

# GENERAL TERMS AND CONDITIONS V1.0

## 1. Definitions and Interpretation

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Equipment”</b>	means the equipment as set out in appropriate schedule in Schedule 2.
<b>“Fees”</b>	means the fees payable by the Customer to the Provider in consideration of Schedules 1,2 and 3
<b>“Software”</b>	means the computer software operating on the Equipment in relation to which the Provider is to provide the Support Services as detailed in Schedule 2; and
<b>“Support Services”</b>	means the services to be provided by the Service Provider to the Customer as fully described in Schedule 1 and 2 – if appropriate
<b>“Managed Service Agreement”</b>	means the accompanying document (unless included in this Agreement) detailing further specifics in relation to the provision of the IT Support service
<b>“Data Backup Agreement”</b>	means the accompanying document (unless included in this Agreement) detailing further specifics in relation to the provision of the Data Backup Services
<b>“Cyber Services Agreement”</b>	means the accompanying document (unless included in this Agreement) detailing further specifics in relation to the provision of the Cyber Services
<b>“Provider”</b>	means Breen IT Solutions LTD trading as CyberSecuritiesUK or BespokeIT

## 2. Provider's Obligations

### All Services

- 2.1 The Provider shall use reasonable endeavours to provide the Services in accordance with Schedule 1 in all material respects, with effect from the Commence Date as specified in the overview section above.
- 2.2 The Provider shall provide the Services with reasonable skill and care.
- 2.3 The Provider shall use reasonable endeavours to meet deadlines agreed from time to time with the Customer, but any such dates shall be estimates only. Time for performance shall not be of the essence of this Agreement.
- 2.4 The Provider shall use reasonable endeavours to act in accordance with all reasonable instructions given to it by the Customer provided such instructions are compatible with the scope of the Services as set out in Schedule 1.
- 2.5 The Provider shall use reasonable endeavours to adhere to response times as set out in the accompanying Agreement and subject always to these Terms and Conditions.
- 2.6 The Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Support Services.
- 2.7 The Provider shall use reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Customer, subject to the Customer's acceptance of any reasonable changes to the Fees that may be due as a result of such changes.

## 3. Customer's Obligations

- 3.1 The Customer shall –
- 3.2 For **IT Support Services Only**
  - 3.2.1 Allow the Provider access to the Equipment and all relevant Software as reasonably required by the Provider in the course of providing the Support Services;
  - 3.2.2 Provide adequate working space and facilities for the Provider, its agents, subcontractors, consultants and employees as reasonably required by the Provider; and
  - 3.2.3 Co-operate with the Provider upon the Provider's reasonable request in the diagnosis of any defect or malfunction in the Equipment or Software.
  - 3.2.4 Allow the Provider the use of any Equipment that is reasonably necessary to enable the Provider to provide the Support Services.
  - 3.2.5 The Customer shall make freely available to the Provider:
    - 3.2.5.1 any and all documentation associated with the Software;
    - 3.2.5.2 any and all documentation associated with the Equipment;
    - 3.2.5.3 original Software installation media;
    - 3.2.5.4 current data backups.
- 3.3 For **Data Backup Services Only** the following terms also apply: -

- 3.3.1 The Customer shall obtain and maintain any and all necessary licences and consents necessary with respect to the Software and the Equipment.
- 3.3.2 The Customer shall use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimize any potential data loss.

### **All Services**

- 3.4 The Customer shall use reasonable endeavours to provide all pertinent information to the Provider that is necessary for the Provider's provision of the Support Services and shall use reasonable endeavours to ensure the accuracy and completeness of such information.
- 3.5 The Customer may, from time to time, issue reasonable instructions to the Provider in relation to their Services. Any such instructions must be compatible with the scope of the Support Services as set out in Schedule 1.
- 3.6 In the event that the Provider requires the decision, approval, consent or any other form of authorization or communication from the Customer in order to continue providing the Services (or any part thereof), the Customer shall use reasonable endeavours to provide the same in a reasonable and timely manner.
- 3.7 The Customer shall use reasonable endeavours to inform the Provider of all health and safety rules and regulations that apply at its premises.
- 3.8 The Customer shall obtain and maintain any and all necessary licences and consents necessary with respect to the Software and the Equipment.
- 3.9 The Customer shall use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimize any potential data loss.
- 3.10 The Customer agrees that the provider shall use Personal Data to fulfil their contractual agreements. Additionally, the provider acts as both a data controller and data processor in this regard.

