

SCHEDULE 4.7 – AUTOMATED VULNERABILITY ASSESSMENT SERVICE

1. APPLICATION

- 1.1 This **Schedule 4.7** contains a description of the Automated Vulnerability Assessment Service which form part of the Agreement entered between the Parties for the provision of such Services together with the General Conditions and the documents referred to in clause 1.4 of the General Conditions where applicable.
- 1.2 Definitions and interpretations that are specific to this schedule are set out in **Annex 1** and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the General Conditions.
- 1.3 The Supplier agrees to fulfil the Order in accordance with its terms and conditions referred to above to the exclusion of all other terms and conditions, including any terms communicated to the Supplier at any time prior to, with or after acceptance of the Order. Where the Customer provides the Supplier with a Purchase Order in respect of the Services stated on the Order, the Customer will be deemed to have accepted the Order and the applicable terms and conditions of the Supplier to the exclusion of all others in the same way it would had it signed the Order.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall take effect on the date upon which it has been signed by both parties and shall continue in force for a minimum period of 12 months from the Commencement Date (or as otherwise specified in the Order) ("**Minimum Term**") and thereafter unless terminated:
- 2.1.1 by the Customer giving the Supplier not more than ninety (90) days' notice and no more than thirty (30) days' written notice; or
- 2.1.2 in accordance with clause 8 of the General Conditions.
- 2.2 The Supplier will provide the Customer with the Automated Vulnerability Assessment Service ("**the Service**") which comprises undertaking a monthly scan and the provision of a report of the results, as further detailed in the Order. The Service is provided for up to 5 IP addresses or hosts unless otherwise stated in the Order.

3. SUPPLIER OBLIGATIONS

- 3.1 This paragraph 3 is supplemental to clauses 3.5 to 3.9 of the General Conditions.
- 3.2 The Supplier shall:
- 3.2.1 provide the Services in accordance with the Order and in relation to the IP addresses and hosts stated by the Customer; and
- 3.2.2 use its reasonable endeavours to conduct the monthly scan at the date and time agreed, and both parties agree that these are estimates only and that time shall not be of the essence.

4. CUSTOMER OBLIGATIONS

- 4.1 This paragraph 4 is supplemental to clauses 3.10 to 3.11 of the General Conditions.
- 4.2 The Customer shall:
- 4.2.1 provide the Supplier with full and accurate details of the Customer's IP addresses and/or hosts which are to be scanned as well as the dates and time it wishes the scans to be conducted monthly;
- 4.2.2 co-operate with the Supplier in all matters relating to the Services including the provision of accurate and

complete access, resources, information and facilities in a timely manner to allow provision of Services;

- 4.2.3 maintain and be fully responsible for all applications, data, interfaces, hardware and equipment within its control, including but not limited to, appropriate back-ups of all data, software, configuration and other information stored on any computer and operating system or any other hardware or software, and maintain an adequate business continuity and disaster recovery plan; and
- 4.2.4 perform its obligations under this Agreement with reasonable care and skill.

5. WARRANTIES AND SERVICE LIMITATIONS

- 5.1 The Customer warrants that:
- 5.1.1 all its applications, devices, network and infrastructure are fully operational in a manner which allow for the provision of Services by the Supplier;
- 5.1.2 it understands that the nature of cyber security testing, and that the Services being provided by the Supplier are intended to identify vulnerabilities in the Customer's internal and external IT applications, hardware, networks and infrastructure and may result in adverse consequences;
- 5.1.3 it consents, despite the risk and consequences set out in this paragraph 5, to the Supplier undertaking the Services as described in the Order and such steps necessary to perform the Services;
- 5.1.4 it is lawfully granting the Supplier the rights and access to the systems which it is being asked to provide in the Services in respect of pursuant to the Agreement;
- 5.1.5 it will not request the Supplier to undertake any act or omission which will result in a violation by the Supplier or the Customer of the Computer Misuse Act 1990, Data Protection Legislation, the Human Rights Act 1998 and any other Applicable Law;
- 5.1.6 it has full capacity and authority to enter into this Agreement and to give the warranties in this paragraph 5.1; and
- 5.1.7 it will indemnify the Supplier in full against any and all claims, liability, losses, costs and expenses (including without limitation reasonable legal expenses) arising from or in connection with any claim brought against the Supplier by a third party in respect of breach by the Customer of the warranties stated in this paragraph 5.1.
- 5.2 The Customer acknowledges and agrees that the scanning of IP addresses and/or domain names may expose vulnerabilities and, in some circumstances, could result in the disruption of services and/or access being provided by the Customer to third parties.
- 5.3 The Customer further acknowledges:
- 5.3.1 the Services will not be undertaken in a manner which is exhaustive or comprehensive in identifying all issues due to the limited nature and scope of this Service, and the nature of security issues in general. Consequently, the Customer acknowledges that performance of the Services has the objective of improving the visibility of Customer's security arrangements. The Services will not remedy any identified vulnerabilities as the Supplier will not implement any recommendations which are provided (in respect

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of which the Customer acknowledges the provisions contained in clause 9 of the General Conditions and paragraph 9 of this Schedule), and there may be security issues including vulnerabilities which are not revealed during the Service due to their limited scope; and

5.3.2 it is permitted to use any materials provided by the Supplier in connection with the Services including the monthly reports solely for their own internal business purposes.

