STANDARD TERMS AND CONDITION OF CONTRACT

Agreement Schedule

SekChek: **SekChek Information Protection Services CC** of Box 101062, Meerensee 3901, South Africa, registered in South Africa (No. 1998/047454/23) ("SekChek IPS");

Client: **Company Name:**_____ ("Client")

Address:_____

_____

_____

Reg Company No / Incorporation Number:

_____

Country (or State) of Registration / Incorporation:

_____

The parties each agree to the terms of this Agreement (which expression includes this Agreement Schedule and the Mutual Confidentiality and Non-Disclosure Agreement Terms and Conditions).

Signed by: Signed by:

_____   _____
For and on behalf of **Company**   For and on behalf of **SekChek**

_____   _____
Name (Print)   Name (Print)

_____   _____
Title   Title

_____   _____
Date   Date

*All pages to be initialed by signatories.

Note: Please sign, convert to PDF format and send the document to: inbox@sekchek.com marked for the attention of Gordon Docherty.
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1.   Introduction

1.1.   These terms and conditions and the quotation, proposal, statement of work or client order (the **"Client Order"**) which refer to or to which these terms and conditions are attached constitute the conditions upon which SekChek IPS is to provide the Services and licence the SekChek Client Software to the client named in that Client Order (the **"Client"**).

2.   Definitions

2.1.   **"this Agreement"** means these standard terms and conditions of contract, which shall be incorporated by reference into the relevant Client Order;

2.2.   **"SekChek IPS"** means the SekChek Information Protection Services CC, a close corporation with registration number 1998/047454/23.

2.3.   **"SekChek Report"** means a report in MS-Office format, which contains an analysis of selected security controls on a host computer, including:

2.3.1.   Graph summaries that compare security on the host computer with industry averages and leading practices for security;

2.3.2.   Detailed report sections containing exception reports that support the graph summaries;

2.3.3.   Generic security exposures, implications and risks, as well as recommendations to correct them.

2.4.   **"Report Highlights Document"** means a report in MS-Office format, which contains:

2.4.1.   An overall rating of security on the host system against a calculated industry average;

2.4.2.   Summarised comments that highlight the more pertinent points in the SekChek Report.

2.5.   **"SekChek Client Software"** means the computer software, licensed to the client in terms of 3.1, that provides the client with:

2.5.1.   The ability to generate programs and / or instructions to extract security data from a host computer;

2.5.2.   The ability to encrypt the extracted security data and to decrypt packages containing SekChek Reports and Report Highlight Documents;

2.5.3.   Instructions and help files for using the SekChek Client Software.

2.6.   **"A SekChek Unit"** means an entitlement to one SekChek Report and one Report Highlights Document.

2.7.   **"The Service"** means the services provided by SekChek IPS to the client set out in clause 3.

3.   The Service

3.1.   In order to facilitate the provision of The Service, SekChek IPS hereby grants to Client a non-exclusive licence ("License") to use the SekChek Client Software in object code form. The License shall commence for each copy of the SekChek Client Software upon delivery of such software to the Client and last for the duration that SekChek IPS provides The Service to the Client. The Client shall use the SekChek Client Software exclusively for the purpose of facilitating the provision of The Service. The Client shall be entitled to make a reasonable number of copies of the SekChek Client Software and to distribute such copies to any third parties, provided that the Client and/or such third parties shall not be entitled to receive any consideration in relation to, in connection with or arising from such software and the Client shall procure that the relevant third parties observe and comply fully with all of the provisions of clause 7. Save as specifically contemplated in this clause 3.1, the granting by SekChek IPS of the right to distribute copies of the SekChek Client Software shall not constitute a waiver by SekChek IPS of any of its intellectual property rights in relation to such software.

3.2.   The Client will use the SekChek Client Software in accordance with the instructions provided to extract security data from a host computer.

3.3.   The Client will encrypt the extracted security data using the SekChek Client Software and e-mail the encrypted extract file to SekChek IPS for processing.

3.4.   Provided that the Client has extracted, encrypted and emailed the extracted security data to SekChek IPS in full compliance with the instructions provided by SekChek IPS to the Client, SekChek IPS will decrypt the encrypted extract file and will analyze the extracted security data using the latest versions of its proprietary processing engines to produce a SekChek Report and Report Highlights Document.

