



My59 Terms of Service

Welcome to www.my59online.com (**My59**) brought to You by The 59 Club Limited (**Us, We** or **Our**). In these My59 Terms of Service (**Terms of Service**), **You** and **Your** means you the person using or visiting My59.

By accessing or using My59, You agree to be bound by these Terms of Service.

These Terms of Service together with Our [Privacy Policy](#) set out how You may use My59. The [Privacy Policy](#) is an essential part of these Terms of Service and, by agreeing to be bound by these Terms of Service, You also accept and consent to Our [Privacy Policy](#).

We reserve the right to vary these Terms of Service from time to time at our sole discretion. Any changes We make to these Terms of Service will be applicable from the date they are published. We will endeavour to notify You of any changes that are going to be made by Us to these Terms of Service reasonably in advance of the date on which such changes take effect and invite You to accept Our new Terms of Service. If You do not to accept our new Terms of Service, then You may no longer be able to access My59.

1. ABOUT US

- 1.1 My59 is a website that provides its registered users with certain online reporting and benchmarking tools that help clubs (**Clubs**) evaluate the performance of particular staff members and analyse the effectiveness of certain key elements of their business.
- 1.2 My59 is owned and operated by The 59 Club Limited, a company incorporated under English law (company number: 06502069) and whose registered office is at The Cottage, 41 Main Street, Swepstone, Leicestershire, LE67 2SG, United Kingdom.
- 1.3 If You would like to make a complaint about anything contained on My59, please contact Us by writing to us at the following postal or email address with the subject heading "Complaint":

Postal Address:

The 59 Club Limited
The Cottage
41 Main Street
Swepstone
Leicestershire
LE67 2SG
United Kingdom

Email Address:

info@my59online.com

2. REGISTERING AN ACCOUNT

Registering a Club account

2.1 In order to register as a Club on My59, You must satisfy the following minimum criteria (**Club Criteria**):

- (a) be an employee, director, agent or representative of the legal entity that owns or operates a Club;
- (b) have the authority to register a Club account on My59 on behalf of the legal entity that owns or operates the relevant Club; and
- (c) have the authority to bind the relevant legal entity that owns or operates the relevant Club to the terms and conditions set out in these Terms of Service.

2.2 As part of the Club account registration process, You will be required to submit a valid email address to Us and this information will need to be verified and accepted by Us. We reserve the right to refuse to accept any email address which We deem to be inappropriate (in our sole discretion) or which has already been registered for a different account. We will issue You with a password for Your Club's My59 account in Your welcome email. You can change Your Club's My59 account password at any time in the "My Details" section of Your Club's My59 account.

2.3 By registering a Club account on My59, You are confirming to Us that You satisfy the Club Criteria set out in paragraph 2.1. If You do not satisfy the Club Criteria, then please do not attempt to register a Club account. We may take steps to verify that You have satisfied the Club Criteria before accepting Your Club account registration. Your Club account may not be accepted by Us or, if it has already been accepted by Us, will be terminated by Us without warning if We have any reason to believe that You have not satisfied the Club Criteria.

2.4 If You have reason to believe that someone who does not satisfy the Club Criteria has registered a Club account on My59 for Your Club, please tell us immediately, by writing to Us at the following email address with the subject heading "Unauthorised Club Account" and including any supporting evidence which You may have to support Your suspicion:

info@my59online.com

2.5 We will investigate Your concerns as soon as reasonably practicable following Our receipt of Your email notice and inform You of Our decision and the steps We have elected to take by writing to the email address from which Your email notice was sent.

Registering a Tester Account

2.6 Once a Club has registered a Club account on My59, if that Club wishes to utilise the mystery tester tools available through My59, it may register additional tester accounts on My59 (each a **Tester Account**) on behalf of those individuals who the Club wishes to test its services (each a **Tester**). In order to register a Tester Account on My59, the Tester must be at least 13 years old (**Tester Criteria**).

2.7 By registering a Tester Account, the Club is hereby warranting to Us that the relevant Tester satisfies the Tester Criteria set out in paragraph 2.6. Please do not attempt to register a Tester

Account for any individual who does not satisfy the Tester Criteria. That individual's Tester Account will be terminated without warning if We have any reason to believe that they have not satisfied the Tester Criteria.

2.8 In addition to procuring that each Tester satisfies the Tester Criteria, in order to maintain the effectiveness of each Tester's mystery test, We strongly recommend that Clubs instruct their Testers to not:

- (a) call the Club they will be testing on the same day as they will be visiting that Club; and
- (b) take photographs or make notes whilst they are at the Club they will be testing and in the company of the staff member escorting them around the Club, as this will alert the relevant staff member to the Tester's mystery tester status.

