



# TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

These are the terms on which BLOCKPHISH Ltd ('Company') do business. They do not affect your statutory rights. They are designed to set out clearly the Company's responsibilities and your rights.

## 1. Definitions

- 1.1. In these terms and conditions (hereinafter collectively referred to as 'Conditions'):
- 1.2. 'Customer' means you, the corporate entity requesting Services from the Company.
- 1.3. 'Contract' means the contract made between the Company and the Customer for performance of the Services as specified in the Statement of Work.
- 1.4. 'Fees' mean the fees set out in the Quote.
- 1.5. 'Quote' means any statement outlining fees for the proposed products or services.
- 1.6. 'Man Day' means a period of 7.5 hours.
- 1.7. 'Parties' mean the Company and the Customer.
- 1.8. 'Restricted Information' means any information which is disclosed by either Party to the other Party pursuant to or in connection with any Contract (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such).
- 1.9. 'Services' means any services specified in the Statement of Work or equivalent which the Company provides to the Customer.
- 1.10. 'Statement of Work' means any statement in writing outlining services.
- 1.11. 'Working Day' means any day other than a Saturday or Sunday when banks are open for business in London.
- 1.12. In these Conditions, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.13. In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.14. In these Conditions headings will not affect the construction of these Conditions.

## 2. Terms Of Acceptance

- 2.1. The Customer agrees that these Conditions shall be the exclusive basis on which the Contract is made between the Company and Customer.
- 2.2. These Conditions shall not create any agency or partnership between the Parties or any third party.
- 2.3. A Contract is formed between the Customer and the Company when (and not before) the Customer signs off the Quote or the Statement of Work or notifies the Company in writing that the Quote or the Statement of Work has been accepted.
- 2.4. The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

## 3. Appointment of Company

- 3.1. The Customer appoints the Company to provide the Services.

## 4. Services to be provided

- 4.1. The Services to be performed by the Company are set out in the Statement of Work.
- 4.2. The Company represents that it possesses the requisite skill, knowledge, expertise and experience to perform the Services.
- 4.3. The Company undertakes to perform the Services using reasonable care and skill, based on industry standards and practice.
- 4.4. Notwithstanding the generality of the preceding clauses in relation to the Services performed by the Company, the Company shall:
  - 4.4.1. Perform the Services using qualified and experienced personnel; and
  - 4.4.2. be in accordance with sound principles and practices in the Company's industry.
- 4.5. The Company shall perform the Services on such dates specified in the Statement of Work and where such dates are not specified, the Parties shall mutually agree a suitable date and time for the performance of such Services. Where the Company is unable to perform the Services on the dates specified in the Statement of Work and/or previously agreed dates and times, the Company shall use reasonable endeavours to inform the Customer prior to the Service dates and re-arrange an alternative mutually convenient date as close as is reasonably practicable to the original pre-agreed dates.
- 4.6. If at any time before the due completion of the Services, the Customer wishes to change all or any part of the Services to be performed by the Company, then the Customer shall provide the Company with full written particulars of such proposed changes and with such further information as the Company may reasonably require in connection with such proposed changes.
- 4.7. The Company shall then submit to the Customer as soon as reasonably practicable a full written quotation for such changes specifying what changes (if any) will be required to fees payable by the Customer to the Company and what adjustments will be required to the Statement of Work.
- 4.8. Upon receipt of such quotation the Customer may elect either:
  - 4.8.1. To accept such quotation, in which case the Quote and the Statement of Work shall be amended in accordance therewith; or
  - 4.8.2. to withdraw the proposed alterations in which case the Quote and the Statement of Work shall continue in force unchanged.
  - 4.8.3. The Company shall be entitled to make a reasonable charge for considering such changes and preparing the said quotation and if the Customer's request for such changes is subsequently withdrawn but results in a delay in the performance of the Services then the Company shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations equal to the period of the delay.
- 4.9. The Company shall not be obliged to consider or make any changes to the Quote or the Statement of Work save in accordance with the aforesaid procedure. Pending agreement on any proposed changes, both Parties shall remain bound to comply with their obligations under the latest agreed Statement of Work.
- 4.10. The Customer undertakes that through the provision of the Services, all equipment, hardware, software and/or such ancillary equipment shall be in a suitable state to enable the Company to carry out the Services without delay and/or interruption.
- 4.11. The Customer shall provide the Company with reasonable access to such locations which the Company may require to access in order to perform the Services.
- 4.12. Where the Services including assessments including 'Phishing', 'Vishing', 'Smishing', 'Social Engineering', 'Hacking' and/or any activities defined as an offense under the United Kingdom Computer Misuse Act 1990, of Customer's information technology infrastructure or other Customer assets, the Customer consents to the Company and/or its authorised representatives carrying out such activities and grants to the Company and/or such

representatives such authority to carry out such activities. The Customer agrees to obtain authority to such activities from any relevant third parties, such as infrastructure hosting or management companies.

