

Terms & Conditions

- This Contract is made up of the following:

a) The Conditions.

b) The Scope of the Work Packages

- If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Contract has been entered into on the date of signature

Agreed terms

- **Interpretation**

1.1 Definitions:

Applicable Laws: all applicable laws, statutes and regulations from time to time in force.

Business Day: a day other than a Saturday, Sunday or public holiday in Northern Ireland, when banks in Belfast are open for business.

Charges: the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Contract Details.

Conditions: these terms and conditions set out in clause 1 (Interpretation) to clause 12 (General) (inclusive).

Contract: the contract between the Customer and the Supplier for the supply of the Services in accordance with the Contract Details, these Conditions and the Security and Penetration Testing Scope Sheet.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer Materials: all materials, specifications and data supplied by the Customer to the Supplier.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.

Deliverables: all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including

without limitation computer programs, data, reports, specifications (including drafts) and the Penetration Test Report.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Penetration Test Report: the penetration test report, generated by the Supplier for the Customer in connection with the Services.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier, as set out in the Contract Details.

Services Start Date: the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

Supplier IPRs: all Intellectual Property Rights either subsisting in the Deliverables (excluding any Customer Materials incorporated in them) or otherwise necessary or desirable to enable a Customer to receive and use the Services.

Systems: the Customer's sites and network infrastructures as more particularly described in the Security and Penetration Testing Scope Sheet.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018.

1.2 Interpretation:

A) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.

B) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

C) A reference to **writing** or **written** includes fax and email.

- **Commencement and term**

The Contract shall commence on the date when it has been signed by both parties and shall continue until the completion of the supply of the Services by the Supplier to the Customer, unless terminated earlier in accordance with its terms.

- **Supply of services**

3.1: The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.

3.2: The Supplier shall perform the Services with reasonable care and skill.

- **Customer's obligations**

4.1 The Customer shall:

A) Co-operate with the Supplier in all matters relating to the Services;

B) Provide such access to and use of the Customer's premises, and such office accommodation and other facilities as may reasonably be required by the Supplier for the purposes of providing the Services;

C) Provide to the Supplier in a timely manner access to all documents, data, information, items and materials in any form (whether owned by the Customer or third party) reasonably required by the Supplier in connection with the Services;

D) Notify its hosting provider of the intended time and date for the penetration test;

E) Provide an emergency 24/7 contact to the Supplier to assist with any issues which may arise; and

F) Ensure that its Systems are fully backed up before the time of the intended penetration test and shall provide written confirmation to the Supplier to this effect.

4.2: If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

4.3: The Customer hereby acknowledges that, in the provision of the Services, the Supplier is permitted to perform an invasive, destructive penetration test on the Systems.

4.4: The Customer agrees and acknowledges that the Supplier shall not be held either directly or indirectly responsible for any damage to the Systems as a result of the Services to be provided pursuant to this Contract.

- **Intellectual property**

5.1: The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

5.2: The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer in accordance with the Contract.

5.3: The Customer warrants:

A) That the receipt and use of the Customer Materials in the performance of this agreement by the Supplier shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

B) It shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

• **Charges and payment**

6.1: In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with his clause 6.

6.2: All amounts payable by the Customer exclude amounts in respect of value added tax (VAT) which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

6.3: To secure its place on the Supplier's schedule for the provision of the Services, the Customer shall be required to pay 50% of the Charges in advance. The Supplier shall invoice the Customer accordingly and the invoice shall be due and payable within 7 days. The Customer shall make payment to a bank account nominated in writing by the Supplier. Once paid, the Customer's place on the Supplier's schedule for the provision of the Services shall be secured.

6.4: The Supplier shall invoice the Customer for the remaining 50% of the Charges on delivery by the Supplier of the Penetration Test Report. The Customer shall pay this invoice within 30 days of receipt, to a bank account nominated in writing by the Supplier.

6.5: Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:

A) The Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;

B) The Supplier may suspend all or part of the Services until payment has been made in full.

