

## **TERMS AND CONDITIONS FOR PROVISION OF SERVICES INCLUDING CYBER ESSENTIALS AND CYBER ESSENTIALS PLUS (the 'Agreement')**

These Terms and Conditions apply to all professional services provided by **Mass Consultants Limited**, a company registered in England and Wales, with registered number 01705804 and having its registered office at Enterprise House, Great North Road, Little Paxton, St Neots, Cambridgeshire, PE19 6BN (hereinafter referred to as "**MASS**"); and

any organisation (hereinafter referred to as the "**Client**") that, wishing to benefit from the skills and abilities of MASS, chooses to accept an offer of services and has entered into an agreement (the 'Agreement') with MASS for such services is, in the absence of any mutually agreed alternative, deemed to have accepted these terms.

### **GENERAL TERMS AND CONDITIONS**

The General Terms below apply to all Agreements; additional service-specific terms also apply to specific services, all as further described below.

#### **1 ENGAGEMENT**

- 1.1 The Client engages MASS and MASS shall act for the Client on the terms and conditions set out in these Terms and Conditions.
- 1.2 Any reference in these Terms and Conditions to any provisions of a statute shall be construed as a reference to that provision as amended, re-enacted, or extended at the relevant time.
- 1.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.
- 1.4 These Terms and Conditions form the entire agreement between MASS and the Client and are non-negotiable. Any amendments to these Terms and Conditions will only be valid following the written approval by MASS.

#### **2 TERM**

- 2.1 The engagement of MASS shall commence on the Agreed Start Date and shall continue (subject to the terms of this Agreement) until completion of the work described in the Statement of Work ("the Project").

#### **3 DUTIES**

- 3.1 The duties of MASS shall be to deliver services, which shall be carried out at the Client's offices or remotely or at such other location(s) as may be necessary for the effective performance of the duties.
- 3.2 The services ('Services') to be provided by MASS shall consist of a technical audit to the Cyber Essentials standard and penetration testing as appropriate

#### **4 FEES**

- 4.1 In consideration of the duties, MASS shall invoice the Client as laid out in the Agreement and the Client shall pay MASS the agreed fee in line with the invoicing schedule.
- 4.2 Any unpaid fees will attract interest at 4% above the base rate as specified from time to time by HSBC Bank and the Client will be liable for any fees and costs that may be necessary to collect payment of the fees.
- 4.3 Unless the agreed fee is stated as being inclusive of expenses, MASS shall be reimbursed in full by the Client in respect of all expenses properly and reasonably incurred by it in connection with the Project, subject to the production of such receipts as the Client may require, attached to an invoice for the whole amount of the expenses.
- 4.4 MASS reserves the right to charge in full for booked consultant days where the Client cancels those consultant days with less than five (5) business days' notice and to charge 50% of the contracted rate where the day is cancelled between five (5) and ten (10) days in advance. In each case, MASS may waive the right to charge for a specific cancellation if MASS is able to deploy the Consultant's time with an alternative client. MASS also reserves the right to charge (at cost) for any non-refundable expenses incurred in respect of travel and accommodation arrangements made in line with this agreement for any consultancy days that are cancelled, irrespective of the notice period.

#### **5 LIABILITY**

- 5.1 MASS shall exercise all reasonable skill, care and attention in all matters and shall indemnify the Client from all costs, claims, liabilities and expenses (other than consequential losses) incurred in respect of the performance (or non- performance) of MASS of the duties, such indemnity to be limited in value to the level of fees incurred under this contract as stated in clause 4.1
- 5.2 MASS shall accept no liability whatsoever in respect of any losses incurred by the Client in respect of the performance of MASS under the Agreement and which arise in any way from circumstances beyond the control of MASS ("force majeure" or "Acts of Nature")

#### **6 NON-SOLICITATION**

- 6.1 The Client and MASS hereby undertake to each other that for the period of twelve (12) months following termination of the Agreement neither of them will either directly or by an agent or otherwise and whether for himself or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his or her employment or an associate or contractor of any sort to breach the terms of his or her contract with the Client or MASS as the case may be.

#### **7 TERMINATION**

- 7.1 The Client shall be entitled to terminate the Agreement with immediate effect and without any payment in lieu of notice by giving notice in writing to MASS if MASS commits any material or persistent breach of any of the terms or conditions of the Agreement or wilfully neglects or refuses to carry out any of the duties.

7.2 MASS shall be entitled to terminate this Agreement immediately if the Client fails to pay any sum due within thirty (30) days of the date of submission of an invoice properly submitted in line with the terms of the Agreement.

