CyberCX New Zealand – General Terms and Conditions

1. Performance of Services

1.1 Formation of Agreements

(a) CyberCX will provide Services, Products or Third-Party Products and Services as requested by the Client and agreed by CyberCX in an Agreement. Products and/or Services will be detailed in a Proposal or Statement of Work (as the case requires) and Third Party Products and Services in a Sales Quotation. In each case, once the relevant document has been executed or issuance of Purchase Order by Client (whichever occurs first) a separate agreement will be formed between the parties incorporating these general terms and conditions (each, an Agreement).

(b) In the event of any conflict between these general terms and conditions and other provisions in the Agreement, it shall be interpreted in the following order of priority: (1) the terms contained in the SOW or Proposal or Sales Quotation; (2) the Additional Terms Schedules (3) any document annexed to or incorporated by reference in the Agreement; and (5) these general terms and conditions (not including the Additional Terms Schedules).

(c) Except as agreed in writing, no other terms or conditions contained in any other Client document will apply or be incorporated into an Agreement (including any purchase order or other contractual documentation provided by the Client) and such client provided terms will be null and void in respect of the Services or any engagement of CyberCX by the Client.

1.2 Additional Terms Schedules

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;

(c) Staff Augmentation Services, the terms in Schedule 3 apply, and

(d) Resale of Third-Party Products and Services, the terms in Schedule 4 will apply.

(together, the **Additional Terms Schedules**)

1.3 Provision of the Services

(a) CyberCX will perform Services in accordance with any specifications set out in an Agreement.

(b) When performing any Services, CyberCX will:

(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 Services; and

(iii) use reasonable endeavours to have any specific Personnel identified in the Agreement available to perform the Services and will provide the Client with reasonable notice if it intends to replace or reassign such Personnel.

(c) CyberCX may provide the Services (or any part of them) through one or more of its Related Bodies Corporate. CyberCX's use of any of its Related Bodies Corporate to perform the Services will not relieve CyberCX of its obligations under this Agreement, and CyberCX will remain fully responsible and accountable to the Client for the performance of the Services provided by such Related Bodies Corporate.

(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) The 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.

1.4 Use of subcontractors

(a) If an Agreement 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.

1.5 Provision of Products

(a) At any time during the Term the Client may request to purchase any Products (excluding Third Party Products and Services) offered for sale 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 a third-party digital marketplace platform (including the AWS Marketplace or Microsoft Azure Marketplace)(each a **Marketplace**) in certain circumstances (**Platform Offer**). The Client must have an existing account with the relevant Marketplace in order to accept a Platform Offer. When accepting a Platform Offer, it is a condition that the Client accepts any third-party vendor terms (such as an end user license agreement) that apply to those Products (which may be included with the Platform Offer, or made available by the third party vendor on their website. 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 Marketplace platform.

1.6 Resale of Third-Party Products and Services.

The resale of Third-Party Products and Services is governed by the terms set forth in Schedule 4.

1.7 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. Client acknowledges that where the Services are delayed as a result of any act or omission of the Client, its personnel or contractors, CyberCX will be entitled to an extension of time equal to the delay.

(b) If the Client requests CyberCX to cancel, delay, reschedule or suspend the Services with less than 3 Business Days' notice,

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the Client must pay CyberCX its reasonable costs associated with such cancelation, delay, rescheduling or suspension.

2. Authorisation

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

3. Governance Risk, Compliance and Privacy Advisory

(a) The Client is responsible for ensuring that the selection and use of Products, Deliverables and Services satisfies all of the Client's business requirements, legal, regulatory and compliance obligations.

(b) Unless set out in an Agreement, CyberCX is not responsible for any of the Client's legal, regulatory or compliance obligations.

4. Term

Unless otherwise terminated in accordance with clause 13, this Agreement commences on the date it is last signed by the parties and continue for the period as set out in the Agreement (**Term**).

5. 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 the Agreement.

(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 the applicable Agreement or otherwise at the end of the month in which the Services are delivered, or in respect of Products (excluding Third Party Products and Services, the terms of which are set forth on Schedule 4), 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 CyberCX fees and charges are exclusive of all taxes, including sales, use, value added, withholding, consumption and other similar taxes or duties. All GST assessed on the provision of the Services or on CyberCX's fees (including the reimbursement of expenses) will be included as an additional charge in an invoice that satisfies the requirements of a "tax invoice" under the relevant GST legislation. Each party will be responsible for its own income, employment, and property taxes. Client will reimburse CyberCX for any deficiency relating to taxes that are Client's responsibility under the Agreement. The parties agree to cooperate with each other to help each party minimise any potential liability to the extent legally permissible and will provide to the other any tax exemptions or certifications reasonably requested. The parties agree that reasonable procedures are in place to prevent any form of facilitation of tax evasion from occurring in relation to the provision or receipt of the Services.

