

## TERMS OF SERVICE

These Terms of Service contain the terms and conditions that govern all use of our Platforms (as defined below) and Services (as defined below) and all content, services and/or products available on or through the Platforms (collectively, the “GoldPhish Services”).

The GoldPhish Services are offered to you subject to your acceptance, without modification (other than Special Terms (as defined below) agreed by the parties pursuant to these Terms of Service), of all of the terms and conditions contained herein and all other operating rules, policies (including, without limitation, our Privacy Policy at [www.goldphish.com/privacy-policy/](http://www.goldphish.com/privacy-policy/)), the Guidelines (as defined below) and any future modifications thereof, and procedures that may be published from time to time on the Platforms or made available to you on or through the GoldPhish Services (collectively, the “Terms”). When accepted by you (or the business, government or entity you represent), these Terms form a legally binding contract between you and GoldPhish (as defined below). If you are entering into these Terms on behalf of an entity, such as your employer or the company you work for, you represent that you have the legal authority to bind that entity.

If client receives the software, subscriptions or GoldPhish Services through a GoldPhish authorised reseller, partner or distributor (collectively, “Reseller”), all fees and other procurement and delivery terms will be agreed between client and the Reseller; however, the terms set forth in these Terms regarding client’s use of the software, subscriptions and GoldPhish Services remain applicable. For clarification, client’s agreement with the Reseller is between client and the Reseller partner only and such agreement is not binding to GoldPhish.

PLEASE READ THESE TERMS CAREFULLY. BY REGISTERING FOR, PURCHASING, ACCESSING, BROWSING, AND/OR OTHERWISE USING THE GOLDPHISH SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS. WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE THAT YOUR SUBMISSION OF AN ORDER FOR THE GOLDPHISH SERVICES CONSTITUTES AN ACCEPTANCE OF THESE TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, DO NOT ACCESS, BROWSE OR OTHERWISE USE THE PLATFORMS OR THE GOLDPHISH SERVICES.

GoldPhish may, in its sole discretion, elect to suspend or terminate access to, or use of the GoldPhish Services to anyone who violates these Terms.

If you register for a free trial or free plan of the GoldPhish Services, the applicable provisions of these Terms will govern that free trial or plan.

The original language of these Terms is English. GoldPhish may make available translations for convenience. In case of conflicts between the original English version and any translation, the English version shall prevail.

## 1. DEFINITIONS

Account	the primary means for accessing and using the GoldPhish Services, subject to payment of a Fee designated in the selected Plan;
Authorised Users	Client authorised employees, agents or independent contractors with an assigned unique email address, who may (i) access the applicable GoldPhish Service; and/or (ii) receive or send email messages with respect to the applicable GoldPhish Service;
Client	a natural or legal person who has accepted these Terms with GoldPhish;
Client Data	Files and any other digital data and information, which is subjected to the GoldPhish Services or otherwise inserted to the Systems by the Client (including the specific Users, Persons, Organisations, associated with the Client);
Content	any data and information available through GoldPhish Services or contained within the structure of the Systems, eLearning modules, assessments, articles, documents, brochures, presentations, pictures, images, videos, other informational materials and any comments;
Fee	payment for using the activated Account;
Feedback	any suggestion, bug reports, enhancement request, recommendation, correction or other feedback for the GoldPhish Services;
Files	documents of any kind (images, spreadsheets, text files, etc.) that are inserted to the Systems by the Client;
Free Trial	temporary access for the purposes of trying out the Web Site and GoldPhish Services in accordance with any selected Plan without paying a Fee;
Free Plan	annual access to GoldPhish Services without paying a Fee, in accordance with selected terms and conditions.
Guidelines	additional guidelines or rules applicable to specific features, applications, products, or services which may be posted from time to time on the Platforms or otherwise made available on or through the GoldPhish Services;
GoldPhish	GoldPhish Limited, a private limited company registered in England under registration no/ 10333752 and with a registered address at 2 Woodberry Grove, Finchley, London, N12 0DR;
GoldPhish Materials	the visual interfaces, eLearning courses, graphics, design, systems, methods, information, computer code, software, services, “look and