7.3 Upon termination of the Agreement MASS shall not represent itself as being engaged by or connected with the Client or any subsidiary company.

## **8 CONFIDENTIALITY**

8.1 MASS will not either during the period of the Agreement (other than in the proper course of its duties and for the benefit of the Client) or after the Agreement has ended for any reason whatsoever:

8.1.1 use, disclose or communicate to any person any Confidential Information which it will have come to know or have received or obtained at any time (before or after the date of the Agreement) by reason of or in connection with the Agreement with the Client; or

8.1.2 copy or reproduce in any form or by or on any media or device or allow others to copy or reproduce Confidential Information whether or not in documentary form ("Documents") containing or referring to Confidential Information.

8.2 The Client shall, and shall procure that all its directors, officers, employees, partners and associates shall keep secret and confidential at all times all information relating to the tools, processes and methods used by MASS in the course of the Project and agrees that these tools, processes and methods are subject to the laws of copyright and are owned by or licenced to MASS and that they may not be copied, shared, forwarded or in any way made available to any other party save during the period of the Agreement and for the express purposes of completion of the Project.

## **9 CO-MARKETING AND EXTERNAL COMMUNICATIONS**

9.1 MASS and the Client agree that, where both consider it appropriate, they will co-operate in relevant public relations and co-marketing activities where reasonably requested by the other. If so requested, MASS shall supply relevant marketing and promotional material to assist the Client in the preparation of relevant Client collateral, materials and electronic presentations. This may include the logos, corporate and solutions content and presentation materials of MASS.

9.2 MASS agrees to participate in relevant Client public relations and co-marketing activities where reasonably requested by Client. The Client agrees that, after completion of the Project, it will support MASS in any reasonable and proportionate company co-marketing activity.

## **10 NOTICES**

10.1 Any notice required or permitted to be given or served under the Agreement shall be in writing and may be served by either party by personal service or by post addressed to the other party's registered office for the time being.

- 10.2 Any such notice shall be deemed to have been served if delivered, at the time of delivery; or if posted, at the expiry of 48 hours after posting.

## **11 WAIVERS AND REMEDIES**

- 11.1 The rights of each party under the Agreement may be exercised as often as necessary and are cumulative and not exclusive of its rights under the general law.
- 11.2 No waiver of any of the provisions of the Agreement shall be effective unless it is expressly stated to be such in writing and signed by both parties.
- 11.3 Any delay in the exercise or non-exercise of any right is not a waiver of that right.
- 11.4 Any remedy or right conferred upon the parties for breach of the Agreement shall be in addition to and without prejudice to all other rights and remedies available to it.

## **12 INDEPENDENT CONTRACTORS**

- 12.1 MASS and the Client are independent contractors and neither shall hold itself out to be, nor shall anything in the Agreement be construed to constitute either party as the agent, representative, employee, partner, or joint venture of the other. Neither party may bind or obligate the other without the other party's prior written consent.

## **13 DATA PROTECTION**

- 13.1 MASS will protect Personal Information (PI) in line with its obligations under the Data Protection Act 1998.
- 13.2 MASS will not:
- 13.2.1 Transfer any Client PI (or PI relating to customers of the Client) outside the EU;
  - 13.2.2 Use any Client data (or data relating to customers of the client) for marketing purposes.

## **14 SEVERABILITY**

- 14.1 If any provision of the Agreement is held invalid, illegal or unenforceable in any jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the illegal or unenforceable provision eliminated.

## **15 REPRESENTATIONS**

- 15.1 MASS warrants and represents to the Client that it is under no obligation, covenant or restriction which would or might operate to prevent or restrict MASS from performing the obligations under the Agreement or which may give rise to any conflict of interest between MASS and the Client or any subsidiary company of the Client.

**16 THIRD PARTY RIGHTS**

- 16.1 A party who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**17 ANTI-BRIBERY**

- 17.1 During the performance of this Agreement MASS and the Client parties undertake to observe the applicable rules and procedures, for the protection and defence of national security and also those specific rules and procedures of such government authorities that are binding upon MASS and the Client. MASS and the Client undertakes to ensure that it, and its employees, servants, suppliers, sub-contractors and agents do nothing in connection with this Agreement that would constitute a breach of any provisions of any legislation governing the prevention of corruption as it applies to any activities undertaken by MASS or the Client in relation to this Agreement. In particular MASS and the Client shall comply with the requirements of the UK Bribery Act 2010

**18 ENTIRE AGREEMENT**

- 18.1 The Agreement (which for the avoidance of doubt includes the Agreement, these Consolidated Terms and Conditions and any applicable service-specific terms and conditions identified below) constitutes the entire understanding and agreement between the parties relating to the subject matter of the Agreement and supersedes any previous agreement between the parties.