6.6: In the event that the Customer cancels or postpones the Services, the following shall apply:

Timeframe of cancellation or postponement	Applicable Charges payable	Method of payment
	Method of payment	
		The Supplier shall retain the 50% of the Charges already paid by the Customer in accordance with clause 6.3.
During the Services	100% of the Charges	Upon the cancellation/postponement of the Services, the Supplier shall invoice the Customer for the remaining 50% of the Charges and the invoice shall be immediately due and payable. The Customer shall make payment to a bank account nominated in writing by the Supplier. The Supplier shall retain the 50% of the Charges already paid by the customer in accordance with clause 6.3.
Fewer than three full Business Days in advance of the Services Start Date	100% of the Charges	Upon the cancellation/ postponement of the Services, the Supplier shall invoice the Customer for the remaining 50% of the Charges and the invoice shall be immediately due and payable. The Customer shall make payment to a bank account nominated in writing by the Supplier.
Three→ten full Business Days in advance of the Services Start Date	50% of the Charges	The Supplier shall retain the 50% of the Charges already paid by the Customer in accordance with clause 6.3.

• **Re-test**

7.1: The Customer shall, within 90 days of delivery of the Penetration Test Report:

A) Effect any remedial works recommended by the Supplier in the Penetration Test Report and deemed to be required by the Customer ; and

B) Contact the Supplier to arrange for a further penetration test (**Re-test**).

7.2: In the event that the Customer complies with its obligations in clause 7.1, the Supplier shall carry out the Re-test free of charge.

7.3: The Customer hereby agrees and acknowledges that, should it fail to comply with its obligations in clause 7.1, the Supplier shall be entitled to charge such fee as it, in its sole discretion, determines appropriate for the Re-test (**Re-test Fee**).

7.4: The Supplier shall invoice the Customer for the Re-test Fee on completion of the Re-test and same shall be payable by the Customer within 30 days of receipt, to a bank account nominated in writing by the Supplier.

• **Limitation of liability**

8.1: Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

A) Death or personal injury caused by negligence;

B) Fraud or fraudulent misrepresentation; and

C) Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2: Neither party shall be liable to the other for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

8.3: Whilst the Supplier shall perform a wide range of tests and attempted compromises in relation to the Customer's Systems, the Supplier shall not be liable for any vulnerabilities in the Systems which are not discovered during the testing period or which are later discovered.

8.4: Subject to clause 8.1, the Supplier's aggregate liability in respect of claims based on events arising out of or in connection with the Contract, shall not exceed the aggregate total of the Charges payable by the Customer to the Supplier pursuant to the Contract.

• **Data Protection**

9.1: Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and, if provided with access, or access is obtained to the Systems through testing, the Supplier is the processor.

9.3: Without prejudice to the generality of clause 9.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.

9.4: Without prejudice to the generality of clause 9.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

A) process that personal data the purposes of delivering the Services only and in accordance with the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data (in which case, the Supplier shall promptly inform the Customer of its inability to comply);

B) Ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

C) Ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

D) Not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) The Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) The data subject has enforceable rights and effective legal remedies;

(iii) The Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) The Supplier complies with reasonable instructions notified to it in advance by the customer with respect to the processing of the personal data;

E) Notify the Customer without undue delay on becoming aware of a personal data breach;

F) At the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and

G) Maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

H) Our team will use cloud based products which unavoidably securely store data outside of the UK/EU. The list of these is below:

- Postman - <https://www.postman.com/>
- Plextrac - <https://plextrac.com/>
- Insomnia - <https://insomnia.rest/>

9.5: The Supplier shall not engage another data processor in relation to carrying out the services without the prior written consent of the Customer.

- **Termination**

10.1: Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

A) The other party commits a material breach of any term of the Contract 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;

B) The other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

C) The other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

10.2: Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

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

- **Exit arrangements**

On termination of the Contract for whatever reason Supplier shall immediately return all Customer Materials.