	feel”, organisation, compilation of the content, code, data, and all other elements of the GoldPhish Services;
GoldPhish Services	the Web Site, Services, System, Content, CybACADEMY Platform and all content, services and/or products available on or through the Platform, SECURITY ASSESSMENT SURVEY Platform and all content, services and/or products available on or through the Platforms;
Linked Sites	Third party websites or services linked by URL on GoldPhish Services, solely as a convenience to Clients;
Order	(i) a quotation issued to Client by GoldPhish that is signed by both Parties or (ii) a written purchase order or similar ordering document, signed or submitted by Client and accepted by GoldPhish, under which Client agrees to purchase GoldPhish Services. It is agreed that all Orders for the GoldPhish Services hereunder will incorporate these Terms, whether expressly referenced or not, and will only be accepted subject to these Terms. These Terms will govern all Orders, and any additional or different terms in an Order are deemed void and of no effect unless such additional or different terms are agreed upon by the Parties in writing. For clarity, acceptance by GoldPhish of a Client’s purchase order or similar ordering document will not be deemed an acceptance of any conflicting or additional terms and conditions;
Plan	various criteria related to the use and functionality of the GoldPhish Services and on which the Fee is based;
Reseller	GoldPhish Sales Partners or other authorised resellers of GoldPhish Services;
Special Terms	any particulars, specifications and conditions by which the parties have agreed to deviate from these Terms;
System	the integrated cloud computing solution for providing the GoldPhish Services, including applications, software, hardware, data bases, interfaces, associated media, documentation, updates, new releases and other components or materials provided therewith;
Taxes	tariffs, duties or taxes imposed or levied by any government or governmental agency, including without limitation, federal, state and local sales, use, value added or other similar taxes;
User	a natural person granted with the Authorisation to use the Account on behalf of a Client;
Web Site	the compilation of all web documents (including images, php and html files) made available via <a href="http://www.goldphish.com">www.goldphish.com</a> or its sub domains or domains with identical names under other top domains and owned by GoldPhish.

## 2. AUTHORITY TO ENTER INTO THESE TERMS WITH GOLDPHISH

The use of the GoldPhish Services is subject to acceptance of these Terms. To accept these Terms for itself or on behalf of a Client, a person must have the legal capacity to do so. In the case of an individual, the individual must be at least 18 years of age or have valid authorisation from his/her legal representative or custodian. In the case of a legal entity, the entity must be duly incorporated and in good standing.

The Terms are accepted as soon as one of the following occurs first:

- a. the Client purchases GoldPhish Services following the submission of an Order;
- b. the person has received the confirmation of the creation of the Account and necessary credentials from GoldPhish in order to log in to his/her/its Account; or
- c. for those GoldPhish Services and parts of the Web Site the use of which is not dependent on creating an Account, upon the moment of gaining access to such services.

You may not, without GoldPhish's prior written consent, access the GoldPhish Services (i) for production purposes, (ii) if you are a competitor of GoldPhish, (iii) to monitor the availability, performance or functionality of the GoldPhish Services or (iv) for other benchmarking or competitive purposes.

Once accepted, these Terms remain effective until terminated as provided for herein.

## 3. MODIFICATIONS TO TERMS

GoldPhish reserves the right, at its sole discretion, to change, modify, add, or remove portions of the Terms at any time by posting such changes on or through the Platforms or the GoldPhish Services. Please check these Terms periodically for changes. Your continued use of the GoldPhish Services after such changes have been posted as provided above constitutes your binding acceptance of such changes. Such amended Terms will automatically be effective upon the earlier of (i) your continued use of the GoldPhish Services, or (ii) 30 days from posting of such modified Terms on or through the Platforms. Notwithstanding the foregoing, the resolution of any dispute that arises between you and GoldPhish will be governed by the Terms in effect at the time such dispute arose.

## 4. OUR RESPONSIBILITIES

**4.1. Provision of GoldPhish Services.** GoldPhish will (a) make the GoldPhish Services, Content and Client Data available to a Client pursuant to these Terms, (b) provide applicable standard support for the GoldPhish Services to Client at no additional charge, and/or upgraded support (for an additional charge, if applicable), (c) use commercially reasonable efforts to make the GoldPhish Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which GoldPhish shall give advance electronic notice as provided in the Guidelines), and (ii) any unavailability caused by circumstances beyond GoldPhish's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem, Internet service provider failure or delay, or denial of service attack.

**4.2. Protection of Client Data.** GoldPhish will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client Data, as described in the Guidelines. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Client Data by GoldPhish personnel except (a) to provide the GoldPhish Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 7.5 (Compelled Disclosure) below, or (c) as a Client or User expressly permit in writing.

## 5. USING THE GOLDPHISH SERVICES

**5.1. Orders.** Certain features, functions, parts or elements of the GoldPhish Services can be used or accessed only by holders of an Account. GoldPhish shall create an Account pursuant to the Order accepted or submitted by Client.

