TERMS & CONDITIONS FOR PENETRATION TESTING SERVICES

1. INTERPRETATION

1.1 In these terms and conditions:

"Captured Data" means data (including Personal Data) belonging to the Customer which is accessed by or discoverable to QinetiQ as a result of Testing but does not include data (including Personal Data) communicated to QinetiQ in the ordinary course of the Contract;

"Charge(s)" means the price payable for the provision of the Services;

"Contract" means the written agreement concluded between QinetiQ and the Customer, including the Specification and all plans, drawings and other documents that are expressly incorporated into it and incorporating these terms and conditions;

"Customer" means the party who purchases or agrees to purchase the Services;

"Deliverables" means a report which shall include relevant information arising from the performance of the Services;

"Party" means either of QinetiQ and the Customer as applicable, together being the "Parties";

"Personal Data" has the meaning set out in the Data Protection Legislation and relates only to Personal Data, or any part of such Personal Data, in respect of which either party may be granted access in the course of providing the Services;

"Proprietary Information" means trade secrets, and all other information of a confidential or proprietary nature in whatever form whether in writing, given orally or contained in an electronic format, and which is either marked as confidential (or with some similar legend) or otherwise designated as confidential;

"QinetiQ" means QinetiQ Limited (registered in England number 3796233) having its registered office at Cody Technology Park, Ively Road, Farnborough, Hampshire, GU14 0LX;

"Personal Data" has the meaning set out in Section 1(1) of the Data Protection Act 1998 and relates only to Personal Data, or any part of such Personal Data, in respect of which QinetiQ may be granted access in the course of providing the Services;

"Services" means the programme of Testing to be performed by QinetiQ as detailed in the Specification;

"Specification" means the description of the work which QinetiQ will undertake and the methodology that QinetiQ will use to undertake the Testing work (including the parameters of the Testing), as detailed in the Contract;

"System" means the computer system and its internet connection(s) defined by the Customer on which the Testing is to be conducted; and

"Testing" means all and any security assessments (the Test(s)) which are performed by QinetiQ on the Customer's System.

1.2 In the Contract references to (i) any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced; (ii) the masculine include the feminine and the neuter and vice versa; (iii) the singular include the plural and vice versa; and (iv) to Clauses are references to the clauses set out in these terms and conditions. The headings to these terms and conditions will not affect their interpretation.

2. SUPPLY OF SERVICES

2.1 QinetiQ shall perform the Services in accordance with these terms and conditions, which are the only terms upon which QinetiQ is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 Each order by the Customer for the supply of Services from QinetiQ shall be deemed to be an offer by the Customer to purchase Services subject to these terms and conditions.

2.3 The Customer acknowledges and accepts that during the performance of the Testing, the System will be exposed to a simulated "hacker attack" via its internet connections or other means as defined by the Specification, and therefore such Testing may create interruptions and

detrimental performance of Customer computer systems and internet connections etc. Although unlikely, the Testing may also cause damage and/or corruption to the Customer's computer systems, internet connections, data etc. For this reason, the Customer shall use reasonable endeavours to: (i) consult with QinetiQ to enable the performance of the Testing at time(s) selected to minimise such potential detrimental impact; and (ii) make full back-up copies of all data on the System in advance of any Testing.

2.4 Where the Contract requires QinetiQ to perform Services at the Customer's or third party premises, the Customer shall be responsible for arranging, in good time, all permits, licences or other permissions necessary to enable QinetiQ's employees, agents and representatives to gain access to, and perform the Services at, such premises. QinetiQ's employees, agents and representatives working on the Customer's premises shall abide by such regulations detailed in the Contract as are applicable to their presence on such premises.

3. CUSTOMER OBLIGATIONS

3.1 To enable QinetiQ to perform the Services, the Customer shall obtain, in a timely manner prior to the planned performance of the Testing all: (i) appropriate instructions, licences or authorisations; (ii) third party licences, approvals and consents required for the System and IP-addresses to be Tested (if they are hosted or managed by an ISP, managed service providers, webhost or other third parties) including but not limited to authorisations required for compliance with the provisions of the Computer Misuse Act 1990.

