

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

Authorisation Form: PTP's Authorisation Form signed by the Customer to demonstrate acceptance of these Conditions and the commencement of the Contract.

Conditions: these terms and conditions.

Confidential Information: all technical or commercial know-how, specifications, inventions, processes, methods (including without limitation processes and methods adopted or used by PTP in the provision of the Services) or initiatives which are of a confidential nature and any other commercially sensitive, proprietary or confidential information which a reasonable person familiar with the parties' industries would consider to be confidential or proprietary in nature.

Contract: the contract between PTP and the Customer for the supply of Services incorporating these Conditions, the Authorisation Form, the Proposal and the Order.

Customer: the purchaser of Services from PTP.

Customer Assets: as defined in the Authorisation Form;

Data Protection Laws: means as binding on either party or the Services (i) the Data Protection Act 2018 or the General Data Protection Regulation ("GDPR"); (ii) any laws which implement such laws; and (iii) any laws that replace, extend or re-enact, consolidate or amend any of the foregoing. The terms "Controller", "Data Subject", "Personal Data", "Processor", "processing" and related expressions shall have the respective meanings given to them in the GDPR.

Deliverables: means the deliverables to be provided by PTP arising out of the Services described in the Proposal.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for Services as notified to PTP by email or telephone or via the PTP website.

Proposal: the description of the Services provided in writing by PTP to the Customer.

Protected Data: Personal Data received from or on behalf of the Customer or otherwise accessed through the Customer Assets in connection with the Services and/ or the performance of the Contract. This does not include name and contact details of employees or other individuals working for the Customer that are provided to PTP in connection with the Services which shall be processed in accordance with PTP's Privacy Policy <https://www.pentestpartners.com/privacy-policy/>

PTP: Pen Test Partners LLP registered as a limited liability partnership in England and Wales with registered number OC353362 at registered office Unit 2, Verney Junction Business Park, Buckingham, MK18 2LB.

Restricted Person: any employee, contractor, consultant or personnel of either party who are materially involved in the provision of the Services.

Service Date: the date on which the Services are to be supplied by PTP to the Customer as set out in the Authorisation Form or as otherwise agreed between the parties.

Services: the cyber security services supplied by PTP to the Customer in accordance with the Contract.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services subject to and in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when PTP issues the Authorisation Form and the Customer executes the Authorisation Form at which point and on which date the Contract shall come into existence.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of PTP which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by PTP, and any descriptions or illustrations contained in PTP's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, whether attached or incorporated into the Order or otherwise or which are implied by trade, custom, practice or course of dealing.

2.6 In the event of any conflict between these Conditions, the Authorisation Form, the Proposal and the Order, the order of priority shall be (i) these Conditions; (ii) the Authorisation Form; (iii) the Proposal and (iv) the Order.

2.7 PTP may recommend the use or deployment of third-party products and services. The Customer shall enter into a direct contract with the 3rd party for such products and services and the products and services shall be used and supplied in accordance with the terms and conditions agreed between the Customer and such 3rd party. PTP shall have no liability in respect of such 3rd party products and services.

3. SUPPLY OF SERVICES

3.1 PTP shall supply the Services and the Deliverables to the Customer in accordance with the Contract. Where the Services are to be supplied at the Customer's premises, PTP shall comply with the Customer's health and safety policy and such other policies that are notified by the Customer to PTP.

