

# Commercial Terms of Services



## SERVICES

1.1 In consideration for payment by the Client of the Charges, Pentest Cyber shall provide the Services to the Client in accordance with the terms of this Agreement and in accordance with the terms of Schedule 1 and Schedule.

1.2 Pentest Cyber will use reasonable endeavours to provide the Services promptly, having regard to the availability of personnel, necessary supplies and facilities and commitments to other clients. All dates or times quoted for commencement or completion of any part of the Services.

1.3 Services may be provided onsite or remotely via the Client's internet connection or by telephone. Where, in Pentest Cyber's reasonable opinion, it is necessary and/or desirable for the Client to install remote support services software, such software will be provided by Pentest Cyber, at the Client's expense.

1.4 Pentest Cyber may temporarily suspend (in whole or part) access to the Services:

1.4.1 to carry out maintenance or update the Service (whether on a scheduled or unscheduled basis);

1.4.2 due to a security threat or prejudicial use of the Services (perceived or actual);

1.4.3 to comply with any applicable law, order, instruction or request of government, a court or other competent administrative authority or an emergency service organisation; or

1.4.4 where there is any disruption caused by the ISP upon whom Pentest Cyber relies for the provision of Services.

1.5 Pentest Cyber will provide the Client with as much notice as reasonably possible of such temporary suspensions of the Services and where possible any such planned suspensions will take place outside of Working Hours in order to minimise disruption to the Services.

## 2 PAYMENTS

2.1 The Client shall pay the Charges in accordance with the terms of the Service Order, where no payment terms are set out in the Service Order, within thirty (30) days of invoice date.

2.2 No title to any equipment provided by Pentest Cyber to the Client shall pass until full and final payment in respect of such equipment has been received.

2.3 Unless otherwise expressly set out to the contrary in the Service Order, the Client shall pay all expenses reasonably incurred by Pentest Cyber that are attributable to the provision of the Services. Such expenses shall include without limitation the delivery charges for any equipment supplied by Pentest Cyber, the cost of travel outside normal business hours to and from the location of the Client's business operations, or any other location agreed between Pentest Cyber and the Client, attendance at meetings, preparation of reports, telephone charges, courier and facsimile costs.

2.4 Pentest Cyber reserves the right to invoice the Client in advance in respect of all fees payable as disbursements to third parties such as Accreditation Bodies,

Cyber Essentials Partners, hardware or software vendors. In such cases, all monies paid by the Client shall be held on account by Pentest Cyber on behalf of the Client.

2.5 All Charges are exclusive of VAT and all other taxes which shall be payable by the Client. Where applicable the Charges are also exclusive of other fees and charges payable to any third party, including but not limited to third party hardware and software suppliers, internet service providers, domain name and company registries.

2.6 Pentest Cyber reserves the right to charge the Client interest on any payment not made by the due date as set out in the relevant Schedule. Interest will be calculated on a daily basis, both before and after any judgement, at the rate of four (4%) per cent per annum above the base rate from time to time of the Bank of England for the period from the date such payment is due until the date on which it is actually paid.

2.7 Without prejudice to Pentest Cyber other remedies, Pentest Cyber reserves the right to suspend provision of the Services forthwith in the event of the Client's failure to pay any outstanding monies.

2.8 The acceptance of any monies by Pentest Cyber shall not be construed as an acceptance of such monies as the correct and full amount due and owing to Pentest Cyber or as a waiver by Pentest Cyber of any claims it may have against the Client.

### **3 LIMITATION OF LIABILITY**

3.1 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement or the Schedules whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.

3.2 Subject to clause 3.3, 3.4 and 3.5, the maximum aggregate liability of Pentest Cyber (including its respective agents and subcontractors) arising from or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall not exceed the total Charges paid by the Client under the Service Order.

3.3 In no event shall Pentest Cyber (including its respective agents and subcontractors) be liable for any loss or damage that is due to:

3.3.1 defects in systems, hardware or software owned by third parties or the Client, supplied to the Client by third parties or procured by Pentest Cyber from third parties;

3.3.2 any interruption in Service caused by the ISP upon whom Pentest Cyber relies for the provision of Services;

3.3.3 any defect or fault arising from or caused by any unapproved changes made to the Infrastructure or resulting from abnormal usage;

3.3.4 any unauthorised access to the Infrastructure, unless the parties have agreed in writing that Pentest Cyber is responsible for the security of such networks and/or systems;

3.3.5 any failure of the Infrastructure which results from interference (including inappropriate use, maintenance, development, modification, repairs or adaptation) by the Client or any third party not authorised by Pentest Cyber which is not in accordance with standard use of the Infrastructure or Pentest Cyber specific instructions;

3.3.6 any failure due to the Client's delay in providing information as reasonably requested by Pentest Cyber. Any such failure which results in Pentest Cyber spending additional time and expense to fulfil the Services shall be recoverable from the Client at Pentest Cyber then standard time and material rates; and

3.3.7 any failure of the Infrastructure that is due to any integration or interoperability issues arising with any third party or Client systems or legacy systems.

