

# Terms and conditions

## Basis of Contract

1. This document describes the terms and conditions upon which QMS International ("QMS") will carry out and be paid for its services and creates a legally binding contract between the Client and QMS (the "Contract"). The Contract will commence on the date of signing by the authorised signatory ("Agreement Date") and shall continue until the expiry of the term detailed above in the service deliverables or on termination of this Contract ("Contract Term"). Should QMS terminate the Contract prior to the expiry of the term detailed above the expiry date of the term detailed above will apply.
2. This Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of QMS which is not set out in the Contract.
3. The conditions of the Contract apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## The Services

4. QMS will provide the Services in accordance with the Contract outlined in the "Details of Services" table.

## Data Protection

*For the purposes of this Agreement and solely in respect of any processing of personal data as a result of this Agreement, the following terms shall have the meaning ascribed to the Data Protection Law: controller, data subject, data protection impact assessment, processor, personal data, process (including processed, processes and processing), personal data breach, special categories of personal data, supervisory authority.*

5. Both parties warrant that they will comply with their respective obligations under the Data Protection Act 2018, the UK GDPR (as defined by the Data Protection Act 2018) and any other applicable regulations, legislation or other local or international laws covering the processing and/or dissemination of personal data of identifiable individuals (Data Protection Law).
6. The Parties acknowledge that for the purposes of the agreement, the Client will be the Controller and QMS the Processor.
7. Where QMS processes personal data on behalf of the Client, QMS, acting as Processor, will:
  - a) Act on and comply with the Client's documented instructions with regards to the processing of personal data unless otherwise required under applicable law in which case QMS shall inform the Client unless prohibited from doing so on important grounds of public interest;
  - b) Take reasonable steps to ensure the relevant QMS' employees who have access to the Client's personal data are under appropriate obligations of confidentiality;
  - c) Take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
  - d) Taking into account the nature of the processing, assist the Client (at the Client's costs and

expense) by appropriate technical and organisational measures (insofar as this is possible) with the Client's (i) security of processing; (ii) notification of personal data breach to the relevant supervisory authority; (iii) communication of personal data breaches to the relevant data subject; (iv) data protection impact assessments and prior consultation of such with a supervisory authority; and (v) fulfilment of its obligations in respect to a received requests for exercising data subject's rights;

- e) At the Client's cost, delete or return all personal data to the Client at the end of the Contract Term;
- f) Make available to the Client (at the Client's cost and expense) relevant information to demonstrate compliance with obligations set out in this clause 7; and
- g) Ensure any processor engaged as part of this Agreement will be subject to similar obligations as set out in this clause 7

8. The Client acknowledges and agrees that it is responsible to ensure the legal basis for the processing of personal data by QMS and storing of personal data in QMS Connect (QMS Connect is applicable to the following services - ISO Premium, ISO Premium IMS, ISO Compliance, ISO Core Consultancy, ISO Transition, , Business Continuity) or Atlas, which is applicable to the eLearning service (including where necessary of the relevant users) as a result of this Contract.
9. As your processor, QMS relies on the Client for direction as to the extent to which it is entitled to process any personal data. Consequently, QMS will not be liable for any claim brought by an individual arising from any processing of personal data undertaken by QMS in the provision of QMS Connect to the Client or as otherwise permitted under the terms of this Contract. As controller of the personal data, the Client agrees to indemnify QMS for all liabilities, costs, expenses, damages and losses incurred by QMS arising out of or in connection with the Client's breach of clauses 5 - 9

## Right of Termination

10. The Client can request termination of **all** Service(s), Certificate(s) and Certification type(s) and this Contract at any time during the Contract Term, subject to paying the cancellation fee, which shall be a sum equal to 50% of the Service, Certification (if applicable) and Annual Fees due and payable over the remainder of the Contract Term ("Cancellation Fee"). Any such cancellation will take effect 6 months following the receipt of the Client's written cancellation request and the Cancellation Fee. On such termination, access to the Client's Certificate (if relevant) shall be immediately withdrawn and access to QMS Connect (if relevant) will be removed (the Client will have a five-day grace period following QMS notification of termination, to ensure all essential documentation is downloaded by the Client should the Client wish to do so). If the service purchased relates to our "Core Consultancy" service, then no cancellation fees will apply as the full contractual amount is paid upon delivery of the service.

### IMS Certification only

Partial Cancellation - The Client can request termination of **one** or more Certification Standard(s) relating to the IMS Service and associated

Certification, retaining a minimum of one Certification Standard (any future cancellation of the remaining one Certification Standard would be subject to Full Cancellation Clause above), by writing to QMS during the Contract Term; this is subject to the Client having reached Certification Audit stage. If all payments relating to the Certification Standard(s) have been made at the point of cancellation, then no cancellation charges will be applied to the Certification Standard(s) being cancelled. If any payments are outstanding, then these would be due immediately and would be calculated on a pro-rata basis, depending on the number of Certification Standard(s) being cancelled. The Client will remain responsible for ongoing payment of the fees relating to the retained Certification Standard(s) over the remainder of the Contract term. Any such cancellation will not be effective until QMS is in receipt of the Client's written cancellation request and QMS provide written confirmation to the Client. On such termination, access to QMS Connect shall be retained but the Client's current Certificate shall be immediately withdrawn and replaced by a revised Certificate for the remaining Certificate Standard(s) that are active.

### eLearning only

The Client can request termination of the Contract by writing to QMS head office (listed below) after 12 months of the Contract Term. A cancellation fee will not be due providing the Client has paid 15 months of their Contract Term in full. Any outstanding payments to the 15-month anniversary of the Contract start date will become immediately due as a cancellation fee. Any such cancellation will not be effective until QMS is in receipt of the Client's written cancellation request and QMS has written to confirm acceptance to the Client. From the point that termination of the Contract has been confirmed by QMS, the Client will have 30 days to download active certificates from the system before user access is revoked. From this point the "Services" shall be withdrawn.