## 4. Fees and Payment

- 4.1 In consideration of the Services, the Customer shall pay the Fees to the Provider in accordance with the provisions of the appropriate Agreement
- 4.2 For **IT Support Only** the following terms also apply: -
  - 4.2.1 All payments for Services provided under this Agreement shall be paid by the Customer monthly in advance without any set-off – unless the payment terms in Agreement differ, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.

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- 4.3 Where payments due are not included in the monthly payment in accordance with Clause 4.2 above then such payments shall be made by the Customer within 14 days of the date of the relevant invoice, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.
- 4.4 The time of payment shall be of the essence. If the Customer fails to make any payment on the due date, then the Provider shall have the right to charge the Customer interest on any sum outstanding compounded at the rate of 4% above the base rate of the Bank of England from the due date for payment, both before and after any judgement, until the date on which the payment is received and such outstanding sums and interest shall compound monthly until paid in full.
- 4.5 Payments shall be made by direct debit, or BACS only.
- 4.6 The Provider shall have the right to suspend any or all Services until payment of the overdue sum (together with any interest due) is made in full. The Customer agrees to indemnify the Provider against any costs incurred by the Customer due to loss of service.
- 4.7 The Customer shall pay the Provider for any additional services provided by the Provider that are not specified in the Agreement in accordance with the Provider's hourly rate in effect at the time of the performance or such other rate as may be agreed. Any such charge for additional services shall be invoiced separately from any Fees due under the Agreement.
- 4.8 If payment is not received within 14 days of this point the matter may be passed onto an external debt collector agency. Any additional charges incurred will be payable by the Customer in addition to the original debt.

4.9 For **subscription/payment plan based services** the following terms also apply: -

- 4.9.1 All payments must be made via direct debit and you will receive an invoice for the month's bill on/around the 20<sup>th</sup> of the prior month with a due date 10 days later, this is typically collected around 4 business days prior to the invoice becoming due.
- 4.9.2 If a direct debit is returned unpaid, we will notify you as it's usually just a case that card or bank details have been altered. However, if after a fair notification period (typically 10 working days) we have not heard from you and the direct debit is not picked up we will end all services. Furthermore, any outstanding amounts will become immediately payable.
- 4.9.3 You agree that if You need to Terminate this Agreement before the end of the Commitment Term, You agree to pay Us the current Agreement Fee multiplied by the number of months left in the current Commitment Term within 14 days of providing Us Notification of Termination.
- 4.9.4 Should there be any pricing adjustments made to this Agreement during a Commitment Term, the Plan Fee used to calculate any Termination Payment will be based on the latter of the original Proposal or any updated Pricing adjustments made in writing from Us to You.

## 5. Termination

### All Services

- 5.1 The Customer may terminate this Agreement following 30 days' notice in writing to the Provider, assuming the minimum contract term has been met – or as referred to in the Agreement. If the minimum contract has not been met, the Customer may ask the provider for a settlement fee.
- 5.2 For Subscription based services, the contract will auto-renew upon the anniversary date, however the client can cancel the Agreement with a minimum of 30 days notice prior to this date
- 5.3 The Provider may terminate this Agreement if the Customer
  - 5.3.1 has not paid any sum within 14 days of notice from the Provider that the payment is overdue; The Customer will be notified and given a further 7 days grace period to pay any and all outstanding fees. The Customer agrees to indemnify the provider against any subsequent loss of service due to late payment.
  - 5.3.2 in breach of any of its obligations hereunder;
    - 5.3.2.1 has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets;
    - 5.3.2.2 has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986;

- 5.3.2.3 ceases or threatens to cease to carry on business; or
  - 5.3.2.4 any circumstances whatsoever beyond the reasonable control of the Provider necessitate and justify the Termination of the Services.
- 5.4 In the event of Termination under clause 5.2 the Provider shall retain any sums already paid to by the Customer without prejudice to any other rights may have whether at law or otherwise.
- 5.5 For subscription based services on a monthly payment plan, the Customer will be issued a final settlement invoice equal to all outstanding payments.
- 5.6 For **IT Support Services Only** the following terms also apply: -
- 5.6.1 The Customer also agrees to pay the Provider for time and materials related to off-boarding to another IT Provider, this will be charged at the Providers standard hourly rates.

