

Mind the Gap Project

# Terms & Conditions



## Preambles

- (a) Mind the Gap is an Initiative (the '**Initiative**') established in collaboration with MDIA, Tech.mt, and MCA. This Initiative is currently composed of two (2) schemes namely; the Cybersecurity Self-Assessment owned and managed by MDIA with the technical and promotional collaboration of the MCA and the Cybersecurity Improvement Scheme owned and managed by Tech.mt.
- (b) This document stipulates the terms and conditions of **the Cybersecurity Self-Assessment**.
- (c) The Cybersecurity Self-Assessment is an easy-to-use online assessment undertaken directly by the Applicant itself to have immediate feedback on the levels of cybersecurity maturity for its e-commerce platform across multiple categories.
- (d) By clicking the "Accept" button below, the Applicant is agreeing that the Applicant have read all the terms and conditions in this document and the guidelines associated with the Initiative and the Cybersecurity Self-Assessment and that the Applicant is accepting these terms and conditions and the guidelines associated with the Initiative and the Cybersecurity Self-Assessment and that the Applicant is fully aware that the Applicant is entering in a contractual agreement with MDIA (the '**Agreement**') with respect to the Cybersecurity Self-Assessment.

### 1. Definitions

The following words and expressions shall have the meanings assigned to them below and the following rules of interpretation shall apply to this Agreement:-

**"Applicant"** (also **"You"**, **"Your"**) refers to any entity engaged in an economic activity regardless of its legal form that provides an E-commerce Service in Malta or a self-employed individual holding a Value Added Tax (VAT) number who provides an E-commerce Service in Malta which entity or individual applies to the Cybersecurity Self-Assessment through the Mind the Gap Portal.

**"Confidential Information"** has the meaning given thereto in Clause 5 of this Agreement.

**"Cybersecurity Self-Assessment"** refers to a set of cybersecurity questions across multiple platforms in relation to the Applicant's e-platform available on the Mind the Gap Portal by virtue of which the Applicant can self-assess the level of cybersecurity of its e-platform.

**"Cybersecurity Self-Assessment Acknowledgment"** is an acknowledgement requested by the Applicant via Mind The Gap Portal and granted by MDIA of the results obtained by the Applicant after submitting the Cybersecurity Self-Assessment which acknowledgement is valid for one (1) year from date of issue and can take two forms; either the acknowledgement depicts the overall score or else the score at the level of every category.

**"Data Protection Law"** (or **"DPA"**) means the Data Protection Act, Chapter 586 of the Laws of Malta.

**“E-Commerce Service”** means a service provided at a distance, through the internet, by electronic means and at the individual request of a user, with a view to conclude a user contract.

**“Fee”** means the fee payable by the Applicant for each application form as described in clause 6 of this Agreement.

**“Force Majeure Event”** means any events, circumstances or causes beyond its reasonable control like for example, act of God, inclement weather, flood, drought, lightning or fire, earthquakes and volcanic eruptions, failure or shortage of power supply, strikes, lockouts, acts or omissions of governmental entities or ministries, labour disturbances and industrial disputes of any kind.

**“Good Industry Practice”** means the practices, methods and procedures and that degree of skill, diligence, prudence and foresight which would reasonably be expected to be adhered to.

**“Loss”** shall include direct, indirect and consequential loss and shall mean, without limitation, all claims, losses, damages, costs, charges, liabilities, penalties, interest, fines and expenses (including legal and other professional charges and expenses on an attorney and own client scale) including, without limitation, any indirect, special, economic or collateral loss including loss of profits, loss of data or corruption of data, revenue, goodwill, bargain or opportunities or loss or corruption of data or loss of anticipated savings or loss to reputation.

**“MCA”** means the Malta Communications Authority established by the Malta Communication Authority Act; Chapter 418 of the Laws of Malta.

**“MDIA”** (also **“We”**, **“Us”**, **“Our”**) means the Malta Digital Innovation Authority established by the Malta Digital Innovation Authority Act, Chapter 591 of the Laws of Malta.

**“Mind The Gap Portal”** is an online portal established and managed by MDIA by virtue of which the Applicant can amongst others, register for the Cybersecurity Self-Assessment, fill the Cybersecurity Self-Assessment, download the presentation of findings or identified gaps and download the Cybersecurity Self-Assessment Acknowledgement.