3.2 The Customer is requested not to modify or change the System between the date on which pre-contract negotiations start and the completion of Testing. If any such change is made to the System the Customer shall communicate the nature of the change to QinetiQ in good time and in any case not less than 2 business days before the commencement of Testing and QinetiQ reserves the right to: (i) make a further Charge to accommodate such change(s); and/or (ii) to reschedule the Testing. QinetiQ will not be liable for any loss, damage or expense suffered by the Customer as a result of any action taken by QinetiQ under this clause as a result of System changes.

3.3 The Customer shall make available relevant personnel, and undertake monitoring of the Testing, as detailed in the Specification.

4. PRICE AND PAYMENT TERMS

4.1 QinetiQ shall invoice the Customer at the times stated in the Contract, or otherwise following completion of the Services. The Customer shall pay to QinetiQ the Charges in respect of the Services by bank transfer to a bank account nominated by QinetiQ within 30 days of submission of an invoice by QinetiQ.

4.2 Unless otherwise stated in the Contract, Charges are exclusive of any Value Added Tax, sales tax or similar, and any taxes, duties or imposts chargeable thereon all of which shall be payable by the Customer as an additional charge. All payments due from the Customer shall be made without deduction of any set-offs, taxes, charges and other duties (including withholdings or income taxes).

4.3 If the Customer disputes any invoice or part thereof, the Customer shall immediately notify QinetiQ in writing of the reasons therefore. The Customer shall immediately pay the undisputed portion of the invoice and the Parties shall seek to resolve the dispute within 14 days, and in the absence of a resolution the provisions of Clause 11 (Dispute Resolution) shall apply. Upon resolution of the dispute, such sum as is agreed by the Parties as payable shall be paid immediately to QinetiQ, together with any interest due under Clause 4.4.

4.4 If the Customer fails to pay QinetiQ any sum due pursuant to the Contract, the Customer will be liable to pay interest to QinetiQ on such sums from the due date for payment at an annual rate equivalent to the base lending rate from time to time of Lloyds TSB Bank plc plus 4 percentage points, accruing on a daily basis until payment is made, whether before or after any judgement.

5. WARRANTY

5.1 The Testing is intended as an aid to help the Customer verify the security of the System's data network equipment by automatic and manual simulated attacks. The Testing does not guarantee or warrant that the System is or will be immune to attack by hackers or similar unauthorised access.

5.2 QinetiQ warrants that it will: (i) provide the Services with reasonable care and skill; and (ii) perform the Testing and provide the Deliverables in accordance with the standards set down by NCSC.

5.3 Subject to Clause 5.4, if any defect or fault is found to exist in the Deliverables resulting from the performance of the Services not in conformance with the warranty in Clause 5.2, QinetiQ shall at its option either (i) re-perform the relevant Services or part thereof or (ii) refund such proportion of the Charges paid to QinetiQ by the Customer for the Services as is reasonable.

5.4 QinetiQ shall have no liability of any kind for breach of its warranty in Clause 5.2 where such breach is due to any: (i) failure of the Customer to comply with its obligations under the Contract; or (ii) any defect in, or failure of, the Customer's (or a third party's) System; or (iii) failure by the Customer to follow QinetiQ's reasonable oral or written instructions in connection with the performance of the Services.

5.5 The Customer acknowledges and accepts that the warranties at Clause 5.2 and associated remedies at Clause 5.3 are its sole and entire warranties and remedies in connection with the performance by QinetiQ of the Services under this Contract. All other representations and warranties which may otherwise be implied (by statute or otherwise) in relation to the Services are excluded to the fullest extent permitted by law.

6. LIMITATION OF LIABILITY

6.1 The following provisions set out the entire financial liability of QinetiQ (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer arising under or in connection with the Contract in respect of: (i) any breach of the Contract; and (ii) any representation, statement or tortious act or omission including negligence.