- a. **Orders Directly with GoldPhish.** A GoldPhish Order will specify Client's authorised scope of use for the GoldPhish Services, which may include the number and type of Authorised Users, Plan, and number of licenses.
- b. **Reseller Orders.** These Terms apply whether Client purchases GoldPhish Services directly from GoldPhish or through GoldPhish Resellers. If Client purchases through a Reseller, your Scope of Use shall be stated in the Order placed by Reseller for Client, and Reseller is responsible for the accuracy of any such Order. Resellers are not authorised to make any promises or commitments on GoldPhish's behalf, and we are not bound by any obligations to Client other than what we specify in these Terms.

**5.2. Authorised Users.** User Licenses for whom Client has paid the required fees are for designated Authorised Users and cannot be shared or used by more than one Authorised User to access and use the GoldPhish Services, but may be reassigned to new Authorised Users replacing former Authorised Users who no longer require on-going use of the GoldPhish Services. Certain GoldPhish Services may allow Client to designate different types of Authorised Users, in which case pricing and functionality may vary according to the type of Authorised User. Authorised Users may be you or your Affiliates' employees, representatives,

consultants, contractors, agents, or other third parties who are acting for your benefit or on your behalf. Client is responsible for compliance with these Terms by all Authorised Users. All use of GoldPhish Services by Client and your Authorised Users must be within the Scope of Use and solely for the benefit of Client or your Affiliates.

The Client and any Authorised User associated with an Account must provide GoldPhish with true, accurate, current, and complete information about the Client, Users or Account and keep it up to date.

**5.3. Logging into an Account.** GoldPhish shall provide Client with a username and password (“Login Credentials”) for being used to log in to its Account. These Login Credentials must not be used by multiple persons. If Client has designated several Authorised Users, each Authorised User will be provided with separate Login Credentials. Client and each Authorised User are responsible for keeping confidential all login credentials associated with an Account. Client must promptly notify GoldPhish:

- a. of any disclosure, loss or unauthorised use of any Login Credentials;
- b. of an Authorised User’s departure from the Client’s organisation;
- c. of a change in an Authorised User’s role in the Client’s organisation;
- d. of any termination of an Authorised User’s right for any reason.

**5.4. Termination of Account.** Client may terminate these Terms at any time as provided in Section 16. GoldPhish shall permanently delete the applicable Account as soon as reasonably practicable after the effective date of the termination.

**5.5. Fees.** The use of an Account is subject to a Fee. Different rates apply to different Plans. Client will pay the Fees for the GoldPhish Services set forth in the applicable Order. All Fees are non-cancellable and non-refundable, i.e. there are no refunds or credits for periods where the Client did not use an activated Account, used it only partially, or deactivated the Account or terminated these Terms during an ongoing subscription interval. All Fees will be fully invoiced in advance on annual payments, unless otherwise agreed by the Parties in writing. If, after creating an Account, Client elects to upgrade to a more expensive Plan, the unused portion of any prepaid Fees shall be applied to the Fee of the more expensive Plan.

Client may increase the number of Authorised Users permitted to access the GoldPhish Service by placing a new Order or, in some cases, directly through the Platform. In all cases, Client must pay the applicable fee for the increased number of Authorised Users. Additional Authorised User licenses purchased during the subscription interval will have a pro rata term ending on the last day of the pre-existing Account Term.

All Fees are exclusive of all tariffs, duties or taxes imposed or levied by any government or governmental agency, including without limitation, federal, state and local sales, use, value

added or other similar taxes, and Client is responsible for paying all Taxes applicable to the GoldPhish Services provided by GoldPhish to Client.

**5.6. Free Plan.** GoldPhish offers FREE Plans on applicable GoldPhish Services. The Client is not required to provide any credit card information or payment during the period of the Free Plan.

In addition to the current collection of Plans, GoldPhish may offer special discounts and motivation schemes (for example finder's fees, etc.).

## 6. PAYMENT

**6.1. Electronic Invoice.** Before the start of each subscription interval, Client will be issued an electronic invoice for payment of the applicable Fee. Client must pay the invoice by the due date indicated on the invoice.

**6.2. Reseller Payment.** If you purchase any GoldPhish Services through a Reseller, you owe payment to the Reseller as agreed between you and the Reseller, but you acknowledge that GoldPhish may terminate your rights to use the GoldPhish Services if GoldPhish do not receive the corresponding payment from the Reseller.

