

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in these terms and conditions.

1.1 Definitions:

Affiliate: means any company which is a subsidiary of, or a holding company of, or another subsidiary of a holding company of, Xyone, as the terms "subsidiary" and "holding company" are defined in section 1159 of the Companies Act 2006 (as amended).

Anti-Bribery Laws: means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws (including any common law, judgment, demand, order or decision of any court, regulator or tribunal) which relate to anti-bribery and/or anti-corruption, including (without limitation) the Bribery Act 2010.

Audit Services: means those audit services detailed in the Proposal.

Authorisation to Test Form: means Xyone's form to be signed by the Client and submitted to Xyone when ordering Security Testing.

Client: means the individual(s) and/or organisation(s) to whom Xyone is providing Services.

Conditions: means these terms and conditions.

Confidential Information: means any information (whether written, oral, in electronic form or in any other media) that is disclosed by or on behalf of a party to or otherwise accessed by the other party or its employees, agents and/or subcontractors in connection with the Contract and/or the provision of the Services and that relates (in whole or in part) to the disclosing party or its business, including (without limitation) all tangible and intangible information designated as confidential by any party in writing and all other information which may, by its nature, should be reasonably regarded as confidential including, but not limited to, details of the Client's Systems/Equipment, procedures, network configuration and topology, passwords, private encryption keys and details of Xyone's methodologies.

Consultant or Auditor: means the individual(s) provided by Xyone for the performance of the Services.

Consultancy Services: means the consultancy services and/or deliverables detailed in the Proposal.

Contract: means the contract formed by these Conditions together with the Proposal and, in the case of Security Testing, the Authorisation to Test Form, and, in the case of Forensic Services, the Order Confirmation, and, in the case of Audit Services, the Agreement for Advisory Support and Compliance.

Contract: the Customer's purchase order and the Supplier's acceptance of it under condition 3.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer's Project Manager: the Customer's manager for the Project appointed in accordance with condition 5.1(a).

Data Protection Legislation: means the Data Protection Act 1998 and Privacy and Electronic Communications (EC Directive) Regulations 2003, together with any related or ancillary legislation, (each as modified, amended, extended, consolidated, re-enacted and/or replaced from time to time).

Deliverables: all products and materials developed by the Supplier in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

Equipment: means the hardware, software or other materials and equipment detailed in the Proposal or Order Confirmation which are to be investigated by Xyone as part of the Forensic Services.

Fees: means Xyone's fees for the Services as detailed in the Proposal and/or the Order Confirmation, and all reasonable expenses incurred by the Consultant in carrying out the Services.

Forensic Services: means the process of undertaking computer forensic examination as described in the Proposal and/or the Order Confirmation.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

ISP: means Internet Service Provider.

Managed Security Services: means either or both of (a) Minerva Managed Services and/or (b) PCI ASV Scanning Services.

Minerva Managed Services: means a service for monitoring and scanning the Client's Systems as described in the Proposal.

Order Confirmation: means the order confirmation provided by Xyone to the Client setting out details of the Forensic Services and any additional terms and conditions applicable to the Contract.

PCI: means Payment Card Industry.

PCI SSC: means Payment Card Industry Standards Security Council.

PCI ASV Scanning Services: means a service for carrying out regular PCI ASV scanning on the Client's systems as described in the Proposal.

Personal Data: means personal data (as defined in the Data Protection Act 1998, as modified, amended, extended, consolidated, re-enacted and/or replaced from time to time)

to which Xyone may (by or on behalf of the Client) be granted access, during the course of the provision of the Services.

Proposal: means the proposal for the Services provided by Xyone to the Client detailing the scope of work all or some of which may be accepted by the Client in their purchase order.

Pre-existing Materials: materials which existed before the commencement of the Project.

Project: the project as described in the Project Plan.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

Project Plan: the detailed plan describing the Project and setting out the estimated timetable (including without limitation Project Milestones) and responsibilities for the provision of the Services by the Supplier in accordance with the Contract.

Report: means any report produced by Xyone detailing the results of the Services.