- **General**

12.1: **Force majeure** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

12.2: **Subcontracting**

The Supplier may subcontract any of its rights or obligations under the Contract. The Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

12.3: Confidentiality.

A) Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 12.3(b).

B) Each party may disclose the other party's confidential information:

(i) To its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and

(ii) As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

C) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.4: **Entire agreement** The Contract 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.

12.5: **Variation** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6: Change control

Where either the Customer reasonably requires a change to any of the Services, or where the Supplier reasonably believes that a change to any of the Services would be in the Customer's best interests, it shall notify the other party thereof and the parties shall as soon as reasonably practicable thereafter discuss the change in good faith, including any charge or increase in the Charges reasonably required by the Supplier and as calculated on the basis of the Supplier's then current rates. In the event that this Contract is varied to record the change (and any extra charge or increase in the Charges), the Customer will pay any agreed charge within 28 days of receipt of the Supplier's invoice therefor.

12.7: **Publicity** All media releases, public announcements and public disclosures by either party relating to this Contract or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties prior to release.

12.8: **Waiver** A) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

B) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

12.9: Severance. If any provision or part-provision of the Contract 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 the Contract.

12.10: Notices.

A) Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

(i) Delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) Sent by email to the following address: operations@verticalstructure.com

B) Any notice or communication shall be deemed to have been received:

(i) If delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

(ii) 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; and

(iii) If sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.10, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

C) 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.

12.11: Third Party Rights

A) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

B) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.12: Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of Northern Ireland.

12.13: Jurisdiction

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

13. Relevant Information Security laws and regulations.

13.1: It is crucial that all work undertaken by Vertical Structure follows relevant legislation. It is noted that the law on ethical hacking is significantly outdated in the United Kingdom. As a company we must avoid committing any unintentional potential criminal offences in this regard.

13.2: There is no single cyber security law in the United Kingdom. Instead, there is a patch work of legislation which applies to this area of law. The key piece of legislation relating to Vertical Structure's work is the Computer Misuse Act 1990 (CMA).

13.3 Section 1 of the CMA provides as follows:

1. *Unauthorised access to computer material.*

(1) A person is guilty of an offence if—

- *he causes a computer to perform any function with intent to secure access to any program or data held in any computer, or to enable any such access to be secured;*
- *the access he intends to secure, or to enable to be secured, is unauthorised; and*
- *he knows at the time when he causes the computer to perform the function that that is the case.*

(2) The intent a person has to have to commit an offence under this section need not be directed at—

- *(a) any particular program or data;*
- *(b) a program or data of any particular kind; or*
- *(c) a program or data held in any particular computer.*

Anyone who breaches this provision is liable to 6 months imprisonment or a fine, or both.

13.4: Section 3A of the CMA also makes it an offence to **make, adapt, supply or offer to supply any article intending** it to be used to commit or assist in the commission of a CMA offence. Anyone who breaches this provision is liable to 6 months imprisonment or a fine, or both.

13.5: Section 16A of the CMA gives the court the power to grant the PSNI a search warrant where a constable has reasonable grounds to suspect that a section 1 CMA has been or is

about to be committed. The PSNI will be permitted, by virtue of such warrant, to enter and search the premises, using such reasonable force as is necessary and can seize articles in evidence.

13.6: Section 1 of the CMA does not take into account the intentions of the “hacker”. For the purposes of section 1, it is irrelevant whether or not a person is gaining unauthorised access to a program or data for good / helpful reasons or for malicious reasons. So long as the “hacker”:

- intends to access the program / data; and
- knows that they are doing so without consent,

they are in breach of section 1.

If an individual creates a program with the intention of using it to break into a program or system (without consent of the owner of that program or system), they would also be falling foul of section 3A.

13.7: Clearly, the CMA (being over 20 years old) is out of date in this regard because it is prohibiting security research and “hacking” for ethical reasons. There are calls from the cyber security industry for the CMA to be updated. However, it is essential that we always work strictly within the **current legal parameters**.