5.4 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees, the Supplier shall:

5.4.1 not be liable for any costs, charges, losses or expenses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;

5.4.2 be entitled to payment of the Charges despite any such prevention or delay; and

5.4.3 be entitled to recover any additional costs, charges, or losses the Supplier sustains or incurs directly or indirectly from such delay or prevention.

5.5 Without prejudice to the Customer's right to terminate this Agreement for material breach, the Customer's sole remedy against the Supplier for any failure on the part of the Services to meet the requirements set forth in the Order will be to require the Supplier to use reasonable endeavours to correct such failure, free of additional charge and within a reasonable time.

6. CHARGES AND PAYMENT

6.1 This paragraph 6 is supplemental to clause 6 of the General Conditions and in the event of express conflict, this paragraph 6 shall take precedence.

6.2 The Supplier shall be entitled to invoice the Customer monthly in advance for the Recurring Charges as detailed in the Order and as varied under this Agreement, together with any of the following:

6.2.1 any Termination Charges upon termination of the Services within the Minimum Term;

6.2.2 any work completed by the Supplier at the Customer's request outside the scope set out in the Order and if no fee is agreed for this work the Supplier shall be paid on a time and materials basis at the Supplier's Tariffs applicable at the time, unless the Parties otherwise agree in writing; and

6.2.3 any additional Charges, fees, costs, losses and/or expenses that might arise due to breach of this Schedule by the Customer or which the Supplier is entitled to invoice in accordance with this Schedule or the General Conditions.

6.3 If the Customer fails to comply with its obligations under paragraph 4 above, then without prejudice to the Supplier's other rights and remedies, the Supplier shall be entitled to:

6.3.1 charge the Customer the full Charges for the Services even if it has not been possible to deliver them due to the Customer's default; and/or

6.3.2 re-arrange or repeat the Services for a subsequent date and charge the Customer for performance of the Service again at that stage.

7. INTELLECTUAL PROPERTY

7.1 Unless otherwise expressly agreed in this Agreement, no Intellectual Property Rights of either Party are transferred, assigned or licensed as a result of this Agreement.

7.2 Each Party grants the other a non-exclusive royalty free licence of such Intellectual Property Rights as are necessary to enable the other Party to fulfil its obligations under this Agreement and provide or make use of the Services supplied under this Agreement for its internal business purposes but not otherwise.

7.3 The Customer acknowledges and agrees that any and all Intellectual Property Rights in Services and any Deliverables are owned by and shall remain at all times the exclusive property of the Supplier.

8. DATA PROTECTION

8.1 This paragraph 8 is supplemental to clause 10 of the General Conditions and shall only supersede it in the event of an express conflict.

8.2 The Customer acknowledges that for the Supplier to provide Services under this Agreement, the Supplier may be required to process Personal Data, whether such data is obtained by the Supplier while providing the Services or provided by the Customer.

8.3 The Customer further acknowledges that the nature of Services provided by the Supplier are such that: (i) the Supplier may come into contact with Personal Data of any nature whatsoever in the course of providing the Services and it is not therefore possible to identify or limit the categories of Protected Data which may be processed under the Agreement; and (ii) the Protected Data may relate to any data subject where Personal Data is stored on the Customer's systems.

8.4 Without prejudice to the generality of clauses 10.2 of the General Conditions, the Customer shall:

8.4.1 ensure it has lawful grounds for processing the Protected Data;

8.4.2 ensure that it has all necessary appropriate consents, and it is entitled to transfer or permit access by the Supplier to the Protected Data so that the Supplier may lawfully use, process and transfer the Protected Data in order to provide the Services for the duration and purpose of the Agreement;

8.4.3 be responsible for maintaining the accuracy of the Protected Data, and the Supplier shall promptly comply with any request from the Customer requiring it to amend or transfer the Protected Data; and

8.4.4 ensure that it implements appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data or its accidental loss, destruction, or damage.

8.5 The Customer shall indemnify in full and keep indemnified the Supplier and hold it harmless from any costs, charge, damages, expense, or loss arising as a result of any failure of the Customer to comply with its obligations under the Data Protection Legislation or this Schedule.