## 7. CLIENT DATA

**7.1. Uploading Client Data to Platforms.** If the Client uploads Client Data to the Platforms, such Client Data and any processing of such Client Data must be in compliance with these Terms and applicable law. All rights, title and interest in and to the Client Data belong to the Client or third persons (including Users, persons and Organisations) whether posted and/or uploaded by you or made available on or through the GoldPhish Services by GoldPhish. By uploading Client Data to the Platforms, Client authorises GoldPhish to process the Client Data. The Client is responsible for ensuring that:

- a. the Client and any of the Authorised Users associated with the Account do not create, transmit, display or make otherwise available any Client Data that violates these Terms, the rights of GoldPhish, other Clients or Authorised Users, persons or Organisations or is harmful (for example viruses, worms, malware and other destructive codes), offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, pornographic, obscene, invasive of another's privacy, defamatory, hateful or otherwise unlawful; and
- b. the Client and all of the Authorised Users associated with the Account have the necessary rights to use the Client Data, including to insert it into the Platforms and process it by means of the Account.

**7.2. No Guarantee of Accuracy.** GoldPhish does not guarantee any accuracy with respect to any information contained in any Client Data, and strongly recommends that you think carefully about what you transmit, submit or post to or through the GoldPhish Services. You understand that all information contained in Client Data is the sole responsibility of the person from whom such Client Data originated. This means that Client, and not GoldPhish, is entirely responsible for all Client Data that is uploaded, posted, transmitted, or otherwise made available through the GoldPhish Services, as well as for any actions taken by GoldPhish or other Clients or Users as a result of such Client Data.

**7.3. Exposure to Other Client's Client Data.** A Client may, in certain circumstances, allow GoldPhish to expose their Client Data to other Clients or Authorised Users for training and marketing purposes. You understand that GoldPhish cannot, and does not, review all Client Data and does not endorse any Client Data. You further understand and acknowledge that you may be exposed to other Client's Client Data that is inaccurate, misleading, offensive, indecent, or objectionable. GoldPhish shall not be responsible for any Client Data, including, without limitation for the accuracy, completeness, relevancy, content of any Client Data.

**7.4. Unlawful Client Data.** GoldPhish is not obliged to pre-screen, monitor or filter any Client Data or acts of its processing by the Client in order to discover any unlawful nature therein. However, if such unlawful Client Data or the action of its unlawful processing is discovered or brought to the attention of GoldPhish or if there is reason to believe that certain Client Data is unlawful, GoldPhish has the right to:

- a. notify the Client of such unlawful Client Data;
- b. deny its publication on the Web Site or its insertion to the System;
- c. demand that the Client bring the unlawful Client Data into compliance with these Terms and applicable law;
- d. temporarily or permanently remove the unlawful Client Data from the Web Site or Account, restrict access to it or delete it.

If GoldPhish is presented convincing evidence that the Client Data is not unlawful, GoldPhish may, at its sole discretion, restore such Client Data, which was removed from the Web Site or Account or access to which was restricted.

In addition, in the event GoldPhish believes in its sole discretion Client Data violates applicable laws, rules or regulations or these Terms, GoldPhish may (but has no obligation), to remove such Client Data at any time with or without notice.

**7.5. Compelled Disclosure.** GoldPhish may disclose a Client's confidential information to the extent compelled by law to do so. In such instance, GoldPhish will use commercially reasonable efforts to provide Client with prior notice of the compelled disclosure (to the extent

legally permitted) and Client shall provide reasonable assistance, at its cost, if Client wishes to contest the disclosure. If GoldPhish is compelled by law to disclose Client's confidential information as part of a civil proceeding to which GoldPhish is a party, and Client is not contesting the disclosure, Client will reimburse GoldPhish for its reasonable cost of compiling and providing secure access to that confidential information.

**7.6. Agreed Disclosure.** You agree to allow GoldPhish to reference you as a customer using GoldPhish Services on GoldPhish's website and in print copy or marketing collateral, provided that GoldPhish obtains your prior written consent. You will provide GoldPhish with an approved company logo that GoldPhish may publish on GoldPhish's website and/or marketing collateral to communicate such relationship.

## 8. SERVICES

**8.1. Use of the GoldPhish Services.** Subject to these Terms, and the payment of the applicable service Fee, GoldPhish grants Client and its Authorised Users a non-exclusive, non-transferable, non-sub-licensable license to use the GoldPhish Services to:

- a. collect, store and organise Client Data, such as add new Users and grant them Authorisations, assign training Activities and assessment Activities to a particular User, and monitor their progress of Activities, add training documentation, create Assessments;
- b. modify and delete Client Data;
- c. customise the standard features of the GoldPhish Services;
- d. receive reasonable help and guidance and from GoldPhish regarding the use of the GoldPhish Services.