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- 3.2 PTP shall use all reasonable endeavours to meet the Service Dates, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 PTP shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services. PTP shall notify the Customer in any such event.
- 3.4 PTP warrants to the Customer that the Services will be provided using reasonable care and skill in line with accepted industry practice and that the Services and the Deliverables shall conform to the requirements of the Contract.
- 3.5 Customer must report any deficiency in the Services to PTP in writing within 15 days of receipt of the Deliverables containing the alleged deficiency. Where PTP determines that the Services were deficient, PTP will at its option and expense remedy the Services in order that they comply with the warranty at clause 3.4 or refund amounts paid solely in relation to the defective Services. Customer shall provide PTP with a reasonable opportunity to remedy any such defect. The remedies set out in this clause 3.5 are Customer's sole remedy for breach of the warranty at clause 3.4. PTP makes no other warranties, express or implied in respect of the Services or the Deliverables.
- 3.6 Following completion of the Services and provided PTP has received completed copies of all documents comprising the Contract and a purchase order number, PTP shall supply the Deliverables to the Customer.
- (f) comply with all laws, including laws relating to health and safety and where the Services are provided at the Customer's premises, to implement and adopt safety measures to ensure the health and safety of PTP's personnel.
- 4.2 In the event that the Services include penetration testing services or other services whereby PTP is required to access and/ or test the Customer's systems or assets, the Customer warrants that prior to the Service Date it shall:
- (a) configure all reactive or adaptive firewall technologies that may shun or block test activities (e.g. IDP/IPS) to exclude the PTP testing servers (as set out in the Authorisation Form);
- (b) make PTP aware of all internal and external load balancing and/or virtual hosting that affects the systems or assets that are subject to the Services;
- (c) ensure that, where the Services are to be performed on systems or assets which are hosted, managed, shared or owned by a third party, it has obtained (and shall maintain) the relevant third party consent, permissions and licences for the Services prior to the date on which the Services are scheduled to be performed and ensure that where the Services are to be performed on Customer systems or assets owned by the Customer that it has made all necessary notifications and received all necessary internal consents; and
- (d) complete and sign the Authorisation Form.
- 4.3 The Customer acknowledges and accepts that the provision of Services may cause disruption to the Customer Assets (including systems or assets of third parties that are linked to the Customer Assets) and the Customer shall ensure that the Customer Assets are fully and effectively backed up and resilient to the Services. PTP shall not be liable for any loss or damage caused to the Customer's (or any third party's) data, systems or assets as a result of the Services or the failure to back up systems, assets or data or to ensure system resilience.

4. CUSTOMER'S OBLIGATIONS AND WARRANTIES

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and Authorisation Form and all other information provided to PTP in connection with the Services is complete and accurate;
- (b) co-operate with PTP in all matters relating to the Services and ensure that it has in place all permissions, consents, and authorisations required in connection with the Services;
- (c) provide PTP, its employees, agents, consultants and subcontractors, with access to the Customer's premises, Customer Assets and other facilities as reasonably required by PTP and prepare the premises and Customer Assets for the supply of the Services;
- (d) provide PTP with such information and materials as PTP may reasonably require in order to supply the Services and provide the Deliverables and ensure that such information is accurate in all material respects;
- (e) ensure that PTP has the right to access any information and data, including Protected Data that are accessed by PTP in connection with the Services; and
- 4.4 The Customer represents and warrants to PTP that (i) it has all necessary power and authority to enter and perform its obligations under this Contract; and (ii) it has taken all requisite corporate and other action to approve the entering into and performance of this Contract and shall provide evidence of that action on request.
- 4.5 In the event that the Customer fails to meet the requirements set out in this clause 4, PTP may suspend provision of the Services until such time as the Customer complies with its obligations and charge the Customer with reasonable cancellation costs in accordance with clause 5.3 in the event that the suspension means that the Services require to be rescheduled.

5. PRICE AND PAYMENT

- 5.1 The fee payable in consideration of the Services is as set out in the Proposal or as otherwise agreed in writing. PTP shall invoice the Customer for the fees on commencement of the Services, unless otherwise agreed in writing, and the Customer shall pay without any deduction or set off in accordance with agreed payment terms which if not otherwise specified shall be 30 days from the date of PTP's invoice.
- 5.2 All amounts payable by the Customer under the Contract are exclusive of VAT which shall be payable by the Customer in addition at the prevailing rate.
- 5.3 In the event that (i) the Customer reschedules or cancels the Services within the periods specified below or following commencement of the Services; (ii) or the Contract is terminated (other than for PTP's default) or (iii) where PTP has to suspend the Services due to the customer's failure to comply with clause 4 then PTP may charge the Customer a cancellation fee up to an amount equal to the fees that would have been paid for the cancelled or rescheduled Services.

