

Terms and Conditions

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

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

Conditions: these terms and conditions of service.

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 whether designated or not as such.

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.

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 Systems 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

Sandhill House, Middle Claydon, Buckingham, Buckinghamshire, MK18 2LD.

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.

3. SUPPLY OF SERVICES

3.1 PTP shall supply the Services to the Customer in accordance with the Contract.

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, and 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 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.

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, systems and other facilities as reasonably required by PTP and prepare the premises and systems 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; and
- (e) ensure that PTP has the right to access any information and data, including Protected Data on its Systems that are accessed by PTP in connection with the Services.

- 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, 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 that are subject to the Services;
- (c) ensure that, where the Services are to be performed on systems 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 Systems owned by the Customer that it has made all necessary notifications and received all necessary internal consents;

- 4.3 The Customer acknowledges and accepts that the provision of Services may cause disruption to the Customer's systems (including systems of third parties that are linked to the Customer's systems) and the Customer shall ensure that all such systems 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 or systems as a result of the Services or the failure to back up systems or data or to ensure system resilience.

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. PTP shall invoice the Customer for the fees on commencement of the Services, unless otherwise agreed in writing, and the Customer shall pay 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 the Customer reschedules or cancels this agreement or the Services 5 working days or less prior to the Service Date, PTP may, at its discretion charge the Customer a late cancellation fee and recover any out of pocket expenses incurred as a result of the cancellation or rescheduling of the Services.
- 5.4 PTP reserves the right to charge interest on any overdue amount at the rate of 3% per annum above the then current Bank of England base rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of/in connection with the Services and the Deliverables shall belong to PTP.
- 6.2 PTP hereby grants the Customer a right to use and copy the Deliverables. for its own internal purposes.

7. CONFIDENTIALITY

- 7.1 Each party (**Receiving Party**) shall keep in strict confidence all Confidential Information disclosed to it by the other party (**Disclosing Party**). The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors 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's Systems 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 have and subject to clause 5.3 the right to terminate the Contract 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

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- (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.
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- 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 our 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.
- 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;
 - (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 Law & Jurisdiction – the Contract shall be governed by and construed in accordance with the laws of England and Wales.