**8.2. Technical Support.** GoldPhish shall provide reasonable technical support to Client and its Authorised User at the reasonable request of the Client. GoldPhish shall respond to enquiries of support from a Client utilizing the contacts set forth below as soon as reasonably possible. Responding to enquiries of Clients and Users who have accepted these Terms but do not have an Account may be less expedient, or may not occur at all.

The contacts for all enquiries of support are:

- a. instant messaging,
- b. built-in notification application on the Web Page,
- c. e-mail: [support@goldphish.com](mailto:support@goldphish.com)

**8.3. Modifications to Service.** GoldPhish reserves the right to modify the GoldPhish Services or any part or element thereof from time to time without prior notice, including, without limitation:

- a. rebranding the GoldPhish Services at its sole discretion;
- b. ceasing providing or discontinuing the development any particular GoldPhish Service or part or element of the Platforms temporarily or permanently;
- c. taking such action as is necessary to preserve GoldPhish's rights upon any use of the GoldPhish Services that may be reasonably interpreted as violation of GoldPhish's intellectual property rights, distribution of Internet viruses, worms, Trojan horses, malware, and other destructive activities or illegal activity.

As applicable, Client may be notified of such modifications when logging in to the Account. Modifications, including change in applicable rates for the GoldPhish Services, will become effective thirty (30) days before the effective date of such modification.

If the Client does not accept the modification, the Client shall notify GoldPhish before the effective date of the modification, and these Terms will terminate on the effective date of the modification. The Client's continued use of the GoldPhish Services, or any part or element thereof, after effective date of modifications shall indicate its consent to the modifications. GoldPhish shall not be liable to the Client or to any third person for any modification, suspension or discontinuance of the GoldPhish Services, or any part or element thereof.

## 9. RESTRICTIONS

**9.1. Prohibited Activities.** Client and its Authorised Users may use the GoldPhish Services and any part or element thereof only in the scope, with the means and for purposes as identified in these Terms and applicable law. By way of example, neither the Client nor any User may:

- a. use the GoldPhish Services or any part or element thereof to commit a crime, breach any applicable law or entice or invite others to carry out such illegal actions;
- b. copy, duplicate, distribute, modify, adapt, hack, create derivative works, reverse engineer or decompile the GoldPhish Services or any part or element thereof, or attempt to extract the source code thereof, unless (i) it is expressly allowed under applicable law, and (ii) to the extent that GoldPhish is not permitted by that applicable law to exclude or limit the foregoing rights;

- c. use the GoldPhish Services or any part or element thereof unless it has agreed to these Terms.

**9.2. Certain Uses Require GoldPhish Consent.** The Client or any Authorised User may not, without GoldPhish's prior express written consent (e-mail, fax, Skype, etc.):

- a. sell, resell, lease, license, sublicense, distribute, provide, disclose, divulge, exploit or otherwise grant Access or make the GoldPhish Services available in whole or in part to any third persons, unless such third person is another Authorised User of the same Client;
- b. use the GoldPhish Services or any part or element thereof in a scope, with means or for purposes other than those for which their functionality was created;
- c. use the GoldPhish Services or any part or element thereof by means of programs that send them automatic enquiries or requests, unless such program has been made available by GoldPhish;

## 10. PRIVACY

GoldPhish takes the privacy of its Clients and Authorised Users very seriously. GoldPhish's Privacy Policy at [www.goldphish.com/privacy-policy/](http://www.goldphish.com/privacy-policy/) is hereby incorporated into these Terms by reference. Please read the Privacy Policy carefully as it governs GoldPhish's collection, use, and disclosure of Client's or Authorised User's personal information.

## 11. INTELLECTUAL PROPERTY RIGHTS

**11.1. GoldPhish's Intellectual Property Rights in the GoldPhish Services.** The GoldPhish Services, GoldPhish Materials, GoldPhish trade names and trademarks, and any parts or elements thereof are solely and exclusively owned and operated by GoldPhish and its third-party vendors and hosting partners. GoldPhish Materials are protected by copyright, trade dress, trade secrets, and trademark laws, international conventions and treaties, and all other relevant intellectual property and proprietary rights laws. GoldPhish, its affiliates and licensors retain all right, title and interest in such GoldPhish Services, GoldPhish Materials, GoldPhish trade names and trademarks, and any parts or elements. Your use of the GoldPhish Services and GoldPhish Materials, and any parts or elements does not grant to you any ownership right or intellectual property rights therein. Any commercial or promotional distribution, publishing or exploitation of the GoldPhish Materials is strictly prohibited unless you have received the express prior written permission from GoldPhish or the otherwise applicable rights holder. GoldPhish reserves all rights to the GoldPhish Services, GoldPhish Materials and GoldPhish trade names and trademarks not expressly granted in the Terms.

