

Commercial Terms of Services



1. DEFINITIONS

In these terms and conditions the following words shall have the following meanings:

“Agreement” means these terms and condition.

“Charges” means the charges payable by the Client to PTC for the provision of the Services, as set out in the Service Order (which, for the avoidance of doubt, may refer to a price list published by PTC from time to time).

“Documentation” means all operating manuals, user manuals and user documentation and any other documentation provided to the Client by PTC or its suppliers which is associated with the use or provision of the Services.

“Force Majeure” means acts of God, war, hostilities, riot, fire, explosion, accident, flood, sabotage, lack of adequate power, raw materials or labour, failure of a supplier, strike, lock-out or injunction compliance with governmental laws, regulations or orders, sickness or indisposition of key PTC employees, or any other cause whether or not of the class or kind enumerated which affects performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party affected.

“Services” means the services, provided by PTC to the Client.

“Working Hours” means 9.00 am to 5.00 pm, Monday to Friday, excluding United Kingdom bank and public holidays.

2. SERVICES

2.1 In consideration for payment by the Client of the Charges, PTC shall provide the Services to the Client in accordance with the terms of this Agreement and in accordance with the terms of any related Service Order or Proposal.

2.2 PTC will use reasonable endeavours to provide the Services promptly, having regard to the availability of personnel, necessary supplies and facilities and commitments to other clients. All dates or times quoted for commencement or completion of any part of the Services.

2.3 Services may be provided onsite or remotely via the Client’s internet connection or by telephone. Where, in PTC’s reasonable opinion, it is necessary and/or desirable for the Client to install remote support services software, such software will be provided by PTC, at the Client’s expense.

2.4 PTC may temporarily suspend (in whole or part) access to the Services:

2.4.1 to carry out maintenance or update the Service (whether on a scheduled or unscheduled basis);

2.4.2 due to a security threat or prejudicial use of the Services (perceived or actual);

2.4.3 to comply with any applicable law, order, instruction or request of government, a court or other competent administrative authority or an emergency service organisation; or

2.4.4 where there is any disruption caused by the ISP upon whom PTC relies for the provision of Services.

PTC will provide the Client with as much notice as reasonably possible of such temporary suspensions of the Services and where possible any such planned suspensions will take place outside of Working Hours in order to minimise disruption to the Services.

3. CLIENT'S OBLIGATIONS

3.1 At all times, throughout the term of this Agreement, the Client shall:

3.1.1 ensure that the personnel of PTC have such right of access to the Client's personnel and premises as are reasonably required by PTC for the purpose of providing the Services;

3.1.2 ensure that if personnel of PTC work on the Client's premises that such personnel are provided with suitable office accommodation and facilities. Any related systems under audit or to which access is necessary for PTC to provide their services must be readily accessible from such accommodation and facilities;

3.1.3 provide reasonable remote access where Services are to be provided via the Client's internet connection. In addition, remote support software may be required and may be provided by PTC with the Client's agreement and at the Client's expense;

3.1.4 ensure that its employees and any sub-contractors co-operate with the reasonable requests of PTC in relation to the provision of the Services;

3.1.5 ensure that the personnel of PTC are entitled to carry out the Services without being subjected to either verbal or physical abuse. Furthermore the Client undertakes to treat the personnel of PTC in a courteous manner. Any breach of this Clause will entitle PTC to suspend provision of the Services or delay delivery of any Services without penalty;

3.1.6 use its systems correctly in accordance with the relevant Documentation;

3.1.7 notify PTC promptly if any changes are to be made to the systems either by the Client or by any third party while PTC are providing their services;

3.1.8 use reasonable efforts to perform all Client administered tasks and routines requested by PTC in accordance with the provision of services;

3.1.9 maintain written, dated and timed records of any changes made to systems within scope of PTC's provision of services;

3.1.10 notify PTC promptly if systems within scope are not operating correctly;

3.1.11 permit only authorised and suitably experienced or qualified personnel to contact PTC to request provision of the Services;

3.1.12 ensure that there is legitimate licencing for any software in use, and that such licences permit use by PTC as required to perform the Services;

3.1.13 provide access to all personnel and decision-making reasonably required by PTC in order to provide the Services; and

3.1.14 take all reasonable steps including any steps specified by PTC or the relevant manufacturer to ensure any equipment, facilities or offices will be safe and without risks to health at all times.

3.2 The Client shall act in accordance with the provisions of the Data Protection Act 1998 and all other applicable data protection legislation at all times. The Client and PTC acknowledge and agree that the Client is the data controller and that PTC is a data processor in respect of all personal data of Client personnel (as such terms are defined in the Data Protection Act 1998). The Client therefore confirms that it is solely responsible for ensuring that any data processing and security obligations that arise from the provision of the Services comply with applicable data protection law. PTC will only process personal data for the purposes of providing the Client with the Services. PTC has in place and will maintain for the duration of this Agreement appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, or disclosure of personal data and adequate security

programmes and procedures to ensure that unauthorised persons do not have access to any equipment used to process personal data. Pentest related reports and data will be retained for a maximum of 2 years unless alternative arrangements are made within contracts or at the client's request.

3.3 PTC shall not be responsible for products or services supplied which incorporate or are based upon information or materials supplied by