3.5.   SekChek IPS will encrypt the Client's SekChek Report and Report Highlights Document, using the password provided by the Client referred to in clause 3.3, and use its reasonable commercial endeavours to e-mail the encrypted SekChek Report and Report Highlights Document to the Client within 24 hours of receiving the encrypted file containing the client's extracted security data.

3.6.   SekChek IPS will provide the Client with the latest versions of the SekChek Client Software within 30 (thirty) days of their release.

3.7.   SekChek IPS will provide the client with a minimum of 4 newsletters per year, which newsletters shall contain information relating to new features and developments in The Service.

4. Restraint

4.1. Each of the parties ("The Grantor") undertakes in favour of the other ("The Other") that, for a period of 12 months from the date that SekChek IPS ceases to provide The Service to the Client, it shall not and shall not attempt to, for itself or as the agent of anyone else, persuade, induce, solicit, encourage or procure any employee, independent contractor, consultant, manager or director of the other to:

4.1.1. Become employed by The Grantor or interested in any manner whatsoever in any business, firm, undertaking, company, close corporation or other entity ("a Concern"); or

4.1.2. Terminate the employment or engagement of such person by The Other; or

4.1.3. Furnish any information or advice to anyone or use any other means which are directly or indirectly designed or calculated to result in any such person terminating its employment or engagement with The Other or becoming employed or engaged by, or directly or indirectly interested in any manner in, any Concern;

4.1.4. Provide services as a consultant either independently or via a third party to The Grantor.

4.2. It is agreed by the Parties that, while the restrictions set out in clause 4.1 are considered fair and reasonable, if it should be found that any of the restrictions are void as going beyond what is fair and reasonable in the circumstances and if by deleting part of the wording or substituting a shorter period of time or a different geographical limit or a more restricted range of activities than set out in clause 4.1 it would not be void, then there shall be substituted such less extensive period and/or different geographical limit and/or more restricted range of activities and such other deletions shall be made as shall render clause 4.1 valid and enforceable.

5. Payment and Invoicing

5.1. Unless stated otherwise in the relevant Client Order, the Client shall pay to SekChek the fees in respect of The Service within 30 days of presentation of the relevant invoice. The Client shall qualify for the discounted prices offered on SekChek Units only if the client pays SekChek within such period.

5.2. There are no time limits on the use of SekChek Units and you are entitled to use them at your own convenience. However, SekChek Units may not be sold or transferred to another party and any payment made for unused SekChek Units is not refundable.

5.3. SekChek IPS will provide the Client with a monthly statement of account, which details invoices issued, SekChek Units purchased and consumed, and the balance of SekChek Units remaining to the Client.

5.4. SekChek IPS will debit the Client's account with one SekChek Unit for each SekChek Report and Report Highlights Document produced for the Client.

6. Validity of Quotations

6.1. All quotations, prices and discounts for SekChek Units set out in the relevant Client Order are valid for thirty days from the date of issue, unless otherwise indicated.

7. Intellectual Property

7.1. SekChek IPS is the owner of, and will retain ownership of, all copyright and all other intellectual property rights (including, without limitation, know-how and trade secrets) subsisting in all materials, software and tools provided to the Client or utilized by it in the provision and the fulfilment of The Service (including, without limitation, the SekChek Client Software).

7.2. The Client shall not be entitled to alter or remove any proprietary notices or labels on the SekChek Client Software nor shall it decompile, disassemble or reverse engineer the object code of such software.

8. Confidentiality and Security

8.1. Subject to clause 8.3, SekChek IPS will keep confidential all information obtained from the Client, and all security data, analyses and reports produced by SekChek IPS under this Agreement unless such information:

8.1.1. is in the public domain; or

8.1.2. is lawfully available from any other source; or

8.1.3. is lawfully requested by any Government or Statutory Body or by any Court of competent jurisdiction; or

8.1.4. is required to be disclosed for the purpose of any arbitration or court proceeding in respect of a dispute arising out of this Agreement.

