

PENTEST PEOPLE MASTER SERVICES AGREEMENT

Between:
Pentest People Limited, a company registered in England and Wales with company number 10661715, with its office situated at Round Foundry New Media Centre, Leeds LS11 5OP ("Pentest People") and **xxx**, a company registered in England and Wales with company number **xxx**, with its office situated at **xxx** (the "Client")

Spirit of This Agreement

The Client hereby enters into this Agreement on the understanding that security testing on or monitoring of IT systems has inherent risks to performance and availability of such systems.

Definitions

In this Agreement, the following terms shall have the following meanings:

"Charges" the fee for provision of the Services and license of the Equipment, (which excludes any VAT or other tax or surcharge properly payable in addition) as set out in the Services Document;

"Commencement Date" the date this Agreement is entered into;

"Equipment" means any hardware or software provided by Pentest People to assist in the delivery of the Service(s);

"Intellectual Property" means all rights in inventions, patents (including patent applications), copyrights, database rights, design rights, trademarks and trade names, service marks, trade secrets, know-how and any other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;

"Network" means the Client's network of computers in relation to which the Services are performed;

"Reports" means reports produced by Pentest People for the Client detailing the results;

"Security Problem" means a Network security problem identified by Pentest People in the course of performing the Services;

"Service(s)" means the services to be provided by Pentest People under this Agreement as set out in the Services Document;

"Services Document" means the sales proposal, schedule of services document and/or renewal notice (as appropriate);

"Software" means any Pentest People software used and/or licensed to the Client as part of the Services;

"Term" means the length of the Agreement as set out in the Services Document or if not detailed in one of those documents shall be 12 months from the Commencement Date;

"Third Party Obligations" means all statutory and contractual duties owed by the Client to a third party whose data is stored on or accessible via the Network in respect of all matters, including without limitation, confidentiality, Intellectual Property Rights and data protection and any other obligations in respect of such matters owed to such third parties.

Limitation of Liability

Pentest People or any authorised reseller or managed service partner shall not be liable for any loss or damage of whatsoever nature suffered by the Client arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Client.

This clause sets out the entire financial liability of Pentest People (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of any breach of this Agreement; any use made by the Client of the Services and/or Software and/or Equipment in whole or in part; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

Except as expressly set out in this Agreement, all warranties, conditions and other terms implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded from this Agreement.

Nothing in this Agreement limits or excludes the liability of Pentest People (or its agents or subcontractors) for death or personal injury resulting from negligence; or for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Pentest People.

Subject to the clause above:

- (a) Pentest People shall not be liable for any loss of performance or availability of the Network or Systems caused by undertaking the Services nor will it be liable if in providing the Services it manages to trigger issues in the Network which cause the Client loss, except where such loss results from Pentest People's negligence;
- (b) Pentest People shall not be liable for loss of profits; or loss of business; or depletion of goodwill and/or similar losses; or loss of anticipated savings; or loss of goods; or loss of contract; or loss of use; or loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

Pentest People's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise (a "Default") shall be limited to five times the charges paid or payable by the Client under this Agreement in the 12-month period preceding such Default.

Contract Term

This Agreement shall commence on the Commencement Date and continue for the Term unless terminated in accordance with this Agreement. The Agreement shall continue for further subsequent Terms, unless the Client shall provide not less than thirty (30) days written notice prior to the expiry of any initial or subsequent Term. Such notice is to be provided in writing via recorded delivery to the registered offices of Pentest People.

Charges, Invoicing and Payment

In consideration for the provision of the Services the Client shall pay Pentest People authorised reseller or managed service partner or its nominated representative the Charges. An initial invoice for 30% of the Charge will be issued on acceptance of order and the remaining 70% will be invoiced at commencement of the service. For absolute clarity, Pentest People's standard payment terms are strictly 30 days from invoice. Pentest People may use a third party to collect the Charges from the Client but the Client agrees that unless otherwise agreed in writing by Pentest People in advance, no Services shall be performed until Pentest People (which for the purpose of this clause shall not include any of its agents or resellers) has received payment in full.

Payment of each invoice in accordance with this Agreement shall be treated as a material condition of this Agreement. Time for payment shall be of the essence. Unless referenced in the Services Document, all fees specified shall be exclusive of all out of pocket expenses which shall be payable in addition by the Client.

