

1. DEFINITIONS

Authorization Form: PTP's Services Authorization 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 which a reasonable person familiar with the Disclosing Party's industry would know is confidential or proprietary in nature.

Contract: the contract between PTP and the Customer for the supply of Services constituted by the documents referred to in Clause 2.2.

Customer: the purchaser of Services from PTP.

Customer Data: any of the Customer's data provided by the Customer or otherwise gathered through the provision of the Services

Deliverables: means the reports that are created for the Customer or other deliverables described in the Proposal.

Intellectual Property Rights: means (a) patents, (b) moral rights, works of authorship (including copyrights in computer software), and rights in data and databases, (c) trademarks, service marks, Internet domain names, trade dress, and trade names, together with all goodwill associated therewith, (d) registrations, applications, renewals and extensions for any of the foregoing in (a)-(c), (e) trade secrets, and (f) rights of privacy and publicity

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

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

PTP: Pen Test Partners Inc, a corporation registered in New York with a place of business at 800 Third Avenue STE 2501, New York, NY 11221, United States and its affiliated companies from time to time.

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 commence as set out in the Authorization Form or as otherwise agreed.

Services: the cyber security services supplied by PTP to the Customer and described in the Proposal.

priority in the event of any conflict between the documents.

3. SERVICES

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

3.2 Any such dates for performance specified in the Contract shall be estimates only unless otherwise agreed in writing.

3.3 PTP may 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 give notice to the Customer in the event of any changes.

3.4 Following completion of the Services and provided PTP has received completed copies of all Contract documents, PTP shall supply the Deliverables to the Customer.

3.5 PTP warrants that the Services will be provided with reasonable skill and care conforming to generally accepted industry standards and the requirements set forth in the Contract. Customer must report any deficiency in the Services to PTP in writing within 15 days of completion of the Services 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 this warranty 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 subsection 3.5 are Customer's sole remedy for breach of the above warranty.

3.6 EXCEPT FOR THE WARRANTY AT SUBSECTION 3.5, PTP MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY OR FITNESS FOR PURPOSE, NONINFRINGEMENT, QUIET ENJOYMENT AND WARRANTIES ARISING OUT OF A COURSE OF DEALING OR CUSTOM OR USAGE OF TRADE. PTP MAKES NO WARRANTY THAT ALL SECURITY RISKS, INCIDENTS OR THREATS WILL BE DETECTED OR REMEDIATED BY THE SERVICES. PTP does not warrant (i) that the Services will meet the Customer's requirements, (ii) that the Services will serve the purposes intended by the Customer, or (iii) that the operation of the Services will be error free or uninterrupted or that any Services errors will be corrected.

2. BASIS OF CONTRACT

2.1 The Contract shall be formed when PTP accepts the Order for the Services in writing or otherwise commences provision of the Services following an Order, subject to these Conditions and the Authorization Form.

2.2 The Contract consists of (i) the Proposal; (ii) these Conditions; (iii) the Authorization Form; and (iv) the Order and shall be interpreted in that order of

4. CUSTOMER'S OBLIGATIONS AND WARRANTIES

4.1 The Customer shall:

(a) ensure that the terms of the Order, Authorization Form, Customer Data and all other information provided to PTP in connection with the Services is complete and accurate;

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- (b) co-operate with PTP in all matters relating to the Services and ensure that it has in place all permissions, consents, and authorizations 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
- (e) ensure that PTP has the right to access any Customer Data.
- 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 Authorization 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; and
- (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 licenses 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.
- 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 and performance of this Contract and shall provide evidence of that action to the other party on request.
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- 5. PRICE AND PAYMENT**
- 5.1 The fee payable for 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 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 sales and other applicable taxes which shall be payable by the Customer in addition at the prevailing rate.
- 5.3 In the event that the Customer reschedules or cancels 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 prime rate of interest (as quoted in the Wall Street Journal, Eastern edition) plus 4% from the due date until the date of actual payment of the overdue amount, whether before or after judgment.
- 5.5 All amounts payable to PTP under this Contract shall be paid by Customer to PTP in full without any set-off deductions, recoupment, counterclaim debit or withholding for any reason other than any deduction or withholding tax which may be required by law.
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- 6. INTELLECTUAL PROPERTY RIGHTS**
- 6.1 All Intellectual Property Rights in Customer Data shall remain vested in the Customer. 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 royalty free, irrevocable, worldwide license to use the Deliverables for its own internal purposes and for the purposes of assessing, improving and reporting on its cyber security, including providing copies to third party supplier for the foregoing purpose.
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- 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 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
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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