**“Personal Data”** shall include both formal or official records and disposable information that identifies living individuals. This could also include sensitive data.

**“Premises”** shall mean the location/s where the Applicant conducts its business, which may also include any remote set ups and the location where the Applicant’s clients conduct their business.

**“Records”** shall mean all records associated with the Cybersecurity Self-Assessment, including but not necessarily limited to those associated with complaints, questionnaires, audits, reviews, data, results, studies, report or acknowledgements.

**“Tech.mt”** is a foundation established in partnership with the government of Malta and the Malta chamber of commerce to promote the national strategy for technology and innovation.

## 2. Process

2.1 The Applicant shall fill the application form of the Cybersecurity Self-Assessment found on the Mind the Gap Portal in order to apply for the Cybersecurity Self-Assessment.

2.2 The Applicant accepts that MDIA, MCA and Tech.mt have access to the information submitted on the Mind the Gap Portal.

2.3 The application form shall be reviewed and assessed in line with the requirements of the application form and the applicable eligibility criteria found in the Cybersecurity Self-Assessment guidelines.

2.4 MDIA and/or MCA shall be permitted to request to the Applicant and/or successful Applicant at any time, even after the application process and/or after the grant of the Cybersecurity Self-Assessment Acknowledgement until its expiration to provide further clarifications including, any additional information or documentation as requested and MDIA and/or MCA are authorised to request that a particular document is provided in original and/or certified by an independent person. Documents not provided in the English language must have an English translation attached thereto, dated, signed and certified by an independent person of proven competence, confirming the integrity of the translation.

2.5 MDIA and/or MCA shall also be authorised at any time, even during the application process and/or after the application process and/or after the grant of the Cybersecurity Self-Assessment Acknowledgement until its expiration to conduct audits or/and assessments to the Applicant even if these are conducted remotely and/or at the Premises, provided MDIA and/MCA notifies the Applicant and/or successful Applicant of this in writing at least forty-eight (48) hours prior and provides a reasonable justification for such audit and/or assessment.

2.6 Should the Applicant decide to apply for the Cybersecurity Improvement Scheme owned and managed by Tech.mt after applying for the Cybersecurity Self-Assessment, the Applicant authorises MDIA to transfer the personal data of the Applicant and its Records to Tech.mt and authorises Tech.mt to access the same.

2.7 The Applicant understands and accepts that the schemes under the Initiative are owned and managed by different bodies and/or entities.

### **3. Obligations and Rights of Applicant**

3.1 The Applicant obliges itself, warrants and represents that:

- (a) It has read and understood this Agreement and all the guidelines related to the Initiative and the Cybersecurity Self-Assessment;
- (b) It has read, understood and filled the application form of the Cybersecurity Self-Assessment which is available on the Mind the Gap Portal completely, with reasonable skill and care, Good Industry Practice and with honesty, good faith and integrity;
- (c) It shall fill and perform the Cybersecurity Self-Assessment available on the Mind the Gap Portal with reasonable skill and care, Good Industry Practice and with honesty, good faith and integrity;
- (d) This Agreement, together with the application form and the Cybersecurity Self-Assessment have been completed and signed by the legal and judicial representative of the Applicant;
- (e) It shall immediately inform MDIA of any material and/or detrimental change in its application form and/or the Cybersecurity Self-Assessment;
- (f) It shall not do or permit to be done anything that might damage the reputation of MDIA and/or MCA or the reputation or standing of the Initiative.

3.2 The Applicant acknowledges that the Cybersecurity Self-Assessment is intended solely to reflect the fact that the Applicant has a certain level of cybersecurity awareness and that the allowed use of the Cybersecurity Self-Assessment Acknowledgment does not indicate or certify or guarantee that the Applicant is free from cyber security vulnerabilities. The Applicant acknowledges and accepts that MDIA and/or MCA have not warranted or represented the Initiative or the use of the Cybersecurity Self-Assessment Acknowledgment as conferring any additional benefit to the Applicant.

3.3 The use of the Cybersecurity Self-Assessment Acknowledgment and the declaration of conformity with the Cybersecurity Self-Assessment is used and issued under the Applicant's sole exclusive responsibility. The Applicant also acknowledges and accepts that the use of the Cybersecurity Self-Assessment Acknowledgment does not mean that its organisation or e-platform is compliant with any applicable Law including the General Data Protection Regulation (GDPR) and the DPA. MDIA and/or MCA do not undertake any legal compliance assessment of the Applicant or its organisation or e-platform nor do they provide legal advice and the Applicant shall not and will not rely on any statements issued by MDIA and/or MCA or on the issuing of a Cybersecurity Self-Assessment Acknowledgment to You as guaranteeing such compliance. MDIA and/or MCA accept no liability for any such reliance.