(f) The Client may not set-off, counterclaim or deduct any amount from an amount owing to CyberCX. Any disputed invoices must be notified to CyberCX within 5 Business Days of receipt, and the notice must detail 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.

6. Intellectual Property

6.1 Background IP

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

6.2 Intellectual Property in Deliverables and provision of Services

(a) Subject to clauses 6.1 and 6.3, 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 6.3, CyberCX grants to the Client a non-exclusive, non-transferable, non-sub licensable, royalty-free (excluding any payments due under clause 5) licence for the Term (except for documentary Deliverables for which the licence will be perpetual) to use in New Zealand the 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 Agreement.

6.3 Third party intellectual property

(a) In conjunction with providing the Services, CyberCX may also resell to the Client Third-Party Products and Services. The Client agrees that:

(i) all Third-Party Products and Services are provided 'as is' by CyberCX as a reseller as facilitator, without warranty of any kind from CyberCX or its affiliates;

(ii) its use or acceptance of any Third-Party Products and Services is conditional on the Client's acceptance of the Third-Party Supplier's licence agreement or terms of use (**Third Party Licence**), which shall be Client's sole and exclusive remedy with respect to such Third-Party Products and Services;

(iii) title in any Third-Party Products and Services remains at all times with the Third-Party Supplier unless provided otherwise in a Third Party Licence; and

(iv) it must comply with the terms on Schedule 4.

7. Confidentiality

(a) Each party agrees that where it, its Personnel, or its Related 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, or a professional advisor of that party, who needs such Confidential Information in order to perform his or her duties and provided that such person has a legal or contractual obligation to maintain the confidentiality of such Confidential Information and has agreed not to use the Confidential Information for any other purpose;

(iii) to the extent permitted by law, promptly 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 7(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;

(ii) is previously known to the Recipient without an obligation of confidence;

(iii) is independently developed by Recipient or for it; or

(iv) is in the public domain (other than through a breach of this Agreement).

(d) The provisions of this clause 7 shall continue in force indefinitely following the termination of this Agreement.

8. Privacy

(a) Both parties agree to comply with the Privacy Laws in relation to the provision and use of the Services.

(b) Where the Client discloses Personal Information (**Client Personal Information**) to CyberCX, or permits CyberCX to collect, access, or handle Client Personal Information under this Agreement, the Client represents and warrants that it has obtained (and will maintain) any authorisations or consents from relevant individuals required under all applicable Privacy Laws.

(c) CyberCX will only collect, access, otherwise use, disclose or handle Client Personal Information to the extent necessary for performance of the Services in accordance with CyberCX's Privacy Policy.

(d) CyberCX may use certain Client Data when analysing cyber security incidents or threats (including attack vectors, methods, defences, and other similar items) (**Cyber Threats**), and for the purposes of quality assurance, and Service integrity and enhancement. When analysing Cyber Threats, CyberCX will not collect Personal Information unless necessary and relevant to the Cyber Threat and understanding its nature or occurrence (e.g. a person's user account name to understand how an attack occurred).

(e) CyberCX may share anonymised results of its Cyber Threats research and analysis with other cyber security providers, customers, government, regulatory bodies or authorities, or law enforcement that have an interest in cyber security threats and prevention.

9. Data Security & Access

(a) CyberCX will take reasonable technical and administrative precautions within its own control to protect Client Data held in 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 where such breach involves Client Data and directly impacts the obligations of either party under this Agreement .Where such Security Breach is caused by CyberCX, CyberCX will provide reasonable assistance to the Client in managing such Security Breach and/or handling any requests in relation to Personal Information.

(d) Client acknowledges that CyberCX is part of a global organisation and therefore its core IT systems are hosted outside New Zealand on cloud-based systems. The Client agrees that to the extent Client Data is collected during the provision of a Service (or the administering of an Agreement), CyberCX will store it on Systems (including cloud-based software such as Microsoft Teams and email services), that comprise of secure servers or data centres outside New Zealand, and that Client Data may be accessed from outside New Zealand. A Statement of Work may specify where specific items or categories of Client Data are to be held or accessed within CyberCX's cloud hosting within a specified geographical location.