**11.2. Content Owned by GoldPhish.** Subject to these Terms and the payment of the applicable service Fee, GoldPhish grants Client and its authorised users a non-exclusive, non-transferable, non-sub-licensable license to download copies of any part of the Content solely for your personal, non-commercial use if you retain all copyright and proprietary notices that are contained in such part of the Content. You expressly acknowledge that you do not acquire any ownership rights by downloading any copyrighted material from or through the Platforms or the GoldPhish Services. You shall not copy, distribute or publish any Content or any information obtained or derived therefrom except as permitted on or through the GoldPhish Services or as otherwise permitted by applicable law.

**11.3. Client Data.**

- a. GoldPhish may use Client Data in an aggregated and anonymized format for research, educational and other similar purposes. GoldPhish may not otherwise use or display Client Data without Client's written consent. GoldPhish respects your right to exclusive ownership of your Client Data. Unless specifically permitted by you, your use of the GoldPhish Services does not grant GoldPhish the license to use, reproduce, adapt, modify, publish or distribute the Client Data created by you or stored in your Account for GoldPhish's commercial, marketing or any similar purpose. Client expressly grants GoldPhish the right to use and analyse aggregate system activity data associated with use of the GoldPhish Services by Client and its Authorised Users for the purposes of optimizing, improving or enhancing the way the GoldPhish Services operate, and to create new features and functionality in connection with the GoldPhish Services in the sole discretion of GoldPhish.
- b. Client is solely responsible for its own Client Data and the consequences of posting or publishing them on or through the GoldPhish Service. In connection with Client Data, Client affirms, represents, and warrants that: (i) Client either owns its Client Data or has the necessary licenses, rights, consents, and permissions to use and authorise GoldPhish to display or otherwise use the Client Data under all patent, trademark, copyright, trade secrets, or other proprietary rights in and to your Client Data in a manner consistent with the intended features of the GoldPhish Services and these Terms, and to grant the rights and license set forth in Section 11.3(a), and (ii) Client Data, GoldPhish's or any GoldPhish Licensee's use of such Client Data pursuant to these Terms, and GoldPhish's or any GoldPhish Licensee's exercise of the license rights set forth in Section 11.3(a), do not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) violate any applicable law or regulation anywhere in the world; or (c) require obtaining a license from or paying any fees and/or royalties by GoldPhish to any third party for the performance of any GoldPhish Services Client has chosen to be performed by GoldPhish or for the exercise of any rights granted in these Terms, unless Client and GoldPhish otherwise agree.

**11.4. Feedback.** If Client or an Authorised User provides GoldPhish with any suggestion, bug reports, enhancement request, recommendation, correction or other feedback for the GoldPhish Services, GoldPhish shall have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into the GoldPhish Services. Client or Authorised User (as applicable) hereby grants GoldPhish a perpetual, irrevocable, nonexclusive, royalty free license under all rights necessary to incorporate, publish, reproduce, distribute, modify, adapt, prepare derivative works of, publicly display, publicly perform, exploit and use your Feedback for any purpose.

## 12. THIRD-PARTY SITES, PRODUCTS AND SERVICES

The GoldPhish Services may include links to other websites or services solely as a convenience to Clients. GoldPhish does not endorse any such Linked Sites or the information, material, products, or services contained on or accessible through Linked Sites. Furthermore, GoldPhish makes no express or implied warranties with regard to the information, material, products, or services that are contained on or accessible through Linked Sites. ACCESS AND USE OF LINKED SITES, INCLUDING THE INFORMATION, MATERIAL, PRODUCTS, AND SERVICES ON LINKED SITES OR AVAILABLE THROUGH LINKED SITES, IS SOLELY AT YOUR OWN RISK.

## 13. DISCLAIMERS; NO WARRANTY

UNLESS OTHERWISE EXPRESSLY STATED BY GOLDPHISH, THE GOLDPHISH SERVICES, GOLDPHISH MATERIAL, AND ANY CONTENT, SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE GOLDPHISH SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, GOLDPHISH AND ITS AFFILIATES DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF PROPRIETARY RIGHTS, CORRECTNESS, ACCURACY, AND RELIABILITY.