### GDPR only

The Client can request termination of the Contract by writing to QMS head office (listed below) prior to the appointment during the Contract Term, subject to paying the cancellation fee, which shall be a sum equal to 50% of the Service Fees due and payable over the remainder of the Contract Term ("Cancellation Fee"). Any such cancellation will not be effective until QMS is in receipt of the Client's written cancellation request and the Cancellation Fee.

### Cyber Essentials only

The Client can request termination of the Contract by writing to QMS head office (listed below) prior to Secure Business Computing Solutions Ltd providing a login to the online portal, subject to paying the cancellation fee, which shall be a sum equal to 50% of the Service Fees due and payable over the remainder of the Contract Term ("Cancellation Fee"). Any such cancellation will not be effective until QMS is in receipt of the Client's written cancellation request and the Cancellation Fee.

### Cyber Essentials Plus

The Client can request termination of the Certificate and the Contract by writing to QMS head office (listed below) at any time during the Contract Term, subject to paying the cancellation fee, which shall be a sum equal to 50% of the Assessment Fee and Certification Fees due and payable over the remainder of the Contract Term ("Cancellation Fee"). Any such cancellation will not be effective until QMS is in receipt of the

Client's written cancellation request and the Cancellation Fee. On such termination, the Client's Certificate shall be immediately withdrawn.

11. Without limiting its other rights or remedies, QMS may terminate the Contract with immediate effect by giving written notice to the Client if the Client:
  - a) Fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts 30 days after being notified in writing to do so; or
  - b) Materially or repeatedly breaches any of the terms of the Contract and (if such breach is remediable) fails to remedy the same, to the satisfaction of QMS, within seven days of written notice of such breach; or
  - c) Displays threatening behaviour or abuse to QMS Staff.
12. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if such other party suffers any sort of insolvency event.
13. Should QMS terminate the Contract in accordance with clauses 11 and 12 above, immediately and without prejudice to any other rights of QMS: (a) the Client's Certificate shall be withdrawn; (b) the Client shall cease all use of the Certificate issued by QMS and any associated certification marks; and (c) the Client shall pay QMS the unpaid balance of all the fees outstanding as due at the date of termination and the Cancellation Fee calculated pursuant to the Right of Termination.  
Cyber Essentials, Cyber Essentials Plus  
Clause 13a replaces Clause 13  
13a) Without limiting its other rights or remedies, QMS may terminate the Contract with immediate effect by giving written notice to the Client in the event that Secure Business Computing Solutions Ltd ceases to provide Cyber Essential or Cyber Essential Plus services or ceases to provide Cyber Essential or Cyber Essential Plus services in conjunction with QMS. If the Client has a current Certificate in place at the time of such termination the Certificate will continue in force until its expiry date.

## Contractual Liabilities

14. Nothing in this Contract excludes or limits QMS' liability for:
  - a) Death or personal injury caused by QMS' negligence; or b) Fraud or fraudulent misrepresentation.
15. Subject to clause 14, QMS is not liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with this Contract for any indirect or consequential loss, including but not limited to:
  - a) Loss of profit; b) Loss of revenue; c) Loss of business; d) Loss of goodwill; or e) Loss of anticipated savings.
16. Subject to clause 14, QMS' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with this Contract, shall be limited to the total Certification Fee and Audit Fees due in accordance with this Contract.
17. The Client shall indemnify QMS against all liabilities, costs, expenses, damages and losses (including but not limited to all legal and professional costs; calculated on a full indemnity basis) suffered or incurred by QMS, arising out of or in connection with the infringement of any third party's intellectual property rights, know-how or confidential information.

## Intellectual Property

18. Once the ISO Certificate has been issued to the Client (only applicable when Premium or Compliance ISO Services are undertaken), the Client may make use of the certification marks and logos in accordance with QMS' Certification Representation Policy appended to these terms and found at [www.qmsuk.com/logo\\_usage](http://www.qmsuk.com/logo_usage). The Certification Representation Policy may be amended by QMS from time-to-time and any such amendment will be communicated to the Client in writing. For the avoidance of doubt, the Client's right to use the certification marks shall immediately cease upon the expiry or termination of the Contract.
19. QMS shall have the right to display the Certificate and its current audit status in the public domain for inspection and to refer to this Contract in its marketing materials and activities.

## Other

20. Except as set out in this Contract, no variation shall be effective unless it is agreed in writing QMS. QMS reserve the right to vary the Contract from time to time by notice in writing. By continuing to use and access QMS's Services following such changes, you agree to be bound by any variation made by us.
21.
  - a) Any notice given under or in connection with the Contract must be in writing and be either delivered by hand or sent by first-class post to the other's registered office (if a company) or main place of business (in any other case) or by email (subject to clause 21d) as follows:
    - i) for email notices to QMS, to the relevant email address given to the Client by QMS from time to time; and
    - ii) for email notices to the Client, to the relevant email address given to QMS by the Client as part of the initial on-boarding process.
  - b) Any notice will be considered to have been received:
    - i) if delivered by hand, at the time the notice is left at the correct address;
    - ii) if sent by email, at the time the email was sent if sent to the correct email address;
    - iii) if sent by first-class post, at 8:30am on the weekday after posting; and
    - iv) if sent by a signed-for next-day delivery service, at the time the delivery notice is signed for.
  - c) This clause does not apply to any documents sent or delivered in any legal proceedings, arbitration or dispute resolution.
  - d) A notice given in relation to clauses 10-13 (Right of Termination) is not valid if it is sent by email.
22. 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.
23. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).