Where an onsite visit is required reasonable expenses are charged at cost per day. This is limited to subsistence, travel and accommodation. Pentest People shall provide (or shall procure the provision of) receipts or other reasonable evidence to the Client of all out of pocket expenses together with the invoice related to such out of pocket expenses. All sums referred to in this Agreement are exclusive of VAT or any other similar sales or turnover tax (if applicable).

Prices will be fixed for the initial Term of the Agreement. Thereafter they will increase annually in line with the retail price index. The Charges shall be reviewed on an upwards only basis in accordance with the all items Retail Price Index published by the Office for National Statistics or any Successor, Ministry or Government department ("RPI"). The percentage increase shall be the increase in relation to the immediately preceding 12 Month period in percentage terms in the RPI up to and including the last published monthly figure prior to the latest anniversary of the Commencement Date. Details of the Charges increase will be provided three months prior to their implementation.

Postponement

If a date is confirmed and formally booked with Pentest People's testing team and needs to be cancelled or changed at short notice the following cancellation rates will apply:

- i. less than 28 calendar days but more than 15 days' notice, 25% of daily rate for the days moved or total engagement cost; ii. less than 15 calendar days but more than 8 days' notice, 50% of daily rate for the days moved or total engagement cost; and iii. less than 8 calendar days, the full cost will be billed.

If changes are made and the allocated consultant is able to be used on an alternative project then Pentest People may choose not to charge. If the circumstances are classed as unavoidable Pentest People may again choose not to bill, however these are entirely at Pentest People's discretion. Where a project has been postponed, the rescheduled date of delivery will be one that is convenient with Pentest People, however Pentest People will endeavour to meet revised dates requested by the client wherever practical.

Cancellations MUST be emailed to projects@pentestpeople.com.

Client Warranty

The Client hereby warrants that it owns the Network and is fully entitled to permit Pentest People to perform the Services and that such performance will not be in breach of any third-party rights in relation to the Network.

Client warrants that it is authorised to perform security testing including vulnerability assessments and penetration testing on the Network or IP addresses on which any of the Services shall be performed and that the performance of the Services will not be in breach of any third-party rights or applicable laws The Client hereby indemnifies and holds wholly harmless Pentest People in respect of any claim by any third party against Pentest People or the Client resulting

PREPARED FOR xxx DATE: xxx

from a breach of the Client's warranties set out in this 'Client Warranty' section. In the event of Pentest People becoming aware of such a claim, it shall notify the Client promptly and will allow the Client at the Client's expense to defend and, if appropriate, settle such claim. Pentest People will, if required, assist in the defence of such claim at the Client's expense.

Pentest People Warranty

Pentest People undertakes to perform the Services in a responsible and professional manner but does not guarantee or warrant that it will succeed in penetrating the Network or identifying all security flaws in relation to the Network or that it will identify all hackers and/or threats to the Network.

Pentest People undertakes to keep confidential the identity of the Client and the results of the Services.

Pentest People undertakes to treat as confidential all data which it accesses in performing the Services, only to use such data for the purposes of this Agreement and to return or delete all such data when required to do so by the Client. The warranty given by Pentest People in this paragraph is exclusive of and in lieu of all other conditions, terms and warranties, statutory or otherwise, either express or implied, including without limitation those relating to satisfactory quality or fitness for purpose.

Grant of Rights

Subject to the Client's payment of any applicable fees and Client's compliance with the terms and conditions of this Agreement, Pentest People grants the Client a non-exclusive, non-transferable right to access the Software and to reproduce solely for Client's own internal business purposes only such vulnerability test results as set forth in the Reports. The Client will not use such Software to access a third party's Network. The Client will indemnify and keep indemnified Pentest People against any losses, damages, costs and expenses it incurs in relation to any misuse of the Software. The Client warrants it will not reverse engineer, decompile, or disassemble the Software.

Confidentiality, Intellectual Property and Data Protection

Each party shall treat the Contract and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Contract or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other or as may be permitted under the later provision of this Clause.

As between the parties, all Intellectual Property now known or hereafter recognised in any jurisdiction in and to the Service, Reports, the Software and the Equipment and in each case all software embedded therein or related thereto, all data and information contained therein (excluding individual factual data gathered from the Client's IP addresses) (the "Intellectual Property Rights") are owned by Pentest People and/or its licensors, and Client agrees to make no claim of interest in or ownership of any such Intellectual Property Rights.