UNLESS OTHERWISE EXPRESSLY STATED BY GOLDPHISH, GOLDPHISH AND ITS AFFILIATES DO NOT WARRANT THAT THE GOLDPHISH SERVICES AND ANY CONTENT, CLIENT DATA SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE GOLDPHISH SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE GOLDPHISH SERVICES AND ANY CONTENT, CLIENT DATA, SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE GOLDPHISH SERVICES OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

UNLESS OTHERWISE EXPRESSLY STATED BY GOLDPHISH, GOLDPHISH AND ITS AFFILIATES DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE PLATFORMS, THE GOLDPHISH SERVICES, GOLDPHISH MATERIAL OR ANY LINKED SITES, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

THE LAWS OF CERTAIN COUNTRIES AND STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

## 14. INDEMNIFICATION

You agree to defend, indemnify and hold harmless GoldPhish and its affiliates, and their respective directors, officers, employees and agents, from any claims, losses, damages, liabilities, including attorney's fees, arising out of your use or misuse of the GoldPhish Services, GoldPhish Materials, representations made to GoldPhish, its affiliates and/or third parties, violation of these Terms, violation of the rights of any other person or entity, or any breach of the foregoing representations, warranties, and covenants. GoldPhish reserves the right, at its own expense, to assume the exclusive defence and control of any matter for which you are required to indemnify GoldPhish, and you agree to cooperate with such defence of these claims.

## 15. LIMITATION OF LIABILITY

**15.1. No Liability:** GoldPhish shall not be liable to the Client or Authorised User for any consequences resulting from:

- a. any modifications in these Terms, calculation and rates of Fees, the GoldPhish Services, GoldPhish Material, or any part or element thereof (including but not limited to Account), including any error, permanent or temporary interruption, discontinuance, suspension or other type of unavailability of the GoldPhish Services or GoldPhish Material;
- b. deletion of, corruption of, or failure to store any Client Data;
- c. use of Client Data by the Client or any of the Authorised Users associated with the Account;
- d. upgrading or downgrading the current Plan;

- e. any disclosure, loss or unauthorised use of the login credentials of Client or any Authorised User due to Client's failure to keep them confidential;
- f. the Client's use of the Account or the GoldPhish Services by means of browsers other than those accepted or supported by GoldPhish;
- g. the application of any remedies against the Client or Authorised Users by GoldPhish, for example if the Client or Authorised User has committed a crime or conducted a breach of applicable law by using the GoldPhish Services or any part or element thereof;
- h. the differences between technologies and platforms used for access, for example if certain features, functions, parts or elements of the GoldPhish Services are designed for use on a personal computer or laptop and do not function on a mobile platform or a tablet;
- i. GoldPhish's application of the remedies described in these Terms, even if the reasonable grounds or legal basis for the application of these remedies turned out to be unfounded or invalid afterwards.

In addition, GoldPhish and its affiliates shall not be liable to the Client for any claim by any User, person, Organisation or third persons against the Client arising out of the Client's failure to:

- a. provide GoldPhish with accurate information about the Client, Authorised Users or Account;
- b. notify GoldPhish of any reasons due to which an Authorised User does not have the right to use the Account on behalf of the Client;
- c. provide any Products which it has agreed to provide to such a person or Organisation (whether such failure arises as a result of GoldPhish's negligence, breach of these Terms or otherwise);
- d. ensure the lawfulness of the Client Data;
- e. obtain the necessary rights to use the Client Data; or
- f. abide by any of the restrictions described in these Terms.

**15.2. Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF GOLDPHISH AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THESE TERMS EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER FOR THE GOLDPHISH SERVICES GIVING RISE TO THE LIABILITY IN THE SIX MONTHS PRECEDING THE

FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CLIENT'S PAYMENT OBLIGATIONS UNDER THE "PAYMENT" SECTION ABOVE.

**15.3. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## 16. TERMINATION OF THESE TERMS

**16.1. For Convenience.** These Terms may be terminated for convenience upon written notice to the other party as indicated in the "Notice" Section below:

- a. by the Client any time by contacting GoldPhish at [accounts@goldphish.com](mailto:accounts@goldphish.com) and requesting a no-questions-asked Account cancellation;
- b. by GoldPhish upon decision to end provision of the GoldPhish Services and close the Platforms; or
- c. immediately by either party, if proceedings are initiated for the other party's liquidation or insolvency or a negotiated settlement with the other party's creditors is concluded or an assignment is made on behalf of the other party for the benefit of creditors.

**16.2 For Default.** These Terms may be terminated for default upon written notice to the other party as indicated in the "Notice" Section below:

- a. by either party in case of breach of these Terms by the other party, if the breach has not been cured within 30 days of receipt of a notice from the non-breaching party; or
- b. immediately by either party if the other party breaches its obligations, as applicable under Sections 11 [Intellectual Property Rights] and 14 [Indemnification] of these Terms.