6.2 Nothing in the Contract shall exclude or limit the liability of QinetiQ for; (i) death or personal injury caused by QinetiQ's negligence; or (ii) fraud committed by QinetiQ (including fraudulent misrepresentation); or (iii) any other matter for which it would be illegal, or in breach of any statutory provision, for QinetiQ to exclude or attempt to exclude liability.

6.3 The Customer acknowledges that, by its nature, the Testing may cause harm to hardware, computer programs, data and systems or parts thereof (including but not limited to the System). By agreeing to Testing, the Customer accepts that QinetiQ's liability to the Customer shall be excluded in respect of any damage caused by or arising from the performance of the Testing (including, but not limited to, interruptions within or damage to the hardware, software or internet connections comprised in the System or any loss of data), except to the extent caused by QinetiQ's negligence or wilful misconduct.

6.4 Subject to Clause 6.2, QinetiQ's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the lesser of 100% of the Charges and £100,000.

6.5 Subject to Clause 6.2, QinetiQ shall not be liable to the Customer for: (i) any, indirect, special or consequential loss or damage; or (ii) any loss of profit, loss of business, depletion of goodwill or like loss; or (iii) any loss, damage or liability to the extent caused by the negligence, wilful misconduct or other fault of the Customer, its employees, agents or contractors or a breach by the Customer of this Contract; in each case howsoever caused, including without limitation negligence or breach of statutory duty or misrepresentation, arising out of or in connection with the Contract.

7. CONFIDENTIALITY

7.1 Without prejudice to the rights of either Party arising elsewhere in the Contract, all Proprietary Information exchanged between the Customer and QinetiQ shall be treated as commercially confidential in accordance with this Clause.

7.2 Neither Party shall use, disclose or knowingly permit to be disclosed to any person (except those employees, agents or sub-contractors who need to know the information for the purposes of the Contract) any Proprietary Information of the other Party without the prior written consent of the other Party and both Parties shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Parties.

7.3 The obligations of confidentiality owed by one Party to the other set out in this Clause shall remain in force despite the completion (or earlier determination) of the Contract but shall not apply to information which (i) is in or enters the public domain (otherwise than by a breach of the receiving Party's confidentiality obligations under this Agreement); or (ii) is known without restriction to the receiving Party at the time of

disclosure without breach of any obligation of confidentiality; or (iii) becomes known to the receiving Party without restriction from an independent source having the right to convey it; or (iv) is shown to the reasonable satisfaction of the originating Party to have been generated independently by the receiving Party; or (v) is required to be disclosed by applicable law or by any competent regulatory body.

8. DATA PROTECTION

8.1 Each Party warrants to the other that it will process any Personal Data in compliance with the General Data Protection Regulation (EU/2016/279) the Privacy and Electronic Communications (EC Directive) Regulations 2003 the Data Protection Act 2018 the Computer Misuse Act 1990 and all applicable laws and regulations effective in the UK relating to the processing of personal data and privacy each as may be updated, amended, re-enacted or replaced ("Data Protection Legislation").

8.2 QinetiQ will only process the Captured Data for purposes expressly authorised by the Customer.

8.3 As part of the Services, QinetiQ will analyse the Captured Data and use this analysis to produce the Deliverables. Deliverables will not normally include personal data. Once the Customer has accepted the Deliverables, QinetiQ will at the Customer's option either securely delete or archive the Captured Data. All Captured Data to be archived will be transferred (i) (in the case of protectively marked data) to an archive server which complies with the requirements of the Ministry of Defence (ii) in all other cases to a secure archive server (not directly connected to any intranet) to which only a discrete number of security cleared individuals have access. Unless otherwise directed by the Customer, all archived Captured Data will be permanently deleted after a maximum of ten years from the end of Testing. Any Captured Data which is not archived will be securely deleted.

8.4 The Customer warrants that it has all requisite authority and has obtained and will maintain all necessary consents required under Data Protection Legislation in order to allow QinetiQ to carry out its obligations under the Contract.