ROC: means the report on compliance created following a PCI assessment.

Security Testing: means the process of testing the System as described in the Proposal made by Xyone to the Client.

Services: means any or all of the following services: Security Testing, Managed Security Services, Consultancy Services, Forensic Services and/or Audit Services.

Start Date: means the date on which it has been agreed the Services will start to be provided.

System: means the systems and networks which the Client requires to be either security tested or security monitored and/or scanned as part of the Services pursuant to this Contract, together with any software, systems and networks linked to the same and data passing across or contained in any of the foregoing.

Supplier: Xyone.

Supplier's Project Manager: the Supplier's manager for the Project, appointed in accordance with condition 4.3.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes faxes and email.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2. APPLICATION OF CONDITIONS

- 2.1 These conditions shall:
 - (a) apply to and be incorporated in the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. EFFECT OF PURCHASE ORDER

The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier shall use reasonable endeavours to manage and complete the Customer's purchase order, and to deliver the Services to the Customer, in accordance in all material respects with the Customer's purchase order.

- 4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Customer's purchase order, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.3 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Customer's purchase order. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Project Manager throughout the delivery of the Services, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the delivery and supply of the Services and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Customer's purchase order;
 - (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
 - (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
 - (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.
- 5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable and properly incurred costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.
- 5.4 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

6. CHANGE CONTROL

- 6.1 The Customer's Project Manager and the Supplier's Project Manager shall meet at least once every 6 months' to discuss matters relating to the supply of Services. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Supplier's charges arising from the change;
 - (c) the likely effect of the change on the supply and delivery of Services; and
 - (d) any other impact of the change on the terms of the Contract.
- 6.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.

7. CHARGES AND PAYMENT

- 7.1 Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. condition 7.3 and condition 7.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case.
- 7.2 Where the Services are provided on a time-and-materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as amended from time to time;
 - (b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - (c) the Supplier shall be entitled to charge at an overtime rate of 150% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 7.2(b) on a pro-rata basis;
 - (d) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(e); and

- (e) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7.

- 7.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Customer's purchase order. The total price shall be paid to the Supplier in instalments as set out in the Customer's purchase order. All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 7.4 Any fixed price contained in the Customer's purchase order excludes:
 - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost; and
 - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

- 7.5 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.

- 7.6 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
 - (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) suspend all Services until payment has been made in full.

- 7.7 Time for payment shall be of the essence of the Contract.

- 7.8 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

- 7.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

- 7.10 The Customer may, without prejudice to any other rights it may have, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights and all other rights in the creation, supply, delivery or management of the Services shall be owned by the Supplier. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 11.1, this licence will automatically terminate.

9. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, partners, consultants, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, partners, consultants, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

9.3 The above provision of this condition 9 shall survive termination of the Contract, however arising.

10. LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and

- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss or corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

11. TERMINATION

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1(d) to condition 11.1(j) (inclusive);
- (l) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

11.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

- 11.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

12. FORCE MAJEURE

The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. SEVERANCE

- 15.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 15.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. ENTIRE AGREEMENT

- 16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17. ASSIGNMENT

- 17.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.2 The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19. THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

20. NOTICES

- 20.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
 - (b) sent by fax to its main fax number.

- 20.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
 - (c) if sent by fax, at 9.00 am on the next Business Day after transmission.
- 20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.

