrying out such activities as Your authorised agent or and on Your behalf and You hereby Indemnify Us from and against any and all Liability suffered or incurred and arising from:
- 6.1.1 carrying out such activities; and/or

- 6.1.2 that is caused by or contributed to (to the extent so contributed) any action or omission of Yours in breach of the terms of the Contract.
- 6.2 In relation to any Digital Forensics Services and/or Data Recovery Services We are engaged by You to perform, You hereby authorise Us and Our Personnel to receive and transport any storage media, Computer Assets and/or data to, from and between Your and Our premises, and to use data recovery processes upon the same to endeavour to recover, access and/or process data held or stored on the same.
- 6.3 You acknowledge and agree that during the performance of the Services We may discover material which is illegal to store, manufacture, distribute or view pursuant to Applicable Laws or Requirements including pursuant to the Protection of Children Act 1978 as amended by the Sexual Offences Act 2003 and We are irrevocably and unconditionally authorised to deal with such material in any manner required by Applicable Law or Requirements including referring the same to the Relevant Authorities including the police and/or the Financial Conduct Authority.
- 6.4 This clause 6 shall survive when this Contract ends.

## **7. CHARGES AND PAYMENT**

### **7.1 Monthly Billing Based on Work Completion**

- 7.1.1 We shall invoice you on a monthly basis for the proportion of work completed during each calendar month ('Monthly Progress Billing'). The amount invoiced each month will be calculated as a percentage of the total agreed value of the project, corresponding directly to the percentage of the project completed during the month.

### **7.2 Surcharge for Delay in Commencement of Work.**

- 7.2.1 In the event You fail to agree for the work to commence within 45 days of receipt of a Purchase Order, We reserve the right to apply a surcharge of 10% of the total agreed value of the service as stated in the purchase order.
- 7.2.2 Notwithstanding any other provision of this Agreement, You acknowledge and agree that We reserve the right to issue an invoice for all services and/or goods provided under any purchase order pursuant to this agreement, regardless of whether such services have been fully delivered, if 180 days have elapsed from the date of the relevant purchase order. The invoicing right is applicable to the total agreed value as stipulated within the purchase order, reflecting both completed and uncompleted portions of the service or goods at that time.

### **7.3 Surcharge for Onsite working.**

- 7.3.1 We reserve the right to apply a surcharge of £200 per day for expenses for all work You stipulate must be carried out from a location specified by You.

### **7.4 Cancellations and Postponements**

7.4.1 We reserve the right to charge for Services cancelled or deferred as follows:

- (a) In full in respect of Services cancelled or deferred within 9 Business Days of the scheduled delivery or start date; and
- (b) 50% of the Charges, in respect of Services cancelled or deferred between 10 and 21 Business Days of the scheduled delivery or start date.

## 8. TERMINATION

Without effecting any other right or remedy available to it, You and We may terminate the Contract immediately on written notice if the other commits any material breach of the Contract, which is either incapable of remedy, or if capable of remedy is not remedied within twenty eight (28) days of written notice requiring the default to be remedied.