## 6. Liability

### All Services

- 6.1 The Customer shall indemnify the Provider against all damages, costs, claims and expenses suffered by the Provider arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agents or employees.
- 6.2 Where the Customer consists of two or more persons, such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
- 6.3 The Provider shall not be liable to the Customer or be deemed to be in breach by reason of any delay in performing, or any failure to perform, any of the Provider's obligations if the delay or failure was due to any cause beyond the Provider's reasonable control.
- 6.4 The Provider shall not be liable – whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss suffered by the Customer in the form of lost revenue or profit or failure to achieve any benefit expected to be derived from the Agreement, loss of use of any asset, loss of data recorded on any computer or other equipment, loss which is not the direct and immediate consequence of the breach, business interruption or management time, or any other loss which is otherwise indirect, commercial, economic, special or consequential.
- 6.5 The Customer acknowledges and accepts that the Provider cannot guarantee 100% monitoring of its devices.
- 6.6 The total liability of the Provider – whether in contract, tort (including negligence), breach of statutory duty or otherwise – for any and all breaches and/or non-performance of its obligations or liability under this Agreement shall be limited to one month's invoice value, available by the Client.
- 6.7 Where the Provider enters into an agreement with a third party to supply services to the Customer or where the Customer engages a third party to provide services to the Customer such third parties warrant that they have all necessary professional indemnity insurance cover with respect to the work undertaken by such third parties. Such third parties shall provide proof of their professional indemnity insurance when so asked to by the Provider and/or Customer.
- 6.8 Nothing in these Terms and Conditions or the Agreement shall limit or exclude the Provider's liability for death or personal injury or any other liability which cannot be excluded by law.
- 6.9 The provider cannot take responsibility for any cyber-attacks that occur where where any of our tools have been implemented. Our services are designed to reduce the chance of successful cyber-attack and assist customers to review their security posture, not eliminate cyber attacks completely.

6.10 For **Data Backup Services Only** the following terms also apply: -

6.10.1 The Customer acknowledges and accepts that the Provider shall not be liable for:

6.10.1.1 Any failure by the Provider to restore any back-up systems;

6.10.1.2 Any virus or other malware suffered by the Customer.

6.10.1.3 Loss of system recovery media by the Customer.

6.10.2 The Customer agrees to pay the provider for recovery of all systems based on approval from a member of their staff, for clarity approval doesn't require the business owner to agree (as time may be of the essence), it is the Customers responsibility to ensure the customers employee has the appropriate authorization.

6.10.3 If the provider feels the Customer may not make the payment, they may decide to suspend all recovery efforts and insist upon immediate payment. The Customer agrees to indemnify the provider in this instance.

## 7. Costs

### All Services

7.1 Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

7.2 Furthermore, the Customer agrees to indemnify the provider for any losses relating to late payment where the provider has cancelled or paused services.

## 8. Relationship of the Parties

### All Services

8.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

## 9. Variation and Amendments

### All Services

- 9.1 These general terms and conditions apply unless a variation is specifically mentioned in the appropriate Customer's Agreement e.g "Cyber Services agreements"
- 9.2 If the Customer wishes to vary any details of the services in the associated Agreement, it must notify the Provider in writing as soon as is reasonably possible. The Provider shall use all reasonable endeavours to make any required changes and any additional costs thereby incurred shall be separately invoiced to the Customer.
- 9.3 If, due to circumstances beyond the Provider's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. The Provider shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original arrangements as is reasonably possible in the circumstances.