21. GOVERNING LAW

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

22. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

PRODUCT SPECIFIC TERMS & CONDITIONS

SECURITY TESTING SERVICES

1. Client's Duties
 - 1.1 The Client agrees:
 - 1.1.1 to obtain consent from its ISP and any third party suppliers of the System for the Security Testing to be carried out and, when requested by Xyone, to provide written evidence of such consent and to notify relevant employees that the Security Testing has been scheduled and that they may be monitored;
 - 1.1.2 to arrange a mutually convenient time and date with Xyone for the performance of the Security Testing and to inform its ISP of the date agreed with Xyone;
 - 1.1.3 that it shall properly and fully back-up all data and copies of all computer programs and data which are held immediately prior to commencement of the Security Testing, and which may be affected by the provision of the Security Testing and, where appropriate, regularly perform back ups during the performance of the Security Testing, to enable straightforward recovery and/or reinstatement of any and all data and/or computer programs lost or damaged (whether in whole or part) through performance of the Security Testing;
 - 1.1.4 that, where the Security Testing is to take place on the Client's premises, the Client shall ensure that a suitable working space is provided for the Consultant which shall include (without limitation) a desk, network access and, where necessary, access to data centres, server rooms and/or switch rooms;
 - 1.1.5 that should the Client require a laptop or PDA (Personal Digital Assistant) to be security tested by Xyone it will deliver the laptop and/or PDA to the relevant Xyone premises and collect it from those premises or authorise other means of delivery and return at the Client's own risk. Xyone shall not be liable for the laptop or PDA during transit to or from its offices;
 - 1.1.6 the Client shall assume all liability and shall indemnify, keep indemnified and hold harmless Xyone, its officers, employees, agents, contractors and sub-contractors in full and on demand from and against any and all third party claims (including, but not limited to, claims for alleged or actual infringement of Intellectual Property Rights), losses, damages, demands, costs, expenses, fees (including, but not limited to, court and legal fees) and liabilities (in each case whether direct, indirect or consequential) of whatever nature suffered, incurred or sustained by Xyone directly or indirectly as a result of the provision of the Security Testing Services, save to the

extent that any such losses, damages, demands, costs, expenses, fees or liabilities are incurred as a direct result of Xyone's breach of the Contract or negligence;

- 1.1.7 for the duration of the Security Testing, to provide Xyone with prompt access to at least one employee who shall have substantial computer systems, network and project management experience of the System and any other systems to act as liaison between the Client and Xyone;
- 1.1.8 to at all times co-operate with Xyone and to provide it promptly with such information about its System and any other Systems, network, premises, equipment, data structures, protocols, software, hardware and firmware as are reasonably required by Xyone;
- 1.1.9 to ensure that, where the Security Testing is taking place on the Client's premises, the premises are safe at all times. The Client will indemnify, keep indemnified and hold harmless Xyone in full and on demand from and against all liabilities, direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including without limitation costs of enforcement) and expenses which Xyone incurs or suffers directly or indirectly in any way whatsoever arising out of or in connection with any claim or action against Xyone for death and/or personal injury arising out of the Client's failure to provide safe premises;
- 1.1.10 that, by signing the Authorisation to Test Form, the Client consents, for itself and on behalf of all group companies, to Xyone performing the Security Testing and that it has procured, where necessary, the consent of all its (and its group companies') third party service providers (including ISPs), relevant third party software vendors and equipment owners, employees, agents and sub-contractors for Xyone to carry out the Security Testing. Such consent includes (but is not limited to) authorisation for the purposes of Section 3 of the Computer Misuse Act 1990 (as modified, amended, extended, consolidated, re-enacted and/or replaced from time to time, and any analogous legislation) that Xyone, its employees (including, but not limited to, the Consultant), agents and sub-contractors may perform Security Testing which;
- 1.1.11 impair the operation of the System and/or any computer and/or other systems (as applicable);
- 1.1.12 hinder access to the System and/or any computer and/or other systems (as applicable) (including, without limitation, to any program or data held on them); and
- 1.1.13 impair the operation of any program and/or the reliability of any data relating to the System and/or any computer (as applicable).

1.1.14 that, whilst Xyone will conduct all Security Testing in line with accepted best practice and use reasonable endeavours to avoid disruption of the Client's network, the tools and techniques used may cause disruption to the Client's Systems, systems and software and/or possible loss of or corruption to data and/or software, and the Client agrees to make back-ups pursuant to clause 1.1.3.;

1.1.15 to notify Xyone in writing in advance or as soon as possible after becoming aware if there are any periods during which the Security Testing is due to be or is being performed when Xyone should not perform the Security Testing or should cease performing the Security Testing due to critical business processes (such as batch runs) or if any part of the System or any attached systems, data or software is business critical so that Xyone can, if needs be and with the Client's consent, modify its testing approach. In such circumstances, the provisions of clause 13.3 shall apply with the necessary changes made; and

1.1.16 that, where Xyone supplies any software and/or hardware as part of the Security Testing, Client shall only use such software and/or hardware for lawful purposes, solely to the extent necessary to receive the benefit of the Security Testing Services and in accordance with any applicable licence terms and Xyone's instructions provided from time to time.

