

## SOFTWARE AS A SERVICE (SaaS) - TERMS OF SERVICE - CORPORATE

### CYSEP LIMITED (Company Number 6295590)

CySEP Limited (“CySEP”) agrees to provide and you agree to have access to the CySEP Cyber Security Education Software as a Service offering, and related services, on the terms of these Terms of Service.

By subscribing to or enrolling with CySEP’s Services, you acknowledging that you are bound to the terms of this agreement, and by continuing to use the CySEP’s Services, you agree to these terms will apply to you at all times.

### KEY DETAILS

Item	Detail
<b>Start Date</b>	When subscribing to the SaaS Service online, the time you electronically acknowledge that you agree to be bound by the terms of this agreement.
<b>End Date</b>	This agreement continues until terminated by either you or CySEP.
<b>SaaS Service</b>	CySEP Cyber Security Education Program.
<b>Related Services</b>	As specified on CySEP’s website or otherwise specified by CySEP in writing to you.
<b>CySEP Website</b>	<a href="http://www.cysep.com">www.cysep.com</a>
<b>CySEP Email Addresses for Notice</b>	<a href="mailto:hello@cysep.com">hello@cysep.com</a>

### GENERAL TERMS

#### 1. Interpretation

**1.1 Definitions:** In this agreement, the following terms are defined accordingly:

##### *Confidential Information*

These Terms of Service and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, these Terms of Service. All intellectual Property owned by CySEP (or its licensors) under law, including the CySEP Software, is CySEP’s Confidential Information. All Data which is Personal Data or identifying information is your confidential information. All other Data is CySEP’s confidential information.

### *CySEP Software*

The software owned by CySEP (and its licensors) that is used to provide the SaaS Service.

### *Data*

All data, content, and information (including Personal Data) owned, held, used or created by or on behalf of you that is stored using, or inputted into the Services.

### *End Date*

The end date set out in the Statement of Work.

### *Fees*

The amounts specified in the Statement of Work, as updated from time to time in accordance with clause 5. Fee changes to be covered in the Statement of Work.

### *Force Majeure*

An event that is beyond the reasonable control of a party, excluding: (a) any event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; (b) or a lack of funds for any reason.

### *Intellectual Property Rights*

Includes copyright and all worldwide rights conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

### *Objectionable*

Includes being objectionable, defamatory, obscene, harassing, threatening, or unlawful in any way.

### *Permitted Users*

Your personnel who are authorised to access and use the Services on your behalf in accordance with clause 3.3.

### *Personal Data*

Has the meaning given in the Privacy Act 1993 (NZ) (where it's described as *personal information*), and the European Union's General Data Protection Regulations (GDPR) for European Union customers.

### *Program*

A 12 month period starting on either the Start Date, or each 12 month period of any renewed subscription.

### *Related Service*

Any further service that CySEP agrees to provide to you specified by CySEP in writing to you, and which are subject to these Terms of Service

### *SaaS Service*

The service having the core functionality as described in the Statement of Work.

### *Services*

The SaaS Service and any Related Service.

### *Start Date*

The start date set out in the Statement of Work.

### *Terms of Service*

All Terms of Service contained in this document including Statement of Work and GeneralTerms.

### *Underlying Systems*

The CySEP Software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.

### *Website*

The Internet site at the domain set out in the Key Details, or such other site notified to you by CySEP.

## **1.2 Interpretation:** In these Terms of Service:

- a clause and other headings are for ease of reference only and do not affect the interpretation of these Terms of Service;
- b words in the singular include the plural and vice versa;
- c a reference to:
  - i a party to these Terms of Service includes that party's permitted assigns;
  - ii personnel includes officers, employees, contractors and agents, but a reference to your personnel does not include CySEP;
  - iii a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
- iv including and similar words do not imply any limit; and

- v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d no term of these Terms of Service is to be construed against a party because the term was first proposed or drafted by that party.