10. 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 an Agreement, it is not the trustee of any trust. Where an Agreement indicates that the Client is the trustee of a trust, the Client warrants that:

(i) it enters into the Agreement in its own right and as trustee of each trust stated in that Agreement;

(ii) the relevant trust has been duly established and subsisting;

(iii) the relevant trust is solvent and able to pay all of its debts 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) **Disclaimer of warranty**. 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, including Third Party Products and Services. In relation to third party Products and Services, Client agrees to comply with, the relevant Third Party Supplier's standard terms and conditions. With respect to Third-Party Products and Services, to the extent that an implied warranty cannot be excluded from this Agreement, or Client's agreement, any warranty, condition or guarantee implied into this Agreement or Client's agreement is limited to, at CyberCX's discretion:

(i) in the case of Third-Party Products, any one or more of the following:

(a) the replacement of the Third-Party Products or the supply of equivalent Third-Party Products;

(b) the repair of the Third-Party Products;

(c) the payment of the cost of replacing the Third-Party Products or of acquiring equivalent Third-Party Products; or

(d) the payment of the cost of having the Third-Party Products repaired; or

(ii) in the case of Third-Party Services:

(a) the supplying of the Third-Party Services again; or

(b) the payment of the cost of having the Third-Party Services supplied again

(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 Law that cannot be excluded, restricted or modified by agreement.

11. Liability

(a) 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 Products and Services) 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 Products and Services, 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) Subject to clause 11(d) and to the extent permitted by law, 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 Agreement in the 12 months preceding the event giving rise to the Loss.

(c) CyberCX's limit on liability in clause 11(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) damage to tangible property caused by CyberCX's negligent act or omission; or

(iii) breach of clause 7(Confidentiality) by CyberCX;

(iv) under the indemnity in clause 11(a).

(d) CyberCX's maximum liability for its breach of clause 8 (Privacy), will be limited to $2,000,000.

(e) Notwithstanding anything in this Agreement, CyberCX will not be liable under this Agreement for any incidental, indirect, special or punitive loss, 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 savings, loss of goodwill, damage to reputation, loss of opportunity, loss or corruption of data or wasted overheads.

(f) Each party will use commercially reasonable efforts to mitigate any Loss. CyberCX's liability will be reduced to the extent Client has caused or contributed to the event giving rise to the claim.

(g) This section shall not be construed to limit any of Client's rights or remedies it may have against the applicable Third Party Supplier (as that term is defined in Schedule 4) for its use of Third Party Products and Services in an agreement between Client and such Third Party Supplier or under law.

12. New Zealand Consumer Law

(a) Nothing in the Agreement limits the application of the Fair Trading Act 1986 (NZ) or the Consumer Guarantees Act 1993 (NZ) or any equivalent legislation("Relevant Legislation"). To the extent legally able to do so, CyberCX limits its liability under the Relevant Legislation to, at CyberCX's option, replacing or repairing the relevant deliverable or re-performing the relevant Services. To the extent permissible by law (including the Relevant Legislation), all other warranties, terms, conditions and representations, express or implied, are excluded. Client agrees that the deliverables and/or Services to be performed or provided under each Statement of Work are being acquired for business purposes and the provisions of the Consumer Guarantees Act 1993 (NZ) do not apply to such supply.

13. Termination

(a) Either party may terminate the Agreement with immediate effect if the other party:

(i) is 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) becomes insolvent (other than for the purpose of a genuine internal reorganisation); or

(iii) is 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 and expenses incurred prior to date of termination including a pro-rated portion for Deliverables in progress and expenses incurred prior to date of termination or Products (for its full committed term) 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 the Agreement.

(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 7(Confidentiality), 8(Privacy), 9(Data Security and Access), 10(Warranties), 11(Liability), 13(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 all applicable laws relating to modern slavery, human trafficking, forced labour and worker exploitation.

(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 impacts 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 or novate its rights under this Agreement without the other party's prior written consent, provided however CyberCX can assign or novate its rights under this Agreement to a Related Body Corporate without prior written consent(or, in the case of novation, with consent to be reasonably provided).

(c) The Client acknowledges and agrees that, depending on the Services to be provided, some or all of the Services may be provided by CyberCX Personnel located outside of New Zealand . Client Data may be stored or accessed from locations outside of New Zealand for the purpose of these CyberCX Personnel providing the Services.