**16.2. Effect of Termination.** Upon termination of these Terms,

- a. GoldPhish shall deactivate and permanently delete the Account, as soon as reasonably practicable after the effective date of termination of these Terms. If the Client has specifically requested for an earlier deletion of the Account, GoldPhish shall fulfil such request within 1 month of its receipt of such request.
- b. Client must:
  1. stop using and prevent the further usage of the GoldPhish Services, including, without limitation, the Platforms;
  2. pay any amounts owed to GoldPhish under these Terms; and
  3. discharge any liability incurred by the Client before under these Terms prior to their termination; and
- c. The following provisions shall survive the termination of these Terms: Sections 1, 7.5, 9, 10, 11, 13, 14, 15, 17 and 18.

### **16.3. Remedies.**

If GoldPhish terminates these Terms as a result of an uncured breach by a Client or Authorised User, GoldPhish is entitled to use the same or similar remedies against any other persons who use the GoldPhish Services in conflict with these Terms. Notwithstanding the foregoing, GoldPhish may also apply any other remedies available to it under the applicable law. Upon application of any remedies, the Client or Authorised User may lose Access or suffer a loss of certain features, functions, parts or elements of the GoldPhish Services.

If GoldPhish has reasonable grounds to believe that the Client's or Authorised User's use of the GoldPhish Services, including the Account may harm any third persons, GoldPhish has the right to take adequate measures under its control to prevent, stop and eliminate the harm, where possible, in order to protect those third persons.

## **17. DISPUTE RESOLUTION**

**17.1. Dispute Resolution; Arbitration.** In the event of any controversy or claim arising out of or relating to these Terms, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach a settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to these Terms shall proceed to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce. The parties shall seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three (3) arbitrators: one selected by each party, and a third selected by the first two. Arbitration will take place in one of the following cities as mutually agreed between the parties: Leicester (United Kingdom) or Jeffreys Bay (South Africa). If the parties are unable to agree to one of these cities, then the arbitration shall proceed in Leicester (United Kingdom). All

negotiations and arbitration proceedings pursuant to this Section 17.1 will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.

**17.2. Governing Law; Jurisdiction.** These Terms will be governed by and construed in accordance with the applicable laws of England and Wales. Each party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions of Section 17.1 (Dispute Resolution; Arbitration) must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the courts of England and Wales, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts of England and Wales, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, GoldPhish may bring a claim for equitable relief in any court with proper jurisdiction.

**17.3. Injunctive Relief; Enforcement.** Notwithstanding the provisions of Section 17.1 (Dispute Resolution; Arbitration), nothing in these Terms shall prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

**17.4. Exclusion of UN Convention and UCITA.** The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to these Terms. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted.

## 18. GENERAL PROVISIONS

**18.1. Relationship of the Parties.** The parties will act solely as independent contractors. These Terms shall not be construed as creating an agency, partnership, joint venture, fiduciary duty, or any other form of legal association between the Client and GoldPhish, and the Client shall not represent to the contrary, whether expressly, by implication, appearance or otherwise. These Terms are not for the benefit of any third parties.

**18.2. Severability.** If any term, condition or provision of these Terms is held to be invalid, unenforceable or illegal in whole or in part for any reason, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties. The validity and enforceability of the remaining terms, conditions or provisions, or portions of them, shall not be affected.

**18.3. Assignment.** Client may not, directly or indirectly, in whole or in part, by operation of law or otherwise, assign or transfer these Terms or delegate any of its rights and/or obligations under these Terms without GoldPhish's prior written consent. Any attempted assignment,

transfer or delegation without such prior written consent will be void and unenforceable. Notwithstanding the foregoing, the Client, or its permitted successive assignees or transferees, may assign or transfer these Terms or delegate any rights or obligations hereunder without consent: (1) to any entity controlled by, or under common control with the Client, or its permitted successive assignees or transferees; or (2) in connection with a merger, reorganisation, transfer, sale of assets or product lines, or change of control or ownership of the Client, or its permitted successive assignees or transferees.

**18.4. No Waiver.** Failure of either Party to exercise or enforce any provision of or any of its rights under these Terms shall not be deemed a waiver of future enforcement of that or any other provision or right.

**18.5. Notices.** Except as otherwise specified in these Terms, all notices related to these Terms will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to you will be addressed to the relevant billing contact designated by you. All other notices to you will be addressed to the relevant Services system administrator designated by you.

**18.6. Entire Terms of Service.** These Terms, including all Orders, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, Orders or representations, written or oral, concerning its subject matter.

Last update: February 2018