3.4 The Applicant and/or successful Applicant shall comply with its obligations under GDPR and DPA including, the duty to provide appropriate data privacy notices to staff and other individuals whose personal data may be processed during or in relation to the Mind the Gap Acknowledgment process and it complying with this Agreement.

3.5 The Applicant and/or successful Applicant will comply with all the terms and conditions applicable to the Initiative and this Agreement.

3.6 If the need arises, the Applicant and/or successful Applicant will comply with all reasonable directions made to You by MDIA or by any of our authorised representatives on anything related with this Scheme.

3.7 If MDIA orders an audit or assessment pursuant to Clause 2 above, the Applicant and/or successful Applicant undertake to:

(a) provide US and/or our representatives with such information and/or Records as We and/or the representatives shall require;

(b) grant US and/or the authorised representatives remote access to Your systems and/or access to the Premises;

(c) preserve and keep all Records as required by US and/or our authorised representatives;

(d) provide US and/or our authorised representatives with the necessary co-operation and to permit scrutiny of all systems, documents, Records and relevant material/equipment to enable the finalisation of the audit or assessment;

(e) to abide by any direction, decision, recommendation, taken by us pursuant to such audit or assessment and if deemed viable and appropriate by Us, take remedial action and follow the recommendations of such audit or assessment.

#### 4. Data Protection and Copyright

4.1 Both Parties will comply with their respective obligations under the DPA and the General Data Protection Regulation (GDPR) as retained and applied in Malta by the DPA. For further information on how the MDIA shall be processing personal data, kindly refer to the Privacy Policy and related documentation of the MDIA which can be found on the official website of the MDIA accessed through the following link: <https://mdia.gov.mt/>.

4.2 You shall hold Us harmless from and against any and all claims (including reasonable and properly incurred costs and expenses) made against Us by an individual arising as a result of any loss, unauthorised disclosure of or unauthorised access to any Personal Data by You or any of Your staff in relation to this Agreement or the Cybersecurity Self-Assessment.

4.3 The provisions of this Clause 4 shall apply during the continuance of this Agreement and shall survive expiry or termination of this Agreement.

4.4 The content of the Initiative together with any related document, website, Mind the Gap Portal, design, layout, artwork as well as the script operating the content are copyright of the owners of the Initiative and is covered by the provisions of the Copyright Act, by Maltese laws, policies, regulations and international agreements.

#### 5. Confidentiality

5.1 Save as set out in this Agreement, we will keep the information You submit as confidential and protect it as we would our own confidential information. We will only use the information you submit for the purposes of performing, managing or reviewing the application form and for the purposes of the effective management, audit, supervision and development of the Cybersecurity Self-Assessment (and for general, applied research, statistics and development in the field of cyber security). In the context of such research and development we will wherever practicable and consistent with that purpose, anonymize Your information.

5.2 We may disclose Your confidential information to Our staff, representatives, advisers and contractors. Such disclosure will be on terms of confidentiality. We may also disclose Your information as required by law including by an order of any court or tribunal.

5.3 Where applicable, You also agree to Us using and publishing the Applicant's name and, if relevant, the name, date and scope of the Records as well as the outcomes of any audit and/or assessment ordered by Us.

#### 6. Fee

6.1. If applicable by virtue of the Cybersecurity Self-Assessment guidelines, the Applicant shall pay the Fee in accordance with the published requirements.

## 7. Cybersecurity Self-Assessment Intellectual Property Rights and Use of Cybersecurity Self-Assessment Acknowledgment

7.1 You will comply with the Cybersecurity Self-Assessment documentation and all reasonable directions made to You by Us.

7.2 You acknowledge that the Cybersecurity Self-Assessment and all material made available by MDIA, (for example, including text, images, graphics, videos, audio clips and other copyrighted materials, trade marks, designs and any other intellectual property rights are referred to collectively as the **“Content”**) are proprietary to US.

7.3 We grant you a non-exclusive, non-transferable, limited personal right to access and use the Cybersecurity Self-Assessment Acknowledgment and enjoy the Content subject to the Agreement. However, no other right, title, or interest is granted or transferred to you.