## 2 SERVICES

### 2.1 **General:** CySEP must use best efforts to provide the Services:

- a in accordance with these Terms of Service and New Zealand law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

### 2.2 **Non-exclusive:** CySEP's provision of the Services to you are non-exclusive. Nothing in these Terms of Service prevents CySEP from providing the Services to any other person.

### 2.3 **Availability:**

- a Subject to clause 2.3-b, CySEP will use reasonable efforts to minimise the unavailability of the SaaS Service. However, it is possible that on occasion the SaaS Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. CySEP will use reasonable efforts to provide you with advance details of any unavailability.
- b Through the use of web services and APIs, the SaaS Service interoperates with a range of third party service features. CySEP does not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, CySEP may cease to make available that feature to you. To avoid doubt, if CySEP exercises its right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

### 2.4 **Underlying Systems:** CySEP is responsible for procuring all Underlying Systems reasonably required for it to provide the SaaS Service in accordance with these Terms of Service.

### 2.5 **Additional Related Services:**

- a CySEP may, from time to time, make available additional services to supplement the SaaS Service.
- b At the request of you and subject to you paying the applicable Fees, CySEP may agree to provide to you an additional Related Service on the terms of these Terms of Service.

## 3 CLIENT OBLIGATIONS

**3.1 General use:** You and your personnel must:

- a use the Services in accordance with these Terms of Service solely for:
  - i your own internal business purposes; and
  - ii lawful purposes (including complying with the Unsolicited Electronic Messaging Act 2007); and
- b not resell or make available the Services to any third party, or otherwise commercially exploit the Services.

**3.2 Access conditions:** When accessing the Services, you and your personnel must:

- a not impersonate another person or misrepresent authorisation to act on behalf of others or CySEP;
- b correctly identify the sender of all electronic transmissions;
- c not attempt to undermine the security or integrity of the Underlying Systems;
- d not use, or misuse, the Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Services;
- e not attempt to view, access or copy any material or data other than that to which you are authorised to access;
- f neither use the Services in a manner, nor transmit, input or store any Data, that breaches any third party rights (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
- g comply with any terms of use on the Website, as updated from time to time by CySEP.

**3.3 Personnel:**

- a Without limiting clause 3.2, no individual other than a Permitted User may access or use the Services.
- b You may authorise any member of your personnel to be a Permitted User, in which case you will provide CySEP with the Permitted User's name, and other information that CySEP reasonably requires in relation to the Permitted User, when subscribing to the service. If following subscription you wish to authorise any additional member of your personnel to be a Permitted User, then a further or replacement subscription may be required to be made.
- c You must procure each Permitted User's compliance with clauses 3.1 and 3.2 and any other reasonable condition notified by CySEP to you.

- d A breach of any term of these Terms of Service by your personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of these Terms of Service by you.

**3.4 Authorisations:** You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Services, including to use, store and input Data into, and process and distribute Data through, the Services.

## 4 DATA

### 4.1 Access to and use of Data:

- a You acknowledge and agree that:
  - i CySEP may require access to the Data to exercise its rights and perform its obligations under these Terms of Service; and
  - ii Data (excluding any Personal Data or identifying information) may be used by CySEP to review or improve the Services, assist with cyber security research, policy development and awareness, and may be provided to third parties for these purposes; and
  - iii to the extent that this is necessary, but subject to clause 7, CySEP may authorise a member or members of its personnel to access the Data for these purposes.
- b You must arrange all consents and approvals that are necessary for CySEP to access the Data as described in clause 4.1-a.
- c CySEP's privacy policy applies to the operation of these Terms of Service.

### 4.2 Agent:

- a You acknowledge and agree that to the extent Data contains Personal Data, in collecting, holding and processing that information through the Services, CySEP is acting as an agent of you for the purposes of the Privacy Act 1993 and any other applicable privacy law.
- b You must obtain all necessary consents from the relevant individual to enable CySEP to collect, use, hold and process that information in accordance with these Terms of Service.

**4.3 Backups of Data:** CySEP will use all standard industry measures to back up all Data stored using the Services.

**4.4 International storage of Data:** You agree that CySEP may store Data (including any Personal Data) in secure servers in overseas territories and may access that Data (including any Personal Data) in those overseas territories and New Zealand.