3.4 In no event shall Pentest Cyber (including its respective agents and sub-contractors) be liable for:

3.4.1 any loss of profits, anticipated savings, loss of data, business interruption, loss of use, loss of contracts, loss of management time, loss of goodwill and reputation (whether direct or indirect); or 3.4.2 any special, indirect, incidental, punitive, exemplary, or consequential damages arising out of or in connection with this Agreement, even if Pentest Cyber has been advised of the possibility of such damages; whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations howsoever caused even if it is advised of the possibility of such loss.

3.5 For the avoidance of doubt, nothing in this Agreement shall be deemed to exclude, restrict or limit liability of either party (or their respective agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraudulent misrepresentation.

3.6 Both parties accept that the limitations and exclusions set out in this Agreement are reasonable having regard to all the circumstances.

#### 4 TERM AND TERMINATION

4.1 This Agreement shall come into force on the Commencement Date and shall remain in force for a period of two (2) years and thereafter until terminated by either party on the provision of not less than ninety (90) days written notice to the other, such notice to take effect on any anniversary of the Commencement Date, (save that no termination may take effect until all Services to be provided pursuant to the Service Order have been provided and all payments received by Pentest Cyber), unless terminated earlier in accordance with clause 6.3.

4.2 Notwithstanding the foregoing, all or any part of the Services may be suspended in the event that the Client does or suffers anything to be done that jeopardises the provision of the Services by Pentest Cyber. No such suspension shall affect the liability of the Client to pay charges and other amounts to Pentest Cyber hereunder.

4.3 In any event the Agreement may be terminated immediately on written notice:

4.3.1 if the Client fails to pay any amount due under this Agreement within 7 days of the due date for payment;

4.3.2 by either party if the other party is in material breach of its contractual obligations and has not remedied such breach within thirty (30) days after receipt of a written notice of Fault from the other party; or

4.3.3 by either party if the other party: a) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; b) becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any

arrangement or, composition with its creditors or is otherwise insolvent; c) has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or d) ceases, or threatens to cease, to carry on business.

4.4 Termination of this Agreement shall be without prejudice to any rights of either party arising on or before termination, which includes without limitation, all sums due to Pentest Cyber for Services supplied (including for the avoidance of doubt any Charges incurred in respect of work in progress) prior to the date of termination.

4.5 On termination of this agreement for any reason, the Client shall immediately pay any outstanding unpaid invoices and interest due to Pentest Cyber. Pentest Cyber shall submit invoices for any services that it has supplied, but for which no invoice has been submitted, and the Client shall pay these invoices immediately on receipt.

4.6 If in breach of the terms of this Agreement the Client terminates an order for the Services, the Client shall pay Pentest Cyber on demand 25% per cent of the Service Charges, as set out in the Service Order to Pentest Cyber by way of liquidated damages. The parties confirm that this sum represents a genuine attempt to pre-estimate the loss that Pentest Cyber would suffer in the event the Client terminates in breach of the terms of this Agreement an order for the Services and Support. The parties confirm that this clause does not operate by way of a penalty.

4.7 The provisions of clauses 4 (to the extent of any unpaid obligations), 3, 4.5, 5, 6 and 11 shall survive the termination of this Agreement and shall remain in full force and effect.

## **5 CONFIDENTIALITY**

5.1 Neither party will during the term of this agreement or after it has ended (except as required by law, or, where applicable, in compliance with Rule 4 of the Solicitor's Code of Conduct (as amended from time to time)) disclose to any person any confidential information or trade secrets relating to the other's business. Such matters include, without limitation, information or secrets relating to: corporate and marketing strategy, business development and plans, sales reports and research results, business methods and processes, technical information and know-how relating to the other's business and which is not in the public domain, including inventions, designs, programmes, techniques, data base systems, formulae and ideas; business contacts, lists of Clients and suppliers and details of contracts with them; and any document marked "confidential".

5.2 During the term of this agreement and for a period of five (5) years after its termination, the parties will use all reasonable endeavours to prevent the publication or disclosure of any such information or secrets. These restrictions will not apply during or after this agreement has terminated to information which has become available to the public generally, otherwise than through unauthorised disclosure.

5.3 Pentest Cyber will make all reasonable endeavours to ensure that clients information is handled in line with legal and regulatory requirements. Please see the following link to view the organisations Privacy Policy; <https://pentestcyber.co.uk/privacy.html>

## **6 NON-SOLICITATION**

6.1 During the period this Agreement is in effect and for a period of six (6) months thereafter, the Client agrees not to solicit or to offer employment to any employees of Pentest Cyber or any sub-contractors used by Pentest Cyber hereunder without the prior written consent of Pentest Cyber.