2. Fees and payment

2.1 Subject to clause 2.2 below and unless otherwise agreed, the Fees payable for Security Testing under this Contract shall be invoiced on or after delivery of the Report or, if none is to be provided, on completion of the relevant Security Testing Services, unless Security Testing Services are to be performed over a period of more than 60 days in which case Xyone reserves the right to invoice the Fees monthly in arrears in respect of the Security Testing Services performed during that month. Each invoice will be payable within 30 days of the date on which the invoice is issued. All payments due under this Contract shall become due immediately upon termination of this Contract despite any other provision herein. All payments due under this Contract shall be made without any deduction by way of set off, counterclaim, discount or abatement or otherwise except where the Client is expressly permitted to do so by law or Order of Court.

2.2 Xyone reserves the right to invoice the Client upon acceptance of the order an amount of 10% of the estimated Fees that will be charged for the performance of the Security Testing to cover the costs of initiating and preparing for the performance of the Security Testing ("Initial Fee"). The Initial Fee will be treated as a payment on account of the total Fees charged for the Security Testing.

2.3 Upon signature of the Authorisation to Test Form, Xyone will immediately start to allocate resources and facilities and commit to third party expenditure to fulfil its contractual commitments. Xyone may at its absolute discretion allow the Security

Testing to be re-scheduled or cancelled, but if it does so allow, the Client agrees that it will be committed to paying Xyone a proportion of the Fees as genuinely pre-estimated liquidated damages to reflect the losses which it will incur as a result of such cancellation or re-scheduling, as follows:

- 2.3.1 cancellation request 8-30 days before the Start Date: 50% of the Fees will be payable;
- 2.3.2 re-schedule request within 2-7 days of the Start Date with firm re-booking date: 50% of the Fees will be payable;
- 2.3.3 cancellation request within 7 days of the Start Date: 90% of the Fees will be payable;
- 2.3.4 re-scheduling request within 48 hours of the Start Date with firm re-booking date: 90% of the Fees will be payable.
- 2.5 Where Xyone permits a re-booking, in addition to the proportion of the Fees incurred above, the full Fees will also be payable for the Security Testing as re-booked.

PRODUCT SPECIFIC TERMS & CONDITIONS

FORENSIC SERVICES

1. Xyone's Duties

1.1 Xyone shall provide a receipt for any Equipment or image that it removes.

2. Client's Duties

2.1 The Client:

2.1.1 confirms that any hardware which is included within the Equipment is in good working order and that any software which is included in the Equipment functions fully and properly. If, when carrying out the Forensic Services, Xyone discovers faults in the Equipment which require additional work, Xyone reserves the right to charge additional fees in accordance with clause 2.3;

2.1.2 acknowledges that, due to the nature of Forensic Services, Xyone cannot guarantee that it will be able to perform and/or complete the Forensic Services. In particular, Xyone may be unable to recover the data in whole or in part, may be unable to gain access to some or all of the Equipment and may need to examine additional equipment not included in the Order Confirmation. In addition, the data recovered may not be of evidentially significant material, the Equipment may suffer damage as a result of the data recovery process and/or the Forensic Services may result in loss of business operating time or interruption to service for the Client. Such problems cannot be identified by Xyone until it has commenced Forensic Services and so the Client is still liable to pay the Fees (or such proportion of the Fees as Xyone may determine in its absolute discretion);

2.1.3 agrees, where the Forensic Services are to take place on the Client's premises, to ensure that a suitable working space is provided for the Consultant which shall include (without limitation) a desk and network access where appropriate;