**4.5 Indemnity:** You indemnify CySEP against any liability, claim, proceeding, cost, expense (including the actual legal fees, GST and disbursements charged by CySEP's solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual

Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

## **5 FEES AND REFUNDS**

**5.1 Payment of Fees:** Payment of Fees for use of the Services by you must be made by electronic bank transfer to CySEP's bank account at the time of subscription or as otherwise required under the Statement of Work. Once your payment has been received by CySEP, access to the Services will be provided within two working days. Notification of your access and related information will be sent to you by email.

**5.2 Quarterly renewal:** Unless you terminate your subscription to the Services in accordance with these Terms of Service, you agree to the Services being renewed every three months on 1 April, 1 July, 1 October and 1 January of each year.

**5.4 Fee increases:** CySEP may increase the Fees at any time, and will notify you of any fee increases which may affect you.

**5.5 Permitted Users:** Fees may be adjusted by CySEP to take into consideration the number of Permitted Users in such manner CySEP considers appropriate. CySEP will notify you of any adjustment which may affect you.

**5.6 Refunds:** If you terminate your subscription in accordance with clause 10.2 (no fault termination), then you will be entitled to a full refund of Fees paid by you for the Program if CySEP receives your termination notice within 7 days after your initial subscription. Because of the nature and timing of the service provided, all on-boarding Fees paid by you to CySEP are non-refundable.

## **6 INTELLECTUAL PROPERTY**

### **6.1 Ownership:**

- a Subject to clause 6.1-b, title to, and all Intellectual Property Rights in the Services, the Website, and all Underlying Systems is and remains the property of CySEP. You must not dispute that ownership.
- b Title to, and all Intellectual Property Rights in the Data (as between the parties) remains your property. You grant CySEP a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with these Terms of Service.

**6.2 Know how:** To the extent not owned by CySEP, you grant CySEP a royalty-free, transferable, irrevocable and perpetual licence to use for CySEP's own business purposes any know how, techniques, ideas, methodologies, and similar Intellectual Property used by CySEP in the provision of the Services.

**6.3 Feedback:** If you provide CySEP with ideas, comments or suggestions relating to the Services or Underlying Systems (together feedback):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications

or derivative works), are owned solely by CySEP; and

b CySEP may use or disclose the feedback for any purpose.

**6.4 Third party sites and material:** You acknowledge that the SaaS Service may link to third party websites or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply any Supplier endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, CySEP excludes all responsibility or liability for those websites or feeds.

**6.5 Third party Intellectual Property Rights indemnity:**

a CySEP indemnifies you against any claim or proceeding brought against you to the extent that claim or proceeding alleges that your use of the Services in accordance with these Terms of Service constitutes an infringement of a third party's Intellectual Property Rights (IP Claim). The indemnity is subject to you:

- i promptly notifying CySEP in writing of the IP Claim;
- ii making no admission of liability and not otherwise prejudicing or settling the IP Claim, without CySEP's prior written consent; and
- iii giving CySEP complete authority and information required for CySEP to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for CySEP's account.

b The indemnity in clause 6.5-a does not apply to the extent that an IP Claim arises from or in connection with:

- i your breach of these Terms of Service;
- ii use of the Services in a manner or for a purpose not reasonably contemplated by these Terms of Service or otherwise not authorised in writing by CySEP; or
- iii any third party data or any Data.

c If at any time an IP Claim is made, or in CySEP's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, CySEP may (at CySEP's option):

- i obtain for you the right to continue using the items which are the subject of the IP Claim; or
- ii modify, re-perform or replace the items which are the subject of the IP Claim so they become non-infringing.

**7 CONFIDENTIALITY**

**7.1 Security:** Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and



- c disclose the other party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 7.1-a and 7.1-b.