9. LIMITATION OF LIABILITY

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- 9.1 This paragraph 9 is supplemental to clause 9 of the General Conditions and shall only supersede it in the event of express conflict.
- 9.2 To the extent that the Supplier makes any recommendations or suggestions (whether as part of the Services or otherwise) regarding the Customer taking any action or procuring any products and/or services (including without limitation software), such recommendations and suggestions collectively being referred to as the “**Recommendations**” and the products, actions and/or services referred to in the Recommendations are referred to as “**Solutions**”, the Customer acknowledges that:
- 9.2.1 such Recommendations should not form the sole basis for any decision or action by the Customer;
 - 9.2.2 such Recommendations may relate to actions and/or third parties’ products and/or services which are unconnected with the Supplier, and therefore the Supplier has no control over such actions, products and/or services;
 - 9.2.3 it is the Customer’s responsibility to check internally and with any relevant third parties that any Solution is suitable for the Customer’s requirements;
 - 9.2.4 if the Customer procures a Solution, whether the Solution is provided by the Supplier, an Affiliates, or an alternative supplier, it remains the Customer’s responsibility to ensure that any contract provides for rights and remedies it requires it respect of the Solution; and
 - 9.2.5 the Customer will be subject to any risks associated with implementing any actions (whether internally itself or by using a third party) which are related to the Recommendations, and therefore the Customer accepts it must ensure that it provides for its own internal contingency measures to be put in place at its own cost (including but not limited to its own disaster recovery and business continuity measures) and it must put in place its own insurance at its own cost to protect against any risks, losses or liability which flow from the Recommendations or using the Solutions.
- 9.3 Subject to clause 9.2 of the General Conditions, the Supplier will not be liable for any issues associated with any Solution. The Customer confirms that this is reasonable in view of the provisions contained within this paragraph 9 and clause 9 of the General Conditions.
- 9.4 Subject to clause 9.2 of the General Conditions, the Supplier will not be liable for any issues, costs or expenses associated with the Customer undertaking any software and/or data restoration and/or configuration. The Customer accepts that that is reasonable in view of the provisions of paragraphs 4.2.3, 5.2, 5.3, 9.2 and 9.5.
- 9.5 The Customer acknowledges that the Charges have been calculated on the basis that the Supplier will exclude and limit its liability as set out in the Agreement, and that the limitations and exclusions of liability in this Agreement are therefore reasonable.
- 10.2 Where the Agreement is terminated prior to expiry of the Minimum Term, other than where the Customer terminates the Agreement under clause 8.1 of the General Conditions or where the Supplier terminates pursuant to clauses 8.3.1 to 8.3.3 of the General Conditions, the Supplier reserves the right to invoice the Customer Termination Charges in accordance with clause 8.7 of the General Conditions and paragraph 6 of this Schedule.

11. NON-SOLICITATION

- 11.1 The Customer shall not, during the continuance of the Agreement, and for a period of six (6) months following termination, whether on behalf of itself or a third party, solicit or seek to entice away any employee of the Supplier or its Affiliates. In the event of a breach of this paragraph 11.1, the Customer shall pay a sum equal to six (6) months gross pay of the employee concerned being a genuine pre-estimate of the cost of recruitment and training a replacement.
- 11.2 The Customer shall not, for the duration of the Agreement, and for a period of six (6) months following termination, enter into a contract with any of the Supplier’s contractors or sub-contractors who have been involved in the performance of any obligations of the Supplier under this Agreement for services the same as, or similar to, any of those the Customer has received from such contractors or sub-contractors via the Supplier pursuant to the Agreement.

10. TERMINATION

- 10.1 This paragraph 10 is supplemental to clauses 8 of the General Conditions and if this paragraph 11 conflicts with clauses 2 or 8 of the General Conditions, this paragraph shall take precedence.

ANNEX 1 - DEFINITIONS

“Deliverables” means all Equipment, products, documents and materials developed or provided by the Supplier in relation to the provision of the Services;

“General Conditions” means the Supplier’s standard terms and conditions for the provision of the Services as set forth on the Supplier’s website at www.chessict.co.uk and which forms part of the Agreement;

“Host” means a network host being a computer or other device connected to a computer network;

“IP address” means an internet protocol address being a numerical label such as 192.0.2.1 that is connected to a computer network that uses the Internet Protocol for communication;

“Order” means an order, quote or proposal issued by the Supplier and accepted by the Customer;

“Protected Data” means the Personal Data received from or on behalf of the Customer or otherwise obtained in connection with the performance of the Supplier’s obligations under this Agreement;

“Recurring Charges” means the Charges for the Services as stated on the Order and as varied under the terms of this Agreement that are invoiced repeatedly in every billing period as set out in the Order; and

“Termination Charges” means any compensatory charges payable by the Customer to the Supplier on termination of this Agreement in whole or in part, in an amount equal to 100% of the Recurring Charges for all remaining months of the Minimum Term.