2.1.4 agrees that it will, unless otherwise agreed, deliver the Equipment to the relevant Xyone premises and collect the Equipment from those premises or authorise other means of delivery and return at the Client's own risk. Xyone shall not be liable for the Equipment during transit to or from its offices;

2.1.5 the Client shall assume all liability and shall indemnify, keep indemnified and hold harmless Xyone, its officers, employees, agents, contractors and sub-contractors in full and on demand from and against any and all third party claims (including, but not limited to, claims for alleged or actual infringement of Intellectual Property

Rights), losses, damages, demands, costs, expenses, fees (including, but not limited to, court and legal fees) and liabilities (in each case whether direct, indirect or consequential) of whatever nature suffered, incurred or sustained by Xyone directly or indirectly as a result of the provision of the Forensic Services, save to the extent that any such losses, damages, demands, costs, expenses, fees or liabilities are incurred as a direct result of Xyone's breach of the Contract or negligence;

- 2.1.6 agrees for the duration of the Forensic Services to provide Xyone with prompt access to at least one employee who shall have experience of the Equipment to act as liaison between the Client and Xyone;
- 2.1.7 agrees at all times to co-operate with Xyone and to provide it promptly with such information about the Equipment as is reasonably required by Xyone;
- 2.1.8 agrees to ensure that, where the Forensic Services are taking place on its premises, the premises are safe at all times. The Client will indemnify, keep indemnified and hold harmless Xyone in full and on demand from and against all liabilities, direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including without limitation costs of enforcement) and expenses which Xyone incurs or suffers directly or indirectly in any way whatsoever arising out of or in connection with any claim or action against Xyone for death and/or personal injury arising out of the Client's failure to provide safe premises;
- 2.1.9 agrees that it has procured any consents required for Xyone to be permitted to carry out the Forensic Services and that, when requested by Xyone it will provide evidence of such consents. Xyone will be carrying out the Forensic Services in the belief that it has all appropriate consents, permits and permissions from the Client;
- 2.1.10 agrees that, where Xyone supplies any software and/or hardware as part of the Forensic Services, it shall only use such software and/or hardware for lawful purposes, solely to the extent necessary to receive the benefit of the Forensic Services and in accordance with any applicable licence terms and Xyone's instructions; and
- 2.1.11 authorises Xyone to work on or remove Equipment which is compromised or which it believes to be compromised.

3. Fees and payment

- 3.1 Subject to clause 3.4 below and unless otherwise agreed, the Fees payable under this Contract shall be invoiced on or after submission of the Report unless the Forensic Services are to be performed over a period of more than 60 days in which

case the Fees shall be invoiced monthly in arrears in respect of the Forensic Services performed during that month.

Each invoice shall be payable within 30 days of the date on which the invoice is issued. All payments due under this Contract shall become due immediately upon termination of this Contract despite any other provision herein. All payments due under this Contract shall be made without any deduction by way of set off, counterclaim, discount or abatement or otherwise except where the Client is expressly permitted to do so by law or Order of Court.

- 3.2 Unless otherwise stated in the Proposal and/or the Order Confirmation the Fees do not include attendance by an Xyone representative at any case conferences, meetings or court hearings; the storage by Xyone of any property or data post completion of the Forensic Services and/or the cost of transporting the Equipment to/from Xyone's premises. If Xyone agrees to carry out any of these activities it shall be entitled to charge reasonable additional fees.
- 3.3 Xyone reserves the right to increase the Fees and/or to charge additional fees should additional work not listed in the Proposal and/or the Order Confirmation, such as reverse engineering, become necessary. This includes, but is not limited to, additional work necessitated by a defect in any of the software or hardware included within the Equipment. Xyone will not increase the Fees and/or charge any additional fees without informing the Client in writing in advance.
- 3.4 Xyone reserves the right to invoice the Client upon acceptance of the order an amount of 10% of the estimated Fees that will be charged for the performance of the Forensic Services to cover the costs of initiating and preparing for the performance of the Forensic Services ("Initial Fee"). The Initial Fee will be treated as a payment on account of the total Fees charged for the Forensic Services.
- 3.5 Upon submission to the Client of the Order Confirmation, Xyone will immediately start to allocate resources and facilities and commit to third party expenditure to fulfil its contractual commitments. Xyone may at its absolute discretion allow the Forensic Services to be re-scheduled or cancelled, but if it does so allow, the Client agrees that it will be committed to paying Xyone a proportion of the Fees as genuinely pre-estimated liquidated damages to reflect the losses which it will incur as a result of such cancellation or re-scheduling, as follows:
 - 3.5.1 cancellation or re-schedule request 8-30 days before the Start Date: 50% of the Fees will be payable;
 - 3.5.2 cancellation or re-schedule request less than 8 days before the Start Date: 100% of the Fees will be payable;