7.4 We reserve the right to rescind, terminate or suspend (without liability nor compensation to You or others) the Initiative, this Agreement and any Cybersecurity Self-Assessment Acknowledgment that has been issued.

## 8. Force Majeure Event

8.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from a Force Majeure Event.

8.2 In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for six (6) weeks, the party not affected may terminate this Agreement by giving ten (10) days' written notice to the affected party.

## 9. Indemnity & Limitation of Liability

9.1 You shall indemnify Us against all claims, liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Us arising out of or in connection with:

(a) Any breach of the warranties or representations contained in clause 3 of this Agreement;

(b) Your breach or negligent performance or non-performance of this Agreement;

(c) The enforcement of this Agreement;

(d) Any claim made against Us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Our use of Your information for the purposes of the Scheme;

9.2 We do not accept any liability to You resulting from any security breach or vulnerability in Your systems or processes either during the assessment or subsequently and We shall not be liable to You whether in contract, tort (including negligence) for breach of statutory duty or otherwise arising under or in connection with this Agreement for any Loss.

9.3 The Consumer Affairs Act (Chapter 378 of the Laws of Malta) and any of its subsidiary legislation are, to the fullest extent permitted by Law, excluded from this Agreement,

but shall not be excluded from Your obligations when interfacing with consumers, as further defined under the same Consumers Affairs Act.

9.4 The limitations and exclusions on liability in this section will not apply to any liability for death or personal injury caused by our gross negligence, for fraud or fraudulent misrepresentation or for any other liability that cannot lawfully be excluded or limited.

## 10. Cancellation and Termination

10.1 We may terminate this Agreement and the right to use the Cybersecurity Self-Assessment Acknowledgement at any stage without notice to you in the event that you are in breach of any of Your obligations under this Agreement or as provided in Clause 7 of this Agreement.

10.2 We may cancel Your Cybersecurity Self-Assessment Acknowledgement at any time in the event that You use it in breach of the terms of the Initiative or in the event that You are in breach of any of Your other obligations under this Agreement.

10.3 In the event that we cancel Your Cybersecurity Self-Assessment Acknowledgement You will immediately cease to use it or to hold Yourself out as holding a Cybersecurity Self-Assessment Acknowledgement in any other way whatsoever.

10.4 Termination of this Agreement and termination of the Cybersecurity Self-Assessment Acknowledgement will not restrict US or prohibit Us from enforcing our other rights under this Agreement and at Law. Without prejudice to any other rights or remedies that We may have, You acknowledge and agree that termination, cancellation and damages alone would not be an adequate remedy for any breach of the terms of this Agreement by You. Accordingly, We shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

## 11. General

### In this Agreement:

11.1 References to a person includes an individual, a body corporate, a partnership and an unincorporated association of persons.

11.2 References to "days" shall mean calendar days unless expressly stated to refer to business days; and references to a party to this Agreement include references to the successors or assigns (immediate or otherwise) of US and YOU.

11.3 The headings in this Agreement do not affect its interpretation.

11.4 The words "includes" or "including" shall mean "including without limitation."

11.5 Clause and paragraph headings shall not affect the interpretation of this Agreement.

11.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

11.7 A reference to a Law or statutory provision shall include all subordinate legislation made from time to time under that Law or statutory provision.

11.8 A reference to any document, scheme, guidance or statutory provision is a reference to it as amended, extended or re-enacted from time to time.



11.9 If there is any conflict or inconsistency between a term in the main part of this Agreement and the Initiative Documentation or other documents referred to or otherwise incorporated into this Agreement, the term in the main part of the Agreement shall take precedence.

11.10 A reference to writing or written includes email and information contained in the Mind The Gap Portal.

11.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

11.12 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.13 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

11.14 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

11.15 This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

11.16 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.17 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

11.18 This Agreement and the relationship between the Parties shall be governed by, and construed exclusively in accordance with, the Laws of Malta (Law). All disputes arising out of or in connection with this Agreement, including any questions or issues regarding its existence, validity and termination, shall be referred to and finally resolved by the Courts of Malta. Nothing in this Agreement shall be construed as preventing US from seeking from any court of competent jurisdiction a temporary restraining order or other temporary or preliminary injunctive relief pending final resolution of any dispute, controversy, or claim.