(d) Client agrees that if it procures any Third Party Products and Services through CyberCX, CyberCX may be required to provide the relevant third party certain Client Data to facilitate the supply of such Third Party Products and Services.

(e) CyberCX and its Personnel may use artificial intelligence tools, services and models (AI Tools) for their internal operations and performance of specific services. Any use of an AI Tool by CyberCX will be in compliance with all applicable laws.

(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 the Agreement, and in the case of CyberCX, the CyberCX representative set out in the Agreement, with any legal notices or notice of dispute, copied to legal@cybercx.com.au (**Legal Address**). A notice will be of no effect unless it has been sent to CyberCX's Legal Address.

(g) This Agreement is governed by the laws of , New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand

(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) The parties agree that in the event of a dispute or alleged breach, the parties will work together in good faith first to resolve the matter internally by escalating it to higher levels of management. In the event the parties fail to resolve the matter within 30 days after the dispute has been escalated to higher levels of management, the dispute shall be submitted to mediation prior to any other dispute resolution process being invoked. The dispute must be referred to mediation to the chairperson for the time being of Resolutions Institute ("RI") New Zealand Inc (or his or her nominee). The dispute referred to RI for mediation must be heard by RI as soon as possible. The parties agree to adhere to the procedures set out in this section before enforcing any other rights permitted by law in the resolution of any disputes under the Agreement. Nothing in this clause prohibits a party from seeking urgent interlocutory or injunctive relief.

(j) Notwithstanding any other provision of this Agreement to the contrary: (a) each Party shall retain responsibility for its compliance with all applicable export control laws and economic sanctions programs relating to its respective business, facilities, and the provision of services to third parties; and neither Party shall be required by the terms of this Agreement to be directly or indirectly involved in the provision of goods, software, deliverables, work, services and/or technical data that may be prohibited by applicable export control or economic sanctions programs. Applicable export control or economic sanctions programs may include those of the UN, EU, and U.S. With respect to the export or re-export of U.S. origin goods, software, services and/or technical data, or the direct product thereof CyberCX and Client will comply with U.S. export control and U.S. economic sanctions laws. The Parties understand and agree that this Agreement shall not require CyberCX to provide or support services involving Cuba, Iran, Sudan, Syria, North Korea, Specially Designated Nationals, and/or Blocked Persons (as determined by the US Treasury Office of Foreign Assets Control), either directly or indirectly, including through the use of subcontractors.

(k) 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.

(l) This Agreement may only be amended or replaced with the written agreement of all parties.

(m) 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.

(n) This Agreement can be signed in counterparts. If an electronic signature is used, it shall have the same effect as a handwritten signature.

17. Definitions and interpretation

17.1 Definitions

All capitalised terms have either the meanings given to that term in the Agreement, the definitions in this clause 17or where otherwise set out in these general terms and conditions:

Agreement means an Agreement made pursuant to clause 1.1(a) incorporating the agreed Proposal, Sales Quotation or Statement of Work and these general terms and conditions; .

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, together with any enhancements, modifications and derivatives made to such 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 the Agreement);

Client means the customer who has requested the Services to be performed by CyberCX and as identified in the Agreement;

Client Data means the data owned or supplied by the Client which is accessed by CyberCX (including its Related 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), and includes the existence and details of this Agreement (and any Agreement made under it) and the business relationship between the parties (but does not include Personal Information);

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 New Zealand Limited;

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

Digital Forensic Services includes:

(a) digital forensic investigation;
(b) digital forensic analysis;
(c) forensic reporting and opinions;
(d) threat hunting;
(e) cyber threat intelligence and risks assessment (including compromise assessments);
(f) crisis communications; and
(g) any other activities related to those in (a)–(e) above (or otherwise referred to as a 'digital forensic service') carried out for, or on behalf of, the Client under an Agreement;

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);

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 Information has the meaning given to that term in the Privacy Act;

Personnel means, in relation to a party, its employees, secondees, officers, agents, advisers and contractors (and in the case of CyberCX, also includes the Personnel of its Related Bodies Corporate);

Privacy Act means the *Privacy Act 2020* (NZ);

Privacy Laws means the Privacy Act and all other applicable privacy and data protection Laws as may be in force from time to time which regulate the collection, use, disclosure, storage of and granting of access rights to Personal Information;

Privacy Policy means the privacy statement (and associated documents) of CyberCX's group of companies as amended from time to time, located at: www.cybercx.com/privacy;

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;

Related Body Corporate is as defined in the *Corporations Act 2001* (Cth) and equivalent to a 'related company' as set out in the Companies Act 1993 (NZ);

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 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 an Agreement

Services means the services to be provided to the Client by CyberCX, as set out in a relevant Agreement;

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 4;

Third Party Licence has the meaning given to that term in clause **Error! Reference source not found.**; and

Third-Party Products and Services means the products and services CyberCX purchases from a Third Party Supplier for resale to the Client in New Zealand under an Agreement.