8.5 The Customer will immediately inform QinetiQ if any of the consents required under Clause 3.1 or Clause 8.4 is revoked or changed in any way which impacts on QinetiQ's rights or obligations under or in connection with the Contract.

8.6 Each Party will in every case where it processes Personal Data:

8.6.1 only process the Personal Data of the other Party to the extent and in such manner as is necessary for it to carry out its obligations under this Contract;

8.6.2 ensure that its staff are subject to a duty of confidence with respect to such Personal Data;

8.6.3 not cause or permit such Personal Data to be transferred outside the European Economic Area; and

8.6.4 refrain from using such Personal Data for marketing and/or promotional purposes or disclosing such Personal Data to third parties for such purposes.

8.7 The Parties do not intend QinetiQ to act as Data Processor on behalf of the Customer in relation to the Captured Data except to the extent required to comply with its obligations under Clauses 8.2 and 8.3. For the purposes of those obligations, the Parties agree that:

8.7.1 the scope, nature and purpose of the processing is as described in this Contract;

8.7.2 the duration of the processing shall be no more than required to comply with the obligations in Clause 8.3;

8.7.3 the types of Personal Data and categories of data subjects may be any contained within the systems to be the subject of the Testing;

8.7.4 QinetiQ will not use a sub-processor;

8.7.5 each Party will provide the other with assistance and co-operation in order to enable it to comply with its obligations under the Data Protection Legislation; and

8.7.6 each Party will inform the other if, in its opinion, the other Party's instructions would breach the Data Protection Legislation.

8.8 Each Party will accept at its own cost the inclusion of any reasonable data protection clause into this Contract in order to comply with the Data Protection Legislation.

8.9   In exceptional circumstances QinetiQ may be required to report information relating to the Captured Data to a public authority in order to comply with its legal and regulatory obligations. In such circumstances QinetiQ will where practicable inform the Customer in advance and will take reasonable account of the Customer's representations in respect of any proposed disclosure.

8.10 The Customer shall, to the extent permitted by law, at all times during and after the term of the Contract, indemnify QinetiQ and keep QinetiQ indemnified against all losses, fines, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by QinetiQ arising from any processing by QinetiQ of Captured Data which is carried out in accordance with the Contract and which arises directly from the Customer's instructions.

9. CUSTOMER CANCELLATION OR RESCHEDULING

9.1   The Customer acknowledges that the Services will be carried out on the dates specified in the Contract.

9.2   Subject to Clause 9.3, the Customer may at any time prior to the performance of the Services under the Contract, by notice in writing cancel or reschedule all or some of the Services.

9.3   The Customer acknowledges that cancellation or rescheduling of the Services at short notice would make reallocation of QinetiQ's committed resources to alternative tasks impractical, as a result of which QinetiQ would suffer financial loss. Accordingly the Customer agrees that, for any notice of cancellation or rescheduling received by QinetiQ prior to the scheduled commencement of the Services, QinetiQ shall have the right to charge a percentage of the Charges for the cancelled or rescheduled Services in accordance with the following table:

Working days before scheduled provision of the Services that notice is received by QinetiQ:	QinetiQ entitled to charge (% of Charges for cancelled or rescheduled Services
≥ 20	0%
15-19	25%
14-10	50%
<10	100%

9.4   On receipt of any notice given in accordance with this Clause 9, QinetiQ shall cease and/or reschedule performance of the cancelled Services as soon as reasonably practicable. In the event of rescheduled Services QinetiQ will use all reasonable endeavours to preserve the originally quoted price assuming no other factor has changed and/or introduced.

10. TERMINATION FOR BREACH

10.1 Without prejudice to any rights of action or remedy which have accrued or shall accrue, either Party (the "Terminating Party") may at any time by written notice terminate the Contract if; (i) the other Party is in breach of any material obligation under the Contract and if the breach is capable of remedy, the other Party has failed to remedy such breach within thirty (30) days of written notice to that Party requiring remediation of the breach; or (ii) any distress, execution or other process is levied upon any of the assets of the other Party; or (iii) the other Party enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, administrative receiver or administrator is appointed in respect of the whole or any part of the other Party's undertaking or assets; or (iv) the other Party ceases or threatens to cease to carry on its business; or (v) the financial position of the other Party deteriorates to such an extent that in the opinion of the Terminating Party the capability of the other Party adequately to fulfil its obligations under the Contract has been placed in jeopardy.