- 4.13. The Customer shall ensure that the work requested and specified in the Statement of Work does not breach Article 8 of the European Convention on Human Rights and does not entail interference in the private and family life, home or correspondence (except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others) of any individual. Furthermore, the Customer shall indemnify the Company against any liability or claim for damages under Article 8 of the European Convention on Human Rights and/or the Data Protection Act 2018 arising from the correct performance of the work requested in the Statement of Work.
- 4.14. Where the Statement of Work specifies:
- 4.14.1. that the term of the Contract is for a period longer than 12 months; and
  - 4.14.2. that the Services are based on Man Days.
  - 4.14.3. The Customer agrees that any unused and paid for Man Days will not be carried over to the following 12 months unless otherwise agreed by the Company in writing.

## 5. Fees

- 5.1. In consideration of the Company agreeing to provide the Services, the Customer shall pay to the Company the Fees in the amounts and times set out in the Quote.
- 5.2. Where not specified in the Quote, the net Fees shall be payable within 30 days from the date of the Company's invoice(s) unless otherwise agreed in writing by the Parties. For the avoidance of doubt, the Company may issue invoices for stage payments where the same has been agreed by the Parties.
- 5.3. All payments due under the Contract shall be paid in full without any deduction or withholding other than as required by law. The Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- 5.4. If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the then current base lending rate of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.
- 5.5. Time for payment shall be of the essence.
- 5.6. The Company reserves the right to suspend the Services and/or any part thereof until all outstanding sums owed by the Customer to the Company are settled.
- 5.7. No payment of any monies including the Fees shall be deemed to have been received until the Company has received cleared funds.
- 5.8. Unless otherwise agreed by the Parties, all payments by the Customer to the Company shall be in Sterling.
- 5.9. The Company shall be entitled to charge the Customer for all reasonable expenses, including but not limited to travel and subsistence, incurred by the Company and the Company's representatives in connection with the provision of the Services.

## 6. Liability

- 6.1. Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services (including any delay in providing the Services).
- 6.2. Without prejudice to Clause 6.1 above, the entire liability of the Company under or in connection with the Agreement, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to:
- 6.2.1. in respect of matters for which the Company does not carry insurance, an amount equal to the aggregate amount of the Fees; and
  - 6.2.2. in respect of matters for which the Company carries insurance, the insured value.
- 6.3. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Consultancy's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control or results directly or indirectly from any act or omission of the Customer.
- 6.4. The provisions of this Clause 6 shall survive the termination of the Contract.
- 6.5. The exclusions and limitations of liability set out in this Clause 6 shall be considered severally. The invalidity or unenforceability of any one of these sub-clauses shall not affect the validity or enforceability of any other part of this Clause 6.

## 7. Confidentiality

- 7.1. Except as provided by Clauses 7.2 and 7.3, each Party shall at all times during the continuance of the Contract and after its termination:
- 7.1.1. Use its reasonable endeavours to keep all Restricted Information confidential and accordingly not to disclose any Restricted Information to any other person; and
  - 7.1.2. not use any Restricted Information for any purpose other than the performance of the obligations under this Agreement.
- 7.2. Any Restricted Information may be disclosed by either Party to the other Party to:
- 7.2.1. any governmental or other authority or regulatory body; or
  - 7.2.2. any of either Party's employee(s) for the purposes of carrying out its obligations under the Contract;
  - 7.2.3. to such extent only as is necessary for the purposes contemplated by the Contract or as is required by law and subject in each case to each Party using its reasonable endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.
- 7.3. The obligations of confidentiality specified in this Clause 7 shall not apply to any Classified Information:
- 7.3.1. Already known to the receiving party;
  - 7.3.2. which is in the public domain other than by breach of the obligations of this clause by either party;
  - 7.3.3. is received from a third party otherwise than in breach of an obligation of confidentiality;
  - 7.3.4. which the Company requires to carry out DBS checks and NCSC checks;
- 7.4. The Parties agree that this Clause 7 shall survive the termination and/or expiry of the Contract for whatsoever reason.

## 8. Intellectual Property Rights

- 8.1. Each Party acknowledges that all intellectual property disclosed by the other Party is exclusively owned by the disclosed Party and/or is lawfully licensed to the disclosing Party.
- 8.2. The disclosing Party grants to the receiving Party a non-exclusive licence to use any intellectual property for the purposes contemplated under the Contract.

## 9. Termination

- 9.1. Either Party may (without limiting any other remedy) at any time terminate the Contract with immediate effect by giving written notice to the other if:
  - 9.1.1. The other Party commits any material breach of the Contract and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so; or
  - 9.1.2. an order is made or a resolution is passed for the winding up of the other party, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement or composition with his or its creditors or has a receiver or administrator appointed or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 9.2. Without prejudice to Clause 9.1 above, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to make payment of any amount payable under the Contract within 60 days of the due date.