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.

CONFIDENTIAL

Schedule 1: SECURITY TESTING TERMS

1. Application of these Terms

(a) The terms in this Schedule apply if Security Testing Services are provided by CyberCX.

(b) The Client agrees and acknowledges that it is aware of the nature and risks associated with Security Testing Services, and such 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 New Zealand, and may be performed by CyberCX Personnel located outside of New Zealand (**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 Related Bodies Corporate 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 professionals using 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

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

Schedule 2: DIGITAL FORENSIC TERMS

1. Application of these Terms

(a) The terms in this Schedule apply if Digital Forensic Services are provided by CyberCX.

(b) The Client acknowledges 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 New Zealand, and may be performed by CyberCX Personnel located outside of New Zealand (**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 Related Bodies Corporate and are bound by CyberCX's corporate group 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 the *Privacy Act*);

(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.

Schedule 3: STAFF AUGMENTATION TERMS

1. Application of these terms

(a) The terms of this Schedule apply if Staff Augmentation Services are provided by CyberCX under an Agreement.

(b) The Client acknowledges and agrees that 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) CyberCX remains responsible for its employment obligations pursuant to the CyberCX Personnel, in particular in regards to remuneration, PAYE obligations and superannuation.

(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;

(iii) a description of the work environment (if on a Client's premises), and a statement detailing any known health and safety risks , the steps the Client has taken to prevent or control such risks, and any reasonable precautions the CyberCX Personnel must take prior to commencing work;

(iv) 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; and

(v) any expenses payable by or to the Personnel.

2. Acknowledgement and Liability

(a) The Client acknowledges and agrees that:

(vi) CyberCX Personnel may be engaged either at the Client premises or remotely;

(vii) the Client is responsible for all work output, decisions, directions or omissions of the CyberCX Personnel providing Staff Augmentation Services;

(viii) the Client is responsible for all project outcomes from the Staff Augmentation Services;

(ix) CyberCX warrants that its Personnel have the knowledge, skill and experience to perform the agreed role or tasks; and

(x) 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) During the term of the Staff Augmentation Services, the Client must not induce or solicit into, or otherwise make an offer to, any CyberCX Personnel for an offer of employment with the Client.

(d) The CyberCX Personnel are not required to undertake any activities for the Client that are outside the scope of works in an Agreement, or any activity that would be unlawful or place the individual in an unsafe situation.

(e) Client represents and warrants that:

(i) CyberCX Personnel will not be given any financial delegation or authority to bind the Client, except where expressly stated otherwise in a Statement of Work;

(ii) it will not ask nor place the CyberCX Personnel in a position where it would be in breach of, or a conflict with, the CyberCX Personnel's obligations or duties to CyberCX as its employer;

3. Virtual Chief Information Security Officer Engagements

(a) This clause 3 applies where the Client has requested CyberCX provides one or more of its Personnel in a Chief Information Security Officer or a similar senior role (**vCISO**).

(b) The Client must not:

(1) require or request the CyberCX Personnel, acting in a vCISO role, participate in any board meetings or decision making of the Client, and that otherwise, they will not be asked to perform or fulfill the roles or duties of an officer of the Client as contemplated by the Companies Act 1993 (NZ)(**Officer**);

(2) hold the CyberCX Personnel out as being an Officer of the Client to any other person, and must not appoint them as an Officer in any corporate documentation or registers.

(c) Where the Client has engaged CyberCX to provide a vCISO role, it agrees and acknowledges that CyberCX will not be prevented from obtaining subsequent work with the Client by virtue of the CyberCX Personnel acting in the vCISO role. Each party agrees that it will maintain appropriate information barriers to identify and resolve any perceived or actual conflicts of interest to ensure CyberCX is not prohibited from any proposed future work with the Client.