Where Xyone permits a re-booking, in addition to the proportion of the Fees incurred above, the full Fees will also be payable for the Forensic Services as re-booked. All prices quoted exclude VAT unless otherwise stated and VAT shall, where applicable, be payable in addition

4. Liability

4.1 Xyone shall not be liable for any loss suffered by the Client or any third party due to the occurrence of any of the events listed in clause 4.2 below.

4.2 The Client acknowledges that, due to the nature of Forensic Services, Xyone cannot guarantee that it will be able to perform and/or complete the Forensic Services. In particular, Xyone may be unable to recover the data in whole or in part, may be unable to gain access to some or all of the Equipment and may need to examine additional equipment not included in the Order Confirmation. In addition, the data recovered may not be of evidentially significant material, the Equipment may suffer damage as a result of the data recovery process and/or the Forensic Services may result in loss of business operating time or interruption to service for the Client. Such problems cannot be identified by Xyone until it has commenced Forensic Services and so the Client is still liable to pay the Fees (or such proportion of the Fees as Xyone may determine in its absolute discretion).

PRODUCT SPECIFIC TERMS & CONDITIONS

MANAGED SECURITY SERVICES

1. Client's Duties:

1.1 The Client agrees:-

1.1.1 to obtain consent from its ISP and any third party suppliers of the System for the Managed Security Services to be carried out and, when requested by Xyone, to provide written evidence of such consent and to notify relevant employees that the Managed Security Services are to be carried out and that they may be monitored;

1.1.2 for the duration of the Managed Security Services to provide Xyone with prompt access to at least one employee who shall have substantial computer systems, network and project management experience of the Client's Systems and any other systems to act as liaison between the Client and Xyone;

1.1.3 at all times to co-operate with Xyone and to provide it promptly with such information about its Systems, network, premises, equipment, data structures, protocols, software, hardware and firmware as are reasonably required by Xyone;

1.1.4 that it shall properly and fully back-up all data and copies of all computer programs and data which are held immediately prior to commencement of the Managed Security Services, and which may be affected by the provision of the Managed Security Services and, where appropriate, regularly make back-ups during the performance of the Managed Security Services, to enable straightforward recovery and/or reinstatement of any and all data and/or computer programs lost or damaged (whether in whole or part) through performance of the Managed Security Services;

1.1.5 that, whilst Xyone will conduct all Managed Security Services in line with accepted best practice and use reasonable endeavours to avoid disruption of the Client's network, the tools and techniques used may cause disruption to the Client's Systems, systems and software and/or possible loss of or corruption to data and/or software, and the Client agrees to provide such redundant systems as are prudent in the circumstances, and further ensure all relevant data and systems are backed up to the fullest extent;

1.1.6 to notify Xyone in writing in advance or as soon as possible after becoming aware if there are any periods during which the Managed Security Services are due to be or are being performed when Xyone should not perform the Managed Security Services or should cease performing the Managed Security Services due to critical business processes (such as batch runs) or if any part of the System or any attached systems,

data or software is business critical so that Xyone can, if needs be and with the Client's consent, modify its testing approach;