2.9 As part of the Tester Account registration process, the relevant Club will be required to submit a valid email address for the Tester to use and this information will need to be verified and accepted by Us. We reserve the right to refuse to accept any email address which We deem to be inappropriate (in our sole discretion) or which has already been registered for a different Tester Account. We will issue the relevant Tester with a password for their Tester Account by sending a welcome email to the email address registered to their Tester Account. Testers may change their Tester Account password at any time by accessing the "My Details" section in their Tester Account.

2.10 If You are a Tester aged between 13 years old and 18 years old, You must review these Terms of Service and Our [Privacy Policy](#) with Your parent or legal guardian to ensure that You and Your parent or legal guardian understand the terms and conditions contained in these Terms of Service and Our [Privacy Policy](#). Each Tester will, by accessing their Tester Account, be deemed to have accepted these Terms of Service and Our [Privacy Policy](#). If a Tester not wish to be bound by these Terms of Service or does not agree to Our processing of their personal data in accordance with Our [Privacy Policy](#), they must not access their Tester Account.

3. ACCESS TO REGISTERED ACCOUNTS

3.1 Once You have a registered account, it is Your responsibility to keep Your account password secret. We will be entitled to assume that any person logging into Your account is either You or someone doing so with Your permission. You are responsible and liable for any actions of any person that logs into Your account. You should notify Us immediately if You suspect that anyone else knows Your username and password or that anyone has logged into Your account as You by writing to us at the following postal or email address with the subject heading "Unauthorised Access":

Postal Address:

The Cottage
41 Main Street
Sweptstone
Leicestershire
LE67 2SG

Email Address:

info@my59online.com

- 3.2 We will be entitled to suspend Your registered account if We reasonably believe that You have failed to keep Your username and password secret or if You, or anyone else, unsuccessfully attempts to log into Your My59 account on 3 successive occasions.

4. **CHARGES**

- 4.1 There is currently no charge to register and use a Tester Account or to access any of the freely available content on My59. However, We reserve the right to charge a fee for such access in the future. If We elect to begin charging such a fee, We will endeavour to notify You of such change by sending an email to the email address registered to Your Club account or Tester Account (if any) or by posting a notice on the homepage of My59 no less than 14 days' in advance of such changes taking effect.
- 4.2 We currently charge a subscription fee of £500 (plus VAT) per annum for allowing Clubs to register a Club account and access the reporting and benchmarking tools provided therein (**Club Fee**). We reserve the right to change the Club Fee at any time. If We change the Club Fee, We will endeavour to notify You of such change by sending a notice of such change to the email address registered to Your Club account (if any) or by posting a notice on the homepage of My59 no less than 14 days' prior to such changes taking effect. If You have a Club account, You will be charged the new Club Fee the next time Your Club Fee becomes due after such changes take effect.
- 4.3 In the event that Your Club account (if any) is cancelled by Us due to Your breach of these Terms of Service, no refund of the Club Fee shall be due.

5. **LICENCE**

- 5.1 Subject to Your continued compliance with these Terms of Service, We hereby grant to You a non-exclusive, non-transferable, non-sublicensable, revocable licence to access and use My59 for Your own personal, non-commercial use. If You breach any provision of these Terms of Service, this licence granted to You and Your authorisation to use My59 will automatically and immediately terminate and You must immediately cease to use My59.

6. **USE OF MY59**

- 6.1 You may not use My59 in any improper or unlawful manner or in breach of any legislation or licence that applies to You, including, without limitation, The Regulation of Investigatory Powers Act 2000 and the Data Protection Act 1998 (or any other similar legislation which may apply to you).
- 6.2 My59 provides Testers with:
- (a) instructions on where to download certain third party tools which may be used by Testers to record their telephone conversations with the staff members of the Club they have been asked to test (**Recorded Conversation**); and
 - (b) access to certain functionality which will allow Testers to:
 - (i) upload any Recorded Conversations to My59; and
 - (ii) share Recorded Conversations with a Club (**Recipient Club**).