TYPE OF SERVICES	PERIOD PRIOR TO SERVICES DATE OR FOLLOWING COMMENCEMENT OF THE SERVICES
Standard Penetration Testing & Consultancy.	5 working days or less
Specialised Penetration Testing from Hardware or ICS Team, including non-regulated Red Teaming.	10 working days or less
CBEST or Regulated Team Services prior to the Service Date.	20 working days or less.

- 5.4 Where the Customer has purchased a specific number of days (such as for retesting) and fails to use all of those dates within a 12-month period, any unused days will be cancelled and shall not be carried forward.
- 5.5 PTP may periodically conduct credit checks on the Customer. PTP reserves the right to renegotiate terms with the Customer based on the outcome of any such credit check.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Each party shall retain ownership of their Intellectual Property Rights and other than the licence granted pursuant to clause 6.2, neither party will acquire any rights to the other party's Intellectual Property Rights.
- 6.2 Where the Deliverables are a report prepared by PTP, PTP shall retain all Intellectual Property Rights

in that report subject to PTP granting the Customer a royalty free, irrevocable, worldwide licence to use any Intellectual Property Rights in that report for its internal business purposes and for the purposes of assessing, improving and reporting on its cyber security, including providing copies of the same to third party providers for the foregoing purpose.

7. CONFIDENTIALITY

Each party (**Receiving Party**) shall keep in strict confidence all Confidential Information disclosed to it by the other party and/or its affiliated companies (**Disclosing Party**). The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors and those of its affiliated companies as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

- 8.1 Subject to clause 8.3, PTP excludes liability for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, downtime, loss or corruption of data (whether direct or indirect) or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses sustained or incurred in connection with the Services or the Contract whether under contract, indemnity, tort (including negligence or breach of statutory duty).
- 8.2 Subject to clause 8.3, PTP's total liability in contract, tort (including negligence or breach of statutory duty), restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to a sum equal to the total fee paid by the Customer in respect of the Services.
- 8.3 Nothing in these Conditions shall limit or exclude PTP 's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or any other liability which may not properly be limited or excluded under the applicable law.
- 8.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 PTP does not offer any implied or express guarantee that the results of the Services will mean that the Customer Assets are secure from every

form of attack. Cyber security is a continually evolving matter and this cannot be guaranteed although PTP shall use reasonable skill and care in the provision of the Services in accordance with industry standards.

- 8.6 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 days of that party being notified in writing of the breach. If such breach is not remediable then the Contract may be terminated with immediate effect on giving written notice;
 - (b) the other party becomes insolvent, has an insolvency practitioner appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution for it to be wound up (otherwise than in the furtherance of a scheme for solvent amalgamation or reconstruction) or if ownership or control shall pass into the hands of any other legal person, or an event analogous occurs in respect of a party in any jurisdiction to which that party is subject.
- 9.2 Without limiting its other rights or remedies, each party shall, subject to clause 5.3, have the right to terminate the Contract for convenience by giving the other party not less than 5 working days written notice.