- 1.1.7 to use any software and/or hardware which Xyone supplies to the Client as part of the Managed Security Services for lawful purposes, solely to the extent necessary to receive the benefit of the Managed Security Services and in accordance with any applicable licence terms and Xyone's instructions provided from time to time;
- 1.1.8 to assume all liability and shall indemnify, keep indemnified and hold harmless Xyone, its officers, employees, agents, contractors and sub-contractors in full and on demand from and against any and all third party claims (including, but not limited to, claims for alleged or actual infringement of Intellectual Property Rights), losses, damages, demands, costs, expenses, fees (including, but not limited to, court and legal fees) and liabilities (in each case whether direct, indirect or consequential) of whatever nature suffered, incurred or sustained by Xyone directly or indirectly as a result of the provision of the Managed Security Services, save to the extent that any such losses, damages, demands, costs, expenses, fees or liabilities are incurred as a direct result of Xyone's breach of the Contract or negligence;
- 1.1.9 to ensure there is sufficient bandwidth to enable Xyone to perform the Managed Security Services; and
- 1.1.10 that Xyone may be obliged to disclose assessment results to PCI SSC or any then current member of PCI SSC, for any PCI work carried out by Xyone for the Client.

2. Xyone's Duties

- 2.1 Reports shall be provided at the frequencies specified in the Proposal(s).
- 2.2 Xyone will use reasonable efforts to ensure the Managed Security Services are provided at the agreed frequency without any interruptions and that the information provided is accurate and up to date. However, from time to time the Client may experience disruptions or receive inaccurate information due to circumstances beyond Xyone's control for which Xyone cannot accept any resultant liability, for example a lack of availability of the backbone internet infrastructure in the UK or other locations. Xyone may also need to perform maintenance of its own hardware and software, which may interrupt the services it provides. However, Xyone will endeavour to execute such essential maintenance with the minimum of disruption to its service and will, where feasible, provide prior notice to the Client.
- 2.3 Xyone will notify the Client of any bandwidth requirements it may have to enable it to perform the Managed Security Services.

3. Fees and Payment

- 3.1 The Fees payable under this Contract shall be invoiced on or after the Start Date. Each invoice will be payable within 30 days of the date on which the invoice is issued. All payments due under this Contract shall become due immediately upon termination of this Contract despite any other provision herein. All payments due under this Contract shall be made without any deduction by way of set off, counterclaim, discount or abatement or otherwise except where the Client is expressly permitted to do so by law or Order of Court. Any additional expenses shall be agreed in advance and shall be reimbursed by the Client.
- 3.2 Xyone will still invoice the Client for the Fees for the Managed Security Services, and the Client will still pay the Fees where the Client cancels or re-schedules all or part of the Managed Security Services within 7 days of the Start Date.
- 3.3 The parties agree that any Fees paid or payable in relation to the Managed Security Services are non-refundable. Accordingly if the Contract is terminated or the Managed Security Services are cancelled, Xyone will be entitled to retain such Fees and no refunds or credits will be given.
4. Liability
 - 4.1 Xyone excludes all liability for any use or misuse of information accessed due to another person being informed of or gaining access to the Client's user names and passwords.

PRODUCT SPECIFIC TERMS & CONDITIONS

AUDIT SERVICES

1. Client's Duties:
 - 1.1 The Client agrees:-
 - 1.1.1 to arrange a mutually convenient time and date with Xyone for the performance of the Audit Services;
 - 1.1.2 to provide Xyone with prompt access to all required staff for the duration of the Audit Services;
 - 1.1.3 at all times to co-operate with Xyone and to provide it promptly with requested information in order to demonstrate compliance with a certification audit;
 - 1.1.4 to ensure that, where the Audit Services are taking place on its premises, the premises are safe at all times. The Client will indemnify, keep indemnified and hold harmless Xyone in full and on demand from and against all liabilities, direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including without limitation costs of enforcement) and expenses which Xyone incurs or suffers directly or indirectly in any way whatsoever arising out of or in connection with any claim or action against Xyone for death and/or personal injury arising out of the Client's failure to provide safe premises;
 - 1.1.5 that, where Xyone is carrying out PCI work for the Client, in order to assist in ensuring the reliability and accuracy of its assessments, Xyone may be obliged to disclose assessment results, including ROCs, to PCI SSC or any then current member of PCI SSC, for any PCI work carried out by Xyone for the Client; and
 - 1.1.6 that, where Xyone is carrying out MasterCard or Visa audits, if requested by MasterCard or Visa, Xyone may be obliged to disclose to MasterCard or Visa evidence in support of the audit results.
2. Fees and payment
 - 2.1 Unless otherwise agreed, the Fees payable for Audit Services under this Contract shall be invoiced on completion of the relevant assignment, unless Audit Services are to be performed over a period of more than 60 days in which case Xyone reserves the right to invoice the Fees monthly in arrears in respect of the Audit Services performed during that month. Each invoice will be payable within 30 days of the date