**19 GOVERNING LAW AND JURISDICTION**

- 19.1 The Agreement is governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the Courts of England. These terms are accepted by the Client's signature on the Acceptance Sheet and are binding on the Client as if these Consolidated Terms and Conditions themselves had been signed.

**SPECIFIC TERMS - PENETRATION TESTING**

The terms in this section are in addition to the General Terms and apply only to Agreements that cover the provision of Penetration Testing.

- (a) Penetration testing and vulnerability assessments will be limited to conducting an agreed set of tests on the devices, systems, infrastructure and applications that are defined in the Statement of Work within the Agreement;
- (b) MASS penetration testing methodology is in line with the guidance of the Open Web Application Security Project (OWASP) and testing is a combination of automated and manual testing, with manual testing designed to exploit any vulnerabilities identified by the automated testing. All tests look for exploitable vulnerabilities within the identified scope. Penetration tests do not include a review of the actual code of any website applications;
- (c) All other tests and systems are out of scope and will not be tested without a signed amendment to the Agreement;
- (d) Test IP Address: MASS testing is carried out from a dedicated penetration testing network, and we will supply you with the relevant IP address so that the Client can add it to any IPS/IDS or filtering system to allow testing to be completed. Log files may record ping sweeps and port sweeps from our test IP address in addition to other activity that may be suspicious to any SEM or SIEM deployed on the systems and applications under test;
- (e) MASS testers will take care not to cause Denial of Service (DOS) conditions or anything that would affect the performance of the systems under test, except where permitted by and agreed with you;
- (f) MASS testers will take care not to perform testing that will result in breaking any of the devices we identify nor will we attempt to exploit any vulnerability where we think that doing so may cause damage, nor will we intentionally damage any information or information systems during testing;
- (g) MASS will immediately report any critical risk vulnerability that we might identify to the client contact;
- (h) MASS will require explicit authorisation to proceed from the Client and from any additional parties involved in hosting the infrastructure or application that is in scope before the start of any test work;
- (i) Logs are kept of the actions taken during a test and, in line with our data retention procedure, these are retained, along with all other client files, for six years and are then destroyed. Your client files will be encrypted, classified as restricted to the testing consultant and to senior management of MASS, stored on a restricted network drive, and will be backed up in their encrypted form to our mirrored, secure offsite backup environment. Within the overall context of the MASS ISO27001 certification, these controls directly protect your data from disclosure, damage and information leakage;

MASS will not:

- (a) Disclose test results or related information to third parties without the Client's prior permission, unless otherwise required by law;
- (b) Allow anyone, other than on a need-to-know basis, access to the Client's test information;
- (c) Exchange information in relation to the tests and test results other than by using encrypted email.

- (d) The Client will identify and disclose to MASS any third parties that may conceivably be affected by MASS testing activities in relation to this Project, and any damages and/or loss of service caused by the Client's failure to identify and/or disclose such third parties shall remain the sole responsibility of the Client and the Client therefore indemnifies MASS against all and any costs or damages howsoever arising from such activities. The Client's authorisation to commence testing activities is deemed to include confirmation that any relevant client-internal or external parties have been appropriately notified and that all necessary permissions from such parties for MASS to commence testing have been provided to MASS.
- (e) MASS will only identify vulnerabilities that are already known at the date on which any tests are carried out, and which are capable of being exposed by the range of testing tools deployed by MASS. The Client accepts that it is in the nature of technical security testing that there may be flaws which will be uncovered in the future or by the use of alternative tools and attack methodologies, none of which could normally be identified at the time of testing, and therefore agrees that it will not, now or in the future, hold MASS to account for any such matters.
- (f) MASS shall accept no liability for damages caused to the Client by any automated or non-automated attacks on the Client's internet-facing infrastructure or its applications, irrespective of whether or not MASS security testing activity carried out under this Agreement did, did not, or could have but did not, identify any vulnerability exploited or which might in future be exploited by any such attack.
- (g) MASS will identify vulnerabilities that its testing has exposed; wherever possible, it will identify by reference to commonly available and published information the appropriate patches and fixes that are recommended to deal with the identified vulnerability but it will be entirely the Client's responsibility to formally identify and deploy an appropriate solution to the vulnerabilities identified by MASS security testing.
- (h) MASS will not use any third party consultants for carrying out any of the services under this part of an Agreement.