## 10. Freedom of Information

- 10.1. For the purposes of this Clause 10 the following expressions shall have the following meanings:
  - 10.1.1. 'Exempted Information' means any information or category of information, document, report, contract or other material containing information relevant to this Contract that has been designated by the Company and the Customer as potentially falling within an FOIA Exemption.
  - 10.1.2. 'FOIA' means the Freedom of Information Act 2000.
  - 10.1.3. 'FOIA Exemption' means any applicable exemption to the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA).
- 10.2. The Customer recognises that the Company is subject to legal duties which may require the release of information under FOIA or other legislation or codes governing access to information and that the Company may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Contract. The Company recognises that each request for information must be considered individually and that any decision to disclose information will be the decision of the Customer.
- 10.3. Notwithstanding anything in this Contract to the contrary including, but without limitation, the general obligation of confidentiality imposed on the parties pursuant to Clause 10.2, in the event that the Customer receives a request for information under the FOIA or any other applicable legislation governing access to information, the Customer shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or such legislation, save that in relation to any such information that:
  - 10.3.1. Is Exempted Information, the Customer shall consult the Company as soon as reasonably practicable and the Company agrees to respond to such a consultation within 7 days of receiving the consultation notice.
  - 10.3.2. Is Exempted Information and within the scope of an absolute exemption to the FOIA, the Customer shall rely on the FOIA Exemption, at the Company's request and cost, and use best endeavours to ensure that the Exempted Information remains withheld, including the lodging of any appeal against a decision by the Information Commissioner in relation to the request.
  - 10.3.3. Is Exempted Information and within the scope of a non-absolute exemption to the FOIA, the Customer shall use reasonable endeavours to consult the Company as soon as reasonably practicable and shall not:
    - 10.3.3.1. Confirm or deny that the information in question is held by the Customer.
    - 10.3.3.2. Disclose the information requested, to the extent that in the Customer's opinion (having taken into account the views of the Company) that exemption is or may be applicable in accordance with the relevant section of the FOIA in the circumstances.
- 10.4. In the event that the Customer incurs any costs, including but not limited to reasonable legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Company shall indemnify the Customer, save that the Customer shall use reasonable endeavours to consult the Company before incurring any such costs.
- 10.5. In any event the Customer shall not be liable for any loss, damage, harm or other detriment however caused arising from the proper disclosure of any information relating the Contract under FOIA or other applicable legislation governing access to information.

## 11. General

- 11.1. The Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other third party sub-contractors. Where the Services (or part thereof) are performed by such third party sub-contractors, any act or omission of any such this party sub-contractors shall be deemed to be the act or omission of the Company.
- 11.2. The Parties shall comply with the Data Protection Act 2018. Where applicable, the Customer shall procure such consent from the relevant data subjects (as defined by the Data Protection Act 2018) to enable the Company to perform the Services which shall include the disclosure of personal data (as defined by the Data Protection Act 2018) for:
  - 11.2.1. The purpose of carrying out DBS and NCSC checks;
  - 11.2.2. such other purposes which the Company may reasonably require.
- 11.3. As the Services undertaken by the Company are based on the information and assistance provided by the Customer, it is the Customer's responsibility to provide the Company with accurate, complete and timely information and/or instructions in order for the Company to properly perform such Services for the Customer. In addition, it is the Customer's responsibility to notify the Company immediately of any changes in circumstances which could render any information the Customer previously provided to the Company to be inaccurate or which would otherwise have a bearing on the advice being rendered and/or services being performed. For the avoidance of doubt and notwithstanding any other provisions set out in these Conditions and any other agreement, contracts entered into between the Parties, the Company does not accept any liability for inaccurate, errors, losses, damages, failures, any missed timelines or problems which arises as a result of the Customer not providing the Company with accurate, complete and timely information and/or instructions.
- 11.4. These Conditions contain the terms and conditions in respect of the entire agreement between the parties and both Parties acknowledge that they have not relied upon any oral or written representation made to them by the other. In addition, these Conditions supersede all prior agreements entered into between the Parties.

- 11.5. Each party irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation whether or not contained in the Contract for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently.
- 11.6. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.7. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 11.8. Both Parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the Parties or either of them renders the performance of the Contract impossible whereupon all money due but unpaid under the Contract shall be paid immediately.

## 12. Notice

- 12.1. Any notice required to be given to the Company shall be given by first class post addressed to the Company' trading address.

## 13. Law and Jurisdiction

- 13.1. These Conditions shall be governed by and construed in accordance with English law and the English Courts shall have jurisdiction.



**BLOCKPHISH Limited**

4th Floor, Silverstream House,  
45 Fitzroy Street, Fitzrovia,  
London, W1T 6EB  
United Kingdom  
Tel: +44 845 86 22 365  
[www.blockphish.com](http://www.blockphish.com)

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