on which the invoice is issued. All payments due under this Contract shall become due immediately upon termination of this Contract despite any other provision herein. All payments due under this Contract shall be made without any deduction by way of set off, counterclaim, discount or abatement or otherwise except where the Client is expressly permitted to do so by law or Order of Court.

2.2 Upon confirmation by Xyone to the Client of the Start Date, Xyone will immediately start to allocate resources and facilities and commit to third party expenditure to fulfil its contractual commitments. Xyone may at its absolute discretion allow the Audit Services to be re-scheduled or cancelled, but if it does so allow, the Client agrees that it will be committed to paying Xyone a proportion of the Fees as genuinely pre-estimated liquidated damages to reflect the losses which it will incur as a result of such cancellation or re-scheduling, as follows:

- 2.2.1 cancellation request up to 45 days before the relevant assignment is due to start: 100% of the Fees and relevant incurred expenses for that assignment will be payable;
- 2.2.2 re-schedule request 30-45 days before the relevant assignment is due to start: 50% of the Fees and relevant incurred expenses for that assignment will be payable;
- 2.2.3 re-schedule request less than 30 days before the relevant assignment is due to start: 100% of the Fees and relevant incurred expenses for that assignment will be payable.

Where Xyone permits a re-booking, in addition to the proportion of the Fees incurred above, the full Fees will also be payable for the Audit Services as re-booked.

PRODUCT SPECIFIC TERMS & CONDITIONS

CONSULTANCY SERVICES

1. Fees and payment

1.1 Unless otherwise agreed, the Fees payable for Consultancy Services under this Contract shall be invoiced monthly in arrears in respect of the Consultancy Services provided during that month. Each invoice will be payable within 30 days of the date on which the invoice is issued. All payments due under this Contract shall become due immediately upon termination of this Contract despite any other provision herein. All payments due under this Contract shall be made without any deduction by way of set off, counterclaim, discount or abatement or otherwise except where the Client is expressly permitted to do so by law or Order of Court.

1.2 Upon confirmation by Xyone to the Client of the Start Date, Xyone will immediately start to allocate resources and facilities and commit to third party expenditure to fulfil its contractual commitments. Xyone may at its absolute discretion allow the Consultancy Services to be re-scheduled or cancelled, but if it does so allow, the Client agrees that it will be committed to paying Xyone a proportion of the Fees as genuinely pre-estimated liquidated damages to reflect the losses which it will incur as a result of such cancellation or re-scheduling, as follows:

1.2.1 cancellation request 8-30 days before the Start Date: 50% of the Fees will be payable;

1.2.2 re-schedule request within 2-7 days of the Start Date with firm re-booking date: 50% of the Fees will be payable;

1.2.3 cancellation request within 7 days of the Start Date: 90% of the Fees will be payable;

1.2.4 re-scheduling request within 48 hours of the Start Date with firm re-booking date: 90% of the Fees will be payable.

Where Xyone permits a re-booking, in addition to the proportion of the Fees incurred above, the full Fees will also be payable for the Consultancy Services as re-booked.

1.3 Xyone's Consultants record all time spent on an assignment including time spent travelling for the purposes of the assignment. Time is accounted for in units of half a day. No charge is made for periods when the Consultant is absent due to illness or holidays.