10. DATA PROTECTION

- 10.1 In the event that PTP acts as a Processor of Protected Data in the provision of the Services, this section 10 shall apply.
- 10.2 The parties agree that Customer is the Controller and PTP is a Processor for the purposes of processing Protected Data. The Customer shall at all times comply with all Data Protection Laws and shall ensure that all instructions given by it to PTP shall at all times be in accordance with Data Protection Laws. The Customer further confirms that it has the right and authority to allow PTP to process Protected Data in connection with the Services.
- 10.3 PTP shall process Protected Data in compliance with the obligations placed on it under the Data Protection Laws and the terms of the Contract. In particular PTP shall:
- (a) only process Protected Data in accordance with the Customer's reasonable instructions;
 - (b) implement and maintain appropriate technical and organisational measures, taking account of the state of technical development

and the nature of the processing, to protect the Protected Data against unauthorised or unlawful loss, destruction or alteration;

- (c) only appoint sub-processors under a written contract containing materially the same obligations as under this clause 10.3 and remain fully liable to the Customer for the acts and omissions of the sub processor under this Contract as if it were its own;
 - (d) not permit any processing of any Protected Data by any agent, subcontractor or third party (except it or its sub-processors' own in employees in the course of their employment that are subject to enforceable obligations of confidence with regard to Protected Data); and
 - (e) not process or transfer directly or indirectly any Protected Data in or to any countries outside the EEA without the prior written consent of the Customer.
- 10.4 PTP shall (at Customer's cost) taking account of the nature of the processing and the information available to PTP:
- (a) assist the Customer in ensuring its obligations pursuant to Articles 32 to 36 of the GDPR; and
 - (b) assist the Customer, in so far as this is possible for the fulfilment of the Customer's obligations to respond to requests for exercising Data Subjects' rights under the GDPR in respect of any Protected Data.
 - (c) Make available, in accordance with Data Protection Laws, reasonable information that is in its possession and control to demonstrate its compliance with this clause.

11. GENERAL

- 11.1 Assignment - PTP may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. The Customer shall not, without the prior written consent of PTP, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.2 Notices - Notices under the Contract shall be validly given if in writing and delivered to the other party in person, by registered post to the registered office of the other or by email to the address notified to the other (subject to a successful delivery receipt being obtained)
- 11.3 Waiver - No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.
- 11.4 Force Majeure - Neither party shall be liable for any delay or failure in carrying out its obligations under the Contract (except any obligations to pay fees) which is attributable to any acts, events, omissions

or accidents beyond the reasonable control of the party in default. In such circumstances, the impacted party shall be entitled to a reasonable extension of time for the performance of its obligations. Without limiting the foregoing, the following shall be deemed to be beyond the reasonable control of PTP, (i) disruption to or failure of Customer's networks or systems (unless caused by PTP) which means that the Services cannot properly be provided (PTP having made reasonable attempts to provide such Services); (ii) major cyber-attack or security breach which has an impact on other systems and networks in addition to the Customer's systems; and (iii) any failure to the Customer's electricity connections or network and internet connections.

- 11.5 Severance – If a court or other competent authority finds any provision of part provision of the Contract to be illegal, invalid or unenforceable that provision or part provision shall be deemed deleted and the remaining provisions shall continue with full force and effect.
- 11.6 Variation - No variation of the Contract shall be effective unless it is in writing and signed by each party.
- 11.7 Third Parties - A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8 Non-Solicitation – During the term of the Contract and for a period of 6 months after its termination or expiry, neither party shall directly or indirectly

whether for its own benefit or for the benefit of another person:

- (a) solicit, entice or induce any Restricted Person of the other party with a view to employing or engaging that Restricted Person; or
- (b) employ or engage or offer to employ a Restricted Person without the prior written consent of the other party.

Notwithstanding the foregoing, either party may employ or engage a Restricted Person who has responded to a bona fide recruitment drive either through a recruitment agency or via publicly placed adverts.

- 11.9 Signing – The Authorisation Form, these Conditions and any other document referred to in these Conditions may be executed in counterparts. Each party may evidence their signature of any of the foregoing documents by emailing an executed signature page in PDF format to the other which shall constitute an executed counterpart.
- 11.10 Relationship - nothing in the Contract is intended to, or shall be deemed to establish, any partnership or joint venture between the parties, constitute a party as an agent of the other or authorise a party to make commitments on behalf of the other.
- 11.11 Law & Jurisdiction – the Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.