**7.2 Permitted disclosure:** The obligation of confidentiality in clause 7.1-a does not apply to any disclosure or use of Confidential Information:

- a for the purpose of performing these Terms of Service or exercising a party's rights under these Terms of Service;
- b required by law (including under the rules of any stock exchange);
- c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- d which was rightfully received by a party to these Terms of Service from a third party without restriction and without breach of any obligation of confidentiality; or
- e by CySEP if required as part of a bona fide sale of its business (assets or shares, whether in whole or in part) to a third party, provided that CySEP enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 7.

## **8 WARRANTIES**

**8.1 Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under these Terms of Service which constitute binding obligations on the warranting party.

**8.2 Cyber security risks:** CySEP's SaaS Service is an educational tool developed to improve your and your employees' awareness of cybersecurity risks and how to minimise those risks. The Services, however, is not designed or developed in any way to prevent cyber attacks on you (in the broadest sense), or unlawful or unauthorised access to your data, your employees or your business ("attack"). You agree and acknowledge that CySEP has *no* liability or responsibility in anyway, and to any extent, if you suffer an attack. You further agree to indemnify CySEP against any liability, claim, proceeding, cost, expense (including the actual legal fees, GST and disbursements charged by CySEP's solicitors) and loss of any kind arising from an attack.

**8.3 No implied warranties:** To the maximum extent permitted by law:

- a CySEP's warranties are limited to those set out in these Terms of Service, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under the Sale of Goods Act 1908) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to \$1,000; and
- b CySEP makes no representation concerning the quality of the Services and does not promise that the Services will:

- i meet your requirements or be suitable for a particular purpose; or
- ii be secure, free of viruses or other harmful code, uninterrupted or error free.

**8.3 Consumer Guarantees Act:** You agree and represent that you are acquiring the Services, and are bound by these Terms of Service, for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Services or these Terms of Service.

**8.4 Limitation of remedies:** Where legislation or rule of law implies into these Terms of Service a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms of Service. However, the liability of CySEP for any breach of that condition or warranty is limited, at CySEP's option, to:

- a supplying the Services again; and/or
- b paying the costs of having the Services supplied again.

## **9 LIABILITY**

**9.1 Maximum liability:** The maximum aggregate liability of CySEP under or in connection with these Terms of Service or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Program exceed an amount equal to the Fees paid by you under these Terms of Service in the immediately previous Program (which in the first Program is deemed to be the total Fees paid by you from the Start Date to the date of the first event giving rise to liability). The cap in this clause 9.1 includes the cap set out in clause 8.2-a.

**9.2 Unrecoverable loss:** Neither party is liable to the other under or in connection with these Terms of Service or the Services for any:

- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

**9.3 Unlimited liability:**

- a Clauses 9.1 and 9.2 do not apply to limit CySEP's liability:
  - i under the indemnity in clause 6.5-a; or
  - ii under or in connection with these Terms of Service for personal injury or death, fraud or willful misconduct, or breach of clause 7.
- b Clause 9.2 does not apply to limit your liability:
  - i to pay the Fees;
  - ii under the indemnity in clause 4.5; or
  - iii for those matters stated in clause 9.3-a-ii.

**9.4 No liability for other's failure:** Neither party will be responsible, liable, or held to be

in breach of these Terms of Service for any failure to perform its obligations under these Terms of Service or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms of Service, or by the negligence or misconduct of the other party or its personnel.

**9.5 Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms of Service.

**9.6 Loss or misappropriation of Data:** CySEP has no liability for any loss, damage or misappropriation of Data under any circumstances for any consequences relating to changes, restrictions, suspensions or termination of these Terms of Service.

**9.7 Cybersecurity breaches:** To avoid doubt, you acknowledge and agree that CySEP has no liability whatsoever for any cyber security breach or incident of any kind, irrespective of its nature, which may affect any of your information or communications technologies or systems.

## **10 TERM, TERMINATION AND SUSPENSION**

**10.1 Duration:** Unless terminated under this clause 10, the supply of the Services and these Terms of Service continue for successive terms of 12 months from the Start Date, unless a party gives one month's notice that these Terms of Service will terminate on the expiry of the then current term.

**10.2 No fault termination:** Either party may terminate these Terms of Service by giving no less than one month's notice.