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

- 8.1 IN NO EVENT SHALL EITHER PARTY OR THEIR AFFILIATES BE LIABLE UNDER OR IN CONNECTION WITH THE CONTRACT UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY LOSS OF REVENUE, LOSS OF PROFIT, BUSINESS INTERRUPTION OR LOSS OF SERVICES, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF USE, LOSS OR CORRUPTION OF DATA, COSTS OF PROCURING SUBSTITUTE SERVICES, DOWNTIME OR FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORSEEABLE;
- 8.2 EXCEPT WITH REGARD TO ITS INDEMNIFICATION OBLIGATIONS OR CONFIDENTIALITY OBLIGATIONS OR, IN RELATION TO THE CUSTOMER'S OBLIGATION TO PAY FEES TO PTP IN NO EVENT WILL EITHER PARTY'S OR ITS AFFILIATES' COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THE CONTRACT OR THE SERVICES UNDER ANY LEGAL OR EQUITABLE THEORY EXCEED THE TOTAL AMOUNT OF FEES PAID TO PTP UNDER THE CONTRACT.
- 8.3 Customer will defend, indemnify and hold PTP and its officers, directors, agents, and employees harmless from and against any loss, damage, liability or cost (including reasonable attorney fees) arising out of Customer's use of the Deliverables, violation of the Contract, breach of the warranties provided in Clause 4, violation of applicable law or violation of any right of any person or entity.
- 8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 This Contract shall continue for the period specified in the Order unless terminated in accordance with this subclause 9.1. Either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 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;
 - the other party becomes insolvent or unable to pay its debts, is dissolved or liquidated or takes any corporate action in connection with dissolution or liquidation, has a receiver, trustee or similar agent appointed over a

material part of its property or business or seeks relief under any bankruptcy law or an event analogous occurs in respect of a party in any jurisdiction to which that party is subject.

- 9.2 Each party shall have, subject to sub-clause 5.3 the right to terminate the Contract by giving the other party not less than 5 working days' written notice. On termination for any reason, Customer shall immediately pay to PTP any sums due to PTP under this Contract and in the event of termination of this Contract by Customer, PT will have no obligation to refund any fees received from Customer.

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10. DATA PROTECTION

- 10.1 It is not anticipated that as a result of the Services, PTP shall process any personal data. In the event that any Customer Data contains personal data about any individual in the course of providing the Services, the parties will enter into a data processing agreement.
- 10.2 The Customer represents and warrants that the collection of Customer Data as contemplated by the Contract does not violate any laws, regulations or any rights of any third party and Customer has the necessary rights and authorizations to permit PTP to process Customer Data in the provision of the Services.

11. GENERAL

- 11.1 **Assignment** - PTP may at any time assign its rights and obligations under the Contract. The Customer shall not, without the prior written consent of PTP, assign its rights or obligations under the Contract.
- 11.2 **Notices** - Notices under the Contract shall be deemed received and properly served 24 hours after an e-mail is sent to the email address notified by each party for such purposes or three days after the date of posting any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee
- 11.3 **Waiver** - No failure or delay by a party to exercise 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 due to any acts, events, omissions or accidents beyond the reasonable control of the party in default.
- 11.5 **Severability** - If a court or other competent authority finds any provision of part provision of

- the Contract to be 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** – Except to the extent stated otherwise in the Contract, nothing in the Contract confers any legal or equitable right, benefit or remedy upon anybody except the parties.
- 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.
- 11.9 **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 authorize a party to make commitments on behalf of the other.
- 11.10 **Signing** – The Authorization 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.
- 11.11 **Law & Jurisdiction** – the Contract and all related documents, and all matters arising out of or relating to the making or performance of the Contract, is governed by and construed in accordance with the laws of the State of New York excluding its choice of law provisions and each party consents to the jurisdiction and forum of the state and federal courts of New York.
- 11.12 The parties agree that the provision of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- 11.13 **Force Majeure** – No party shall be liable to the other for any delay or non-performance of its obligations under this Contract arising from any cause beyond its control including, without limitation, any of the following: governmental act, war, fire, flood, explosion or civil commotion. For the avoidance of doubt, nothing in this Clause 11.2 shall excuse the Customer from any payment obligations under this Contract.
- 11.14 **Entire Agreement** – This Contract and any documents otherwise referred to or incorporated by reference herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.