8.2. In particular, but subject to clause 8.3, SekChek IPS will only retain Client security data and reports on its systems for a maximum of 5 (five) days, unless requested otherwise by the Client, for the sole purpose of reruns that may be requested by the Client or the answering of queries raised by the Client.

8.3. An exception to the confidentiality provisions set out in clauses 8.1 and 8.2 is highly summarized statistical data that is used to calculate industry averages for security for the purpose of benchmarking Clients' security against industry averages and norms.

8.4. SekChek IPS will ensure that the Client's extracted security data is only used for the purpose of producing a SekChek Report and a Report Highlights Document in accordance with the terms of this Agreement.

8.5. SekChek IPS will ensure that SekChek Reports and Report Highlights Documents are encrypted using the password provided by the Client referred to in 3.3, before they are transmitted to the Client.

8.6. The Client will ensure that the SekChek Client Software is used to encrypt all extracted security data before it is transmitted to SekChek IPS for processing.

8.7. The Client will ensure that robust and non-trivial passwords are used to encrypt extracted security data before they are transmitted to SekChek IPS and that such passwords are communicated to SekChek IPS.

8.8. Each of SekChek IPS and the Client will endeavour to ensure that files and e-mail messages exchanged between them are free of viruses and malicious code.

9.   Termination and Limitation of Liability

9.1. This Agreement may be terminated forthwith by either party in the event of the other party going into provisional or final liquidation, or having a Judicial Manager appointed over all or part of its activities.

9.2. In the event either party breaches any of the terms of this Agreement and fails to remedy the breach within 7 (seven) days of receipt of notice so to remedy, or if the breach is incapable of being remedied, the other party may in writing terminate the Agreement without prejudice to its right to claim damages arising from such breach, or, in the case of SekChek IPS, its right to demand payment for services that have been rendered or work that has already been completed.

9.3. Disclaimer Of Warranties. To the maximum extent permitted by law, SekChek IPS provides to the Client the SekChek Client Software and The Service *as is and with all faults*; and SekChek IPS hereby disclaim with respect to the SekChek Client Software and The Service all warranties and conditions, whether express, implied or statutory, and the Client hereby waives all of its rights in relation to, arising from or in connection with such warranties and conditions.

9.4. In the unlikely event that the Client incurs a loss due to any act or omission, whether negligent or not, of SekChek IPS, the maximum aggregate liability of SekChek IPS for all claims of the Client arising out of damages suffered by it in connection with The Service, shall be limited to the total fee received by SekChek IPS for The Service as per the respective sales invoice. The liability contemplated herein shall be a maximum aggregate liability for all claims from whatsoever source and howsoever arising, whether in contract, delict or otherwise.

9.5. SekChek IPS will not be liable to the Client or any cessionary or third party claiming through or on behalf of the Client for any damages whatsoever or for any consequential or other loss or damages beyond the maximum liability specified in clause 9.4.

9.6. Any claims, howsoever arising, must be commenced formally by service of court summons or process initiating arbitration proceedings within one year after the party bringing the claim becomes aware (or ought to reasonably have become aware) of the facts which allegedly give rise to such claim, but in all cases within a period of 2 (two) years from the date of occurrence which gave rise to the alleged claim and, if a party does not commence such proceedings within the time periods set out in this clause 9.6, such party shall be deemed to have waived all of its rights in relation to and/or arising from the relevant claim. This expressly overrides any statutory provision or common law rule that would otherwise apply.

10.   Force Majeure

10.1. Delay or failure to comply with or breach of any of the terms and conditions of this Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any Government or other authority, compliance with Government orders, demands or regulations, or any circumstances of like or different nature beyond the reasonable control of the party so failing, will not be deemed to be a breach of this Agreement nor will it subject either party to any liability to the other.

11.   General Terms

11.1. This Agreement, together with the relevant Client Order, shall constitute the entire agreement between the parties and no variation, amendment, or addition shall be valid or enforceable unless reduced to writing and signed by the parties.

11.2. No indulgence, leniency or extension of time which any party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

11.3. If for any reason any provision of this Agreement is or becomes void or unenforceable it shall be severable from the remainder of this Agreement which shall remain in full force and effect.

11.4. This Agreement shall be governed by, and construed in accordance, with the laws in force from time to time of the Republic of South Africa.