Client further acknowledges that the structure, organisation, and code of the Software are the valuable trade secrets of Pentest People and/or its licensors. Client acknowledges that no title to the Intellectual Property Rights in the Service or the Reports is transferred to Client, and that Client does not obtain any rights, express or implied, in the Service or the Reports, including any information contained within the Reports, other than the rights expressly granted in this Agreement.

Both parties shall ensure that they, their employees, agents and sub-Contractors shall observe the requirements of the GDPR and Data Protection Act 2018 and any amendments or revisions thereto in the provision and use of the subject matter of the Contract and personal data processed under it and shall comply with any request made or direction given to the other which is directly due to the requirements of such Act.

On the conclusion or termination of the Contract both parties shall cease to use all copies of confidential information obtained from the other except in so far as the law requires the information be retained in which event it shall be kept until such period is over and, in any event, kept strictly confidential under the provisions of this clause. The obligations relating to confidentiality shall continue notwithstanding termination of this Agreement until such time as the information is no longer confidential in nature.

Username and Password

It is the Client's responsibility to change the password and for keeping the Client's user name and password confidential. Client will be responsible for all activities and charges incurred through the use of Client's user name and password, and will indemnify and hold harmless Pentest People for any claims, liability, damages, losses and costs (including reasonable legal fees) to the extent resulting from such use.

General

This Agreement shall terminate forthwith upon written notice being given by either the Client or Pentest People to the other if the other:

- (c) commits any breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed within 30 (thirty) days after receipt of notice from such party so to do, to remedy the breach to the reasonable satisfaction of such party; or
- (d) the other suspends payment or is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or a petition is granted by a competent court, an order made or a resolution passed for winding-up of the other whether voluntary or compulsory or the other is dissolved (otherwise for the purpose of a reconstruction or amalgamation whilst solvent on terms previously approved in writing by the first mentioned party) or a petition is granted by a competent court for the appointment of an administrator over the other, or notice of intention to appoint an administrator or notice of appointment of an administrator is presented or an order appointing an administrator is made by a competent court or the other enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors or a distress, execution or other legal process (including the appointment of an administrative receiver, receiver or manager) is levied or issued on or against the other or over the whole or part of its undertaking or assets.

Pentest People may terminate this Agreement with immediate effect if the Client misuses the Services or Software. The headings of the clauses of this Agreement are inserted for convenience of reference only and shall not in any way affect the interpretation of this Agreement.

Nothing herein shall preclude Pentest People from assigning, charging, sub-contracting or in any other way dealing with any of its rights or obligations under this Agreement. The Client may not assign, charge sub-contract or in any other way deal with any of its rights or obligations under this Agreement.

This Agreement shall not be modified except by an instrument in writing signed by the duly authorised representatives of each of the parties to this Agreement.

This Agreement constitutes the entire agreement and understanding between the parties in relation to its subject matter. Each party irrevocably and unconditionally waives any right it may have to rescind the Agreement and/or claim damages or other relief for any misrepresentation not contained in the Agreement or for breach of any warranty not contained in the Agreement unless such misrepresentation or warranty was made fraudulently.

In the event that any or part of the terms, conditions or provisions contained in this Agreement shall be determined invalid, unlawful or unenforceable to any extent then such terms, conditions or provisions shall be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

The waiver by either party of a breach or default of any of the provisions of the Agreement by the other party must be in writing and shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.

This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

Where Pentest People gives its express written consent, Pentest People's agent or reseller may in its own right enforce the provisions of this Agreement in accordance with the Contract (Rights of Third Parties) Act 1999 (the "Act") except that Pentest People and the Client may vary or rescind the Agreement without the consent of any such third-party reseller or agent, which shall have no rights in that respect. Without prejudice to any right or remedy apart from the Act, save as aforesaid, a person who is not a party to this Agreement has no right or remedy under the Act to enforce any term of this Agreement.

I/we the undersigned hereby agree to enter into this Master Services Agreement the terms of which I/we acknowledge have been properly drawn to my/our attention in this Agreement and which I/we have read and agree to be bound by.		
Signed	Print Name:	Company / Organisation:

	Position:	Date:
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