- 6.3 If You are a Tester, You acknowledge and agree that by creating any Recorded Conversation and/or uploading any such Recorded Conversation to My59, You are representing and warranting to Us that You and/or the Recipient Club have obtained all such necessary consents as may be required to enable You to do so legally and that Your creation, uploading, sharing and/or use of any such Recorded Conversation complies in all respects with all applicable laws. Please do not create, upload, share and/or otherwise use any Recorded Conversation if You have any doubts as to whether You and/or the Recipient Club have obtained all such necessary consents. If You create any Recorded Conversation, You agree to indemnify, defend and hold Us harmless from and against any claim that Your recording, uploading, sharing and/or use of any Recorded Conversation breaches any applicable laws.
- 6.4 If You are the Recipient Club, You acknowledge and agree that by accessing a Recorded Conversation on My59, You are representing and warranting to Us that You and/or the relevant Tester have obtained all such necessary consents as may be required by applicable law to enable the Tester to create, upload and share such Recorded Conversation with You and that Your accessing and use of any such Recorded Conversation complies in all respects with all applicable laws. Please do not instruct a Tester to create, upload, share and/or otherwise use any Recorded Conversation if You have any doubts as to whether You and/or the relevant Tester have obtained all such necessary consents. You hereby agree to indemnify, defend and hold Us harmless from and against any claim that:
- (a) the relevant Tester's creation, uploading and/or sharing of any Recorded Conversation; and/or
 - (b) Your accessing and/or use of any Recorded Conversation,
- breaches any applicable laws.
- 6.5 If We have any reason to believe that a Recipient Club or Tester has failed to obtain all such necessary consents as may be required by applicable law, or has otherwise breached any applicable law in recording any such telephone conversation and/or sharing such recording with a Recipient Club (including, without limitation, the Regulation of Investigatory Powers Act 2000 and the Data Protection Act 1998), We reserve the right to immediately, and without notice to the relevant Tester and/or Recipient Club, remove any Recorded Conversation uploaded by such Tester from My59 and/or terminate the relevant Club's My59 account and/or any of such Club's Tester Accounts.
- 6.6 Without limiting the foregoing, You agree that when using My59 You will not:
- (a) reverse engineer, decompile, disassemble or otherwise attempt to obtain My59's source code;
 - (b) publish, post, upload, store, distribute or disseminate any unlawful, fraudulent, defamatory, untruthful, infringing, obscene, pornographic, harmful, libellous, hateful, racist, threatening or otherwise illegal or offensive material or information or anything which might constitute a criminal or civil offence;
 - (c) upload files which contain viruses, corrupted files, or any other software or programs which may interfere with or damage the operation of My59 or any other computer;

- (d) use software (including any spider, scraper or bot) to monitor, harvest or copy any information from My59;
- (e) create multiple Club accounts or multiple Tester Accounts;
- (f) impersonate any other person or Club; and/or
- (g) promote any activity that is illegal.

6.7 You agree to comply with all reasonable instructions that We may give You regarding Your use of My59.

6.8 You are also responsible for obtaining (at Your own cost) all necessary devices and telecommunications services required to access My59. We will be entitled to assume that any person using Your device to access My59 is either You or someone doing so with Your permission. You are responsible and liable for any actions of any person that accesses My59 using Your device.

7. **THIRD PARTY WEBSITES**

7.1 My59 contains links to other websites that are either owned by Us or by third parties. By way of example, My59 may contain advertisements or links that, if selected by You, will take You out of My59 and to a third party's website. We have no control over any third party website which You access via My59 and therefore make no warranties or representations whatsoever about any third party website which You may access through My59 or any of the services that are available via any such third party website.

7.2 Third party websites are in no way approved, vetted, checked or endorsed by Us and You agree that We will not be responsible or in any way liable for the content, accuracy, compliance with relevant laws or accessibility of any information, data, advice or statements or for the quality of any products or services available on such third party websites. Links do not necessarily imply that We are, or that My59 is, affiliated to, or associated with, such third party websites. If You decide to visit any third party website, You do so at Your own risk. In addition, use of any third party website may be subject to Your acceptance of additional terms and conditions, which We suggest You read carefully before proceeding.

8. **INTELLECTUAL PROPERTY**

8.1 For the purposes of these Terms of Service, **Intellectual Property Rights** means patents, registered and unregistered trademarks and service marks, domain names, registered designs and design rights, copyright (including such rights in computer software and databases), database rights and moral rights (in each case for the full period thereof and extensions, revivals, reversions and renewals thereof), applications for the foregoing and the right to apply for or enforce any of the foregoing anywhere in the world, and all similar rights anywhere in the world including those subsisting in inventions, designs, drawings and computer programs.

8.2 All Intellectual Property Rights in and to My59 and any content, materials or information made available by Us on My59 are owned, and will remain owned, by Us or Our licensors at all times.

8.3 These Terms of Service are not intended to prevent You recording in manual form any individual item of information from My59 or disclosing any individual item of information from My59, free

of charge, to friends, colleagues or relations for non-commercial purposes provided that You take all reasonable steps to ensure that any person to whom You may disclose such information complies with these Terms of Service.

8.4 You warrant and undertake that You own the Intellectual Property Rights in and to all content You upload to My59.

8.5 You grant, and You represent and warrant that You have the right to grant, to Us a non-exclusive, irrevocable, perpetual, transferable, sub-licensable, worldwide, royalty-free licence to reproduce, display, communicate to the public, modify, edit, manage, distribute and store any and all of content You upload to My59 as part of the My59 service.

8.6 You acknowledge that, other than as set out in these Terms of Service, We do not monitor the content that is made available by Testers on My59. If You believe that any content available on My59:

(a) infringes Your Intellectual Property Rights or other proprietary rights;

(b) is defamatory to You; and/or

(c) is otherwise in breach of these Terms of Service,

please contact Us using the contact details set out in paragraph 1.3.