## 10. Confidentiality

### All Services

- 10.1 In this Agreement “Party” means either The Provider or the Customer, who will be known collectively as “the Parties”.
- 10.2 The Parties wish to protect any confidential information disclosed to the other Party in the course of any business or potential business dealings.
- 10.3 In this Agreement “Confidential Information” means all disclosed commercial, financial, technical or other information of either Party or their clients, whether disclosed to the other Party verbally, in writing or in any other form, including (without limitation) data, drawings, films, documents and computer readable media, product information, new product plans, pricing information, customer lists and other customer information, software (in source or object code), analyses, compilations, and studies (including Confidential Information released prior to the execution of this document).
- 10.4 The Parties hereby agree that:-
  - 10.4.1 They will keep confidential such Confidential Information as is made available to them, or which comes to their knowledge, from any source whatsoever arising out of the arrangements between them, and they will not copy, reproduce, use or distribute such information other than in accordance with this Agreement.
  - 10.4.2 They will not disclose the Confidential Information to any third party or any of the Parties’ employees other than those who require access to the information in order to carry out the business or potential business dealings.
  - 10.4.3 Where information is disclosed to any third party in accordance with the terms of this Agreement, the disclosing Party is responsible for ensuring that the third party has entered into an equivalent Agreement to ensure confidentiality.
  - 10.4.4 They will take all reasonable steps to protect the secrecy of and avoid disclosure or use of the Confidential Information in order to prevent it from falling into the public domain or the possession of unauthorized persons. They also agree to adhere to the BespokeIT Security Policy
  - 10.4.5 They will notify the other Party in writing of any misuse or misappropriation of Confidential Information that may come to their attention.
- 10.5 Upon the written request of either Party, the other Party will promptly return
  - 10.5.1 all tangible items representing or containing Confidential Information as well
  - 10.5.2 as copies and destroy or erase any Confidential Information recorded in any electro-magnetic memory device.
- 10.6 Nothing contained in this Agreement is to be interpreted as granting any rights, by licence or otherwise, to the Confidential Information disclosed pursuant to this Agreement.
- 10.7 In the event that either Party breaches the terms of this Agreement, the other Party will be fully indemnified and kept indemnified against all losses, costs, claims, expenses, damages and liabilities arising from that breach.

- 10.8 If damages are not a sufficient remedy for any breach of the above confidentiality provisions, the Parties can seek specific performance or injunctive relief as a remedy, in addition to any other remedies, for any breach or threatened breach thereof.
- 10.9 This Agreement does not apply: -
- 10.9.1 To information which at the time of disclosure is in or which subsequently comes into the public domain other than as a result of a breach of this Agreement; nor
  - 10.9.2 To the extent that information is required to be disclosed by mandatory rule of law or by the regulations of any relevant regulatory body.
- 10.10 This Agreement is to be governed by and construed in accordance with English law and exclusive jurisdiction is to be vested in the Courts of England.

## 11. Sub-Contracting and Assignment

### All Services

- 11.1 The Provider may sub-contract to third parties all or any part of the work to be performed hereunder.
- 11.2 The Customer shall not assign to a third party any or all of its rights or obligations under these Terms and Conditions without the prior written consent of the Provider.

## 12. Force Majeure

### All Services

- 12.1 Neither Party to these Terms and Conditions shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

## 13. Waiver

### All Services

- 13.1 No waiver by the Provider of any breach of these Terms and Conditions and/or the Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions and/or clause(s) of et Agreement shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.
- 13.2 No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

## 14. Severance

### All Services

- 14.1 If any provision of these Terms and Conditions and/or clause(s) of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and/or the Agreement and the remainder of the provision and/or clause in question shall not be affected thereby.

## 15. Notices

### All Services

- 15.1 All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorized officer of the Party giving the notice.
- 15.2 Notices shall be deemed to have been duly given:
- 15.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
  - 15.2.2 when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated; or
  - 15.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - 15.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
  - 15.2.5 in each case addressed to the most recent address, email address, or facsimile number notified to the other Party.
- 15.3 Service of any document for the purposes of any legal proceedings concerning or arising out of these Terms and Conditions shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.

## 16. Non-Solicitation

### All Services

- 16.1 The Customer shall not for the Term of the Agreement and for a period of 12 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the Provider at any time in relation to the Agreement without the express written consent of the Provider
- 16.2 The Customer shall not for the Term of the Agreement and for a period of 12 months after its termination or expiry, solicit or entice away from the Provider any customer or client where any such solicitation or enticement would cause damage to the business of the Provider without the express written consent of the Provider.

## 17. Third Party Rights

## All Services

No part of these Terms and Conditions is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms and Conditions and/or the Agreement.

## 18. Law and Jurisdiction

### All Services

18.1 This Agreement shall be governed by and construed under the laws of England and Wales whose courts shall have exclusive jurisdiction.

18.2 These terms may be updated at any time and the latest version will be available [www.cybersecurities.uk/generaltermsandconditions.pdf](http://www.cybersecurities.uk/generaltermsandconditions.pdf)