### **10.3 Other termination rights:**

- a Either party may, by notice to the other party, immediately terminate these Terms of Service if the other party:
  - i breaches any material provision of these Terms of Service and the breach is not remedied within 14 days of the receipt of a notice from the first party requiring it to remedy the breach, or capable of being remedied;
  - ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
  - iii is unable to perform a material obligation under these Terms of Service for one month or more due to Force Majeure.
- b If the remedies in clause 6.5-c are exhausted without remedying or settling the IP Claim, CySEP may, by notice to you, immediately terminate these Terms of Service.

### **10.4 Consequences of termination or expiry:**

- a Termination or expiry of these Terms of Service does not affect either party's rights and obligations that accrued before that termination or expiry.

- b On termination or expiry of these Terms of Service, you must pay all Fees for Services provided prior to that termination or expiry.
- c Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of these Terms of Service, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control. To avoid doubt, CySEP has ongoing rights to the use of Data referred to in clause 4.1-a-ii.

**10.5 Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of these Terms of Service continue in force.

**10.6 Suspending access:** Without limiting any other right or remedy available to CySEP, CySEP may restrict or suspend your access to the SaaS Service where you (including any of its personnel):

- a undermines, or attempts to undermine, the security or integrity of the SaaS Service or any Underlying Systems;
- b uses, or attempts to use, the SaaS Service:
  - i for improper purposes; or
  - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service; or
- c has otherwise materially breached these Terms of Service (in CySEP's reasonable opinion).

**10.7 Notice:** CySEP must notify you where it restricts or suspends your access under clause 10.6.

## **11 DISPUTES**

**11.1 Good faith negotiations:** Before taking any Court action, a party must use best efforts to resolve any dispute under, or in connection with, these Terms of Service through good faith negotiations.

**11.2 Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under these Terms of Service even if there is a dispute.

**11.3 Right to seek relief:** This clause 11 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

## **12 GENERAL**

**12.1 Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under these Terms of Service to the extent caused by Force Majeure, provided that the affected party:

- a immediately notifies the other party and provides full information about the Force Majeure;
- b uses best efforts to overcome the Force Majeure; and
- c continues to perform its obligations to the extent practicable.

**12.2 Rights of third parties:** No person other than CySEP and you have any right to a benefit under, or to enforce these Terms of Service.

**12.3 Waiver:** To waive a right under these Terms of Service, that waiver must be in writing and signed by the waiving party.

**12.4 Independent contractor:** Subject to clause 4.2, CySEP is an independent contractor in relation to you, and no other relationship (for example, joint venture, agency, trust or partnership) exists under these Terms of Service.

**12.5 Notices:** A notice given by a party under these Terms of Service must be delivered to the other party via email using the email address provided by you when subscribing for the Service. If the notice is a notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address.

**12.6 Severability:** Any illegality, unenforceability or invalidity of a provision of these Terms of Service does not affect the legality, enforceability or validity of the remaining provisions of these Terms of Service.

**12.7 Variation:** CySEP has the right to vary these Terms of Service at any time. The varied Terms of Service will take effect from such time that you are notified of the variation by CySEP.

**12.8 Modification:** CySEP may modify, update, or discontinue the Services at any time without liability to you or anyone else. However, we will make reasonable effort to notify you before we make the change.

**12.9 Entire agreement:** These Terms of Service, together with any terms relating to the use of CySEP's website, or any other CySEP application, and our privacy policy, set out everything agreed by the parties relating to the Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of these Terms of Service that is not expressly set out in these Terms of Service, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986.

**12.10 Subcontracting and assignment:**

- a You may not assign, novate, subcontract or transfer any right or obligation under these Terms of Service without the prior written consent of CySEP, that consent not to be unreasonably withheld. You remain liable for its obligations under these Terms of Service despite any approved

assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

- b Any change of control of you (if you are a company) is deemed to be an assignment for which CySEP's prior written consent is required under clause 12.9a. In this clause change of control means any transfer of shares or other arrangement affecting you or any member of your group which results in a change in the effective control of you.

**12.11 Law:** These Terms of Service is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms of Service.