8.7 Any removal of such content will be without any admission as to liability and without prejudice to Our other rights and remedies.

9. **DISCLAIMERS**

9.1 We will exercise all reasonable skill and care in providing My59. However, We are not able to guarantee the availability of My59 nor the accuracy, completeness, currency or reliability of any content, materials or information on My59 that derives from third parties (including any of Our licensors or third party partners).

9.2 Except as expressly provided in these Terms of Service, My59 and all materials and information provided through it are provided on an "as is" basis without guarantee of any kind and any conditions, statements and warranties (including any warranty of reliability, completeness, accuracy, fitness for a particular purpose or non-infringement) are excluded to the fullest amount permissible by law.

9.3 Without limiting the foregoing, We cannot guarantee and do not promise that My59 and all content, materials and information provided through it will meet Your requirements. Therefore We advise You to check any content, materials and/or information provided to You through My59 as any reliance that You place on the accuracy, completeness, currency or reliability of such content, materials and/or information is at Your own risk.

10. **LIMITATION OF LIABILITY**

10.1 Nothing in these Terms of Service limits or excludes Our liability for anything that cannot be excluded by applicable law.

10.2 Subject to paragraph 10.1, You agree that We will not be liable for:

- (a) any direct loss, claim or damage;
- (b) any indirect loss, claim or damage, or any punitive, special, incidental or consequential damages of any kind (including lost savings or loss or corruption of data); or
- (c) any loss of profit (whether direct or indirect), in each case whether based in contract, tort (including negligence), strict liability, or otherwise, which arises out of or is in any way connected with any:
 - (i) use of My59;
 - (ii) failure or delay in the use of any component of My59 or any service including any unavailability of My59 or any service irrespective of duration of any period of unavailability;
 - (iii) content which may be uploaded by any Tester; and/or
 - (iv) use of or reliance upon any content, materials, information, software, services and related graphics obtained via My59,

in all cases even if We have been forewarned of the possibility of such loss or damage.

10.3 Without limiting the effect of paragraph 10.2, due to the inherent risks of using the Internet, We cannot be liable for any damage to, or viruses that may infect, Your device or any other property when You are using My59. The downloading or accessing of any content, material and/or information made available via My59 is done at Your own discretion and risk and with Your agreement that You will be solely responsible for any damage to Your device or loss of data that results from the downloading or acquisition of any such content, material and/or information.

10.4 You agree to indemnify Us against any claims or legal proceedings that may arise through Your use of My59 or from any breach of these Terms of Service by You. We will notify You of any such claims or proceedings and keep You informed as to the progress of such claims or proceedings.

11. **TERMINATION**

11.1 We may remove My59 or cease providing any of the features or services provided via My59 at any time in Our absolute discretion for any reason whatsoever.

11.2 You may cancel Your Tester Account at any time by writing to Us at the following email address with the subject heading "Account Termination":

info@my59online.com

11.3 You may cancel Your Club account (including all Tester Accounts registered against Your Club account) at any time on no less than 30 days' prior written notice. You may notify Us by writing to Us at the following email address with the subject heading "Account Termination":

info@my59online.com

11.4 Nothing in this paragraph 11 will affect the accrued rights and liabilities of either You or Us as at the time of the removal or cancellation of Your account.

12. **DATA PROTECTION AND PRIVACY**

12.1 We will only use any personal information that We collect about You in accordance with Our Privacy Policy. This policy forms an essential part of these Terms of Service and it is important that You read it. By accepting these Terms of Service You also accept and consent to Our Privacy Policy.

13. **GENERAL**

13.1 Any failure or delay by Us to enforce any of Our rights under these Terms of Service will not be taken as or deemed to be a waiver of that or any other right unless We acknowledge and agree to such a waiver in writing.

13.2 These Terms of Service are not intended to be for the benefit of, and will not be exercisable by, any person who is not a party to these Terms of Service.

13.3 If any part of these Terms of Service is or becomes invalid, illegal or unenforceable, the remainder of these Terms of Service will remain valid and enforceable.

13.4 These Terms of Service and Our Privacy Policy set out the full extent of Our obligations and liabilities concerning My59 and the services We provide via My59 and replace any previous agreements and understandings between Us and You.

13.5 Subject to paragraph 10.2, You will have no remedy in respect of any untrue statement made to You upon which You relied in entering into these Terms of Service other than any remedy You may have for breach of the express terms of these Terms of Service.

13.6 These Terms of Service and any dispute or claim arising out of or in connection with them will be governed by and construed in accordance with English law and You and We each irrevocably agree to submit to the non-exclusive jurisdiction of the English courts.

Last Updated: 26 April 2016