6.2 In the event that the Client breaches clause 6.1, it shall be liable to pay, immediately on demand, and without prejudice to any other remedy that Pentest Cyber may have, the equivalent of twelve (12) months gross salary of the employee so solicited and/or employed.

## **7 FORCE MAJEURE**

7.1 If Pentest Cyber is prevented or delayed from or in performing any of its obligations under this Agreement by Force Majeure, then:

7.1.1 its obligations under this Agreement (or, where the Force Majeure only affects some of the Services, such obligations as relate to those Services) shall be suspended for so long as the Force Majeure continues and to the extent that that party is so prevented, hindered or delayed;

7.1.2 the parties shall, without prejudice to the other provisions of this clause 7.1.2 consult with a view to taking such steps as may be appropriate to mitigate the effects of such Force Majeure; and 7.1.3 Pentest Cyber shall use all reasonable endeavours to mitigate the effects of the Force Majeure upon the performance of its obligations under this Agreement.

7.2 If any Force Majeure prevails for a continuous period in excess of two (2) months, either party shall be entitled to terminate this Agreement in its entirety (if the provision of all Services are affected by Force Majeure) or in part (insofar as it relates to the Services affected by Force Majeure) by giving not less than ten (10) days' notice in writing to the other party.

## **8 MISCELLANEOUS**

8.1 Pentest Cyber may engage any person, company or firm as its agent or sub-contractor to perform all or any of its obligations or duties under this Agreement.

8.2 References to clauses and schedules shall be to clauses and schedules of this Agreement. The Schedule(s) form part of this Agreement and shall be interpreted accordingly.

8.3 The headings are included for convenience only and shall not affect the interpretation or construction of this Agreement.

8.4 The waiver by either party of its rights in respect of any breach of any provision of this Agreement shall not be taken or held to be a waiver in respect of any subsequent breach thereof.

8.5 Neither party or any of its employees, servants, agents or sub-contractors shall be under any liability whatsoever to the other party for any non-performance, defective performance or delay in the performance of any of the services or work to be supplied hereunder caused directly or indirectly by an Act of God or by any other event or circumstance beyond the reasonable control of that party.

8.6 No alteration, modification or addition to this Agreement shall be valid unless made in writing and signed by the duly authorised representatives from both parties.

8.7 The Client consents to the use by Pentest Cyber of the Client's name in Client lists and other publicity, including interviews, case studies, and conference discussions, provided that such publicity accurately describes the nature of the relationship between Pentest Cyber and the Client.

8.8 All notices, documents and other communications relating to this Agreement must be in writing and delivered, or posted by first class registered or recorded pre-paid post or sent by facsimile transmission to the registered office of Pentest Cyber or the registered office of the Client, as appropriate, and any such notice shall be deemed to have been duly served upon and received by the party to whom it is addressed at the time of delivery if delivered by hand, on the expiry of 48 hours after posting or at the time of transmission in the case of facsimile transmission.

8.9 If any part of this Agreement is found to be unreasonable, invalid or unlawful under any enactment or rule of law the Court shall have the power to strike out or override that part whether it be an entire clause or clauses or some part or parts thereof and enforce this Agreement as if the offending part or parts had not been included.

8.10 In this Agreement the singular shall be deemed to include the plural and the plural shall be deemed to include the singular unless the context requires otherwise.

8.11 Nothing in this Agreement shall give, directly or indirectly, any third party any enforceable benefit or any right of action against Pentest Cyber and such third parties shall not be entitled to enforce any term of this Agreement against Pentest Cyber.

8.12 Neither party may assign the benefit of all or part of this Agreement without the prior written consent of the other party which shall not be unreasonably delayed or withheld.

8.13 This Agreement constitutes the entire Agreement between the parties. Other than as expressly stated otherwise in this Agreement neither party shall be under any liability for any understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, made prior to or during the operation of this Agreement.

8.14 This Agreement shall be governed and construed in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

8.15 The parties to this Agreement may sign this Agreement by electronic signature if the parties so desire, whatever the form the electronic signature takes, and agree that such method of signature shall be equally conclusive of their intention to be bound by the terms and conditions of this Agreement as if signed with the manuscript signature of both parties.

## **9 PENTEST CYBER DETAILS**

9.1 Pentest Cyber is a trading name of Greenfield Cyber Ltd, a company incorporated in England and Wales with registered number 09981652 and operates the Website [pentestcyber.co.uk](http://pentestcyber.co.uk). The registered VAT number is 233593210 and registered office address of 11 Woodville Avenue, Mile End, Coleford, Gloucestershire, England, GL16 7DF.