(d) In the event a CyberCX Personnel performing a vCISO role is deemed to be an officer of the Client, the Client indemnifies and holds harmless CyberCX and that CyberCX Personnel from any loss or damage, actions or claims that may arise asserting that the CyberCX Personnel has breached a duty or obligation they may have under the Companies Act 1993 (NZ) as an Officer of the Client.

Schedule 4: RESALE OF THIRD PARTY PRODUCTS AND SERVICES

1. Application of these terms

(a) The terms of this Schedule apply to, and are the enforceable terms and conditions for, the resale of Third Party Products and Services between CyberCX and Client and will govern the Client's purchase of Third Party Products and Services from CyberCX in New Zealand.

(b) For the avoidance of doubt, all Third Party Products and Services are provided directly by a third party supplier ("Third Party Supplier").

2. Sales Quotations

(a) Third Party Products and Services purchased by Client hereunder will be listed on the a sales quotation issued by CyberCX to Client, which incorporates these terms and conditions by reference, and together are the "Sales Quotation". CyberCX will order the Third Party Products and Services specified on the Sales Quotation that has been accepted by both Client and CyberCX. Client accepts the Sales Quotation by signing the Sales Quotation or by issuing a purchase order for the Third Party Products and Services listed in the Sales Quotation. CyberCX confirms its acceptance of the Sales Quotation to the extent that CyberCX orders Third Party Products and Services pursuant to the Sales Quotation.

(b) Any term, condition or proposal submitted by Client in a purchase order or otherwise (whether orally or in writing) that is inconsistent with or in addition to the Sales Quotation or the terms and conditions of this Agreement will be of no force or effect, unless otherwise agreed in writing.

3. Prices and Payment.

(a) CyberCX will invoice Client in the primary local currency of CyberCX (unless stated otherwise in the Sales Quotation). Client agrees to pay as invoiced the total purchase price for the Third Party Products and Services agreed in the Sales Quotation, plus Taxes (as defined in Section 4) and applicable delivery and insurance charges.

(b) Payment in full is due within 30 days of an invoice date. Interest on any payment past due will accrue at the lower of the rate of 1.5% per month or the maximum rate allowed by law. Client will be responsible for CyberCX's costs of collection for any payment default, including, but not limited to, court costs, filing fees and reasonable attorneys' fees.

4. Taxes.

(a) Applicable taxes will be billed as a separate item on invoices and any taxes paid on behalf of Client by CyberCX will be identified on the applicable invoice. In addition to the purchase price, the Client shall pay or reimburse CyberCX for all sales, use, property and all other similar taxes, including tax costs incurred by CyberCX arising from transactions to purchase the Third Party Products and Services, local fees or charges imposed by any federal, state or local government for Products and/or Services provided under this Agreement, even if imposed by law upon CyberCX or CyberCX's employees, excluding taxes based upon the income or property of CyberCX and taxes based upon the payroll of CyberCX's employees (collectively "Taxes"). Client will reimburse CyberCX for any deficiencies, interest or penalties relating to taxes that are Client's responsibility under this Agreement.

(b) If Client is required to withhold or deduct any Taxes from any payment, Client shall be required to "gross up" the amount of such payment and shall pay the total amount reflected on the invoice. The Client agrees to pay such Taxes unless the Client has provided CyberCX with a direct pay permit or valid exemption certificate for the applicable jurisdiction.

(c) The Parties will cooperate in good faith to minimize Taxes to the extent legally permissible including, if available, acceptance of electronic delivery of software products with no media backup. Both Parties agree that in connection with the activities under this Agreement shall (i) not engage in tax evasion or the facilitation of tax evasion and (ii) have sufficient controls and policies in place to prevent tax evasion or the facilitation of tax evasion.

5. Delivery and Risk of Loss.

(a) Shipment and delivery of Third Party Products and Services, including risk of loss, will be in accordance with the applicable terms and conditions of the Third Party Supplier. All orders are subject to the availability of underlying Third Party Products and Services. For hardware, title will each pass to Client from CyberCX immediately after being transferred to CyberCX from the Third Party Supplier.

6. Order Changes, Cancellations and Returns.

(a) Subject to (b), any Third Party Products and Services is supplied on a non-cancellable, non-refundable basis.

(b) Any order changes, cancellations or returns of Third Party Products and Services will be governed by the applicable Third Party Supplier policies. Client will be responsible for any fees, penalties or other amounts a Third Party Supplier charges CyberCX as a result of any order change, cancellation or return by Client.