10.2 Where QinetiQ terminates the Contract under Clause 10.1, the Customer shall within seven (7) days pay to QinetiQ: (i) all outstanding Charges invoiced by QinetiQ under the Contract at the date of termination; (ii) in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination; (iii) all costs (including

overheads) and liabilities incurred by QinetiQ arising out of or resulting from termination, including but not limited to suppliers' and sub-contractors' cancellation charges; and (iv) a sum in respect of the profits which QinetiQ would have made under the Contract but for its termination.

10.3 All Clauses which are implicitly intended to survive termination of this Contract shall remain in force after termination.

11. FORCE MAJEURE

11.1   QinetiQ shall not be liable for any failure or delay in performing its obligations if the failure or delay is due directly or indirectly to any cause beyond the reasonable control of QinetiQ, which shall include but not be limited to the following: (i) any act of God, fire, flood, explosion, accident, war, governmental actions, strikes, civil disturbance or emergency; or (ii) any major plant or equipment or power failure or shortage which has a material affect on the operations of a facility; (iii) failure of any telecommunication facility such as but not limited to telephone or internet connection; or (iv) the postponement of any trial or test as a result of unsafe conditions ("Force Majeure Event").

11.2 A Party affected by a Force Majeure Event will promptly provide notice to the other Party specifying the nature of the Force Majeure Event, its expected duration and confirmation of the steps being taken to mitigate it. The time for performance of the obligations of the affected Party shall be extended by a period equivalent to that during which performance is prevented or delayed. If a Force Majeure Event persists for longer than thirty (30) days from the date of service of notice either Party may terminate the Contract on 7 days' written notice.

11.3 Termination for Force Majeure shall be without prejudice to any right or remedy accrued under the Contract prior to termination.

12. DISPUTE RESOLUTION

12.1   If any dispute arises out of or in connection with this Contract ("Dispute") the Parties undertake that, prior to the commencement of any legal proceedings pursuant to Clause 13, they will seek to have the Dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either Party will be entitled to initiate the process by written notice to the other.

12.2 If the Dispute has not been resolved to the satisfaction of either Party within thirty days of initiation of the procedure pursuant to Clause 12.1 or if either Party fails or refuses to participate in or withdraws from participating in the procedure then either Party may deal with the Dispute through legal proceedings issued in accordance with Clause 13.

13. MISCELLANEOUS

13.1 A notice given under or in connection with the Contract must be in writing and may be delivered by hand, sent by first class post or by email to the QinetiQ Commercial Manager or (as the case may be) to the address of the Customer as set out in the Contract or to any such other address as either QinetiQ or the Customer may substitute by notice to the other Party. Notice shall be deemed given if sent :(i) by first class post on the second business day after posting; (ii) by email at the time of transmission; or (iii) delivered by hand on the day of delivery. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13.2 A Party shall not be entitled to assign the Contract or any part of it without prior written consent of the other Party.

13.3 A person who is not a Party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

13.4 Failure by either Party to enforce, at any time or for any period, any one or more of the terms or conditions of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Contract.

13.5 The Contract constitutes the entire agreement between the parties in connection with its subject matter and neither Party has relied on any representation or promise except as expressly set out in the Contract.

13.6 If any provision of these terms and conditions is held by any competent authority to be illegal, void, voidable, invalid, unenforceable or unreasonable in whole or in part ("Void") it shall, to the extent it is Void be deemed severable and the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.

14. **GOVERNING LAW AND JURISDICTION**

14.1 The Contract shall be governed by and construed in accordance with the law of England and Wales.

14.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales provided that each Party shall have the right to enforce a judgment of the courts of England and Wales in a jurisdiction in which the other Party is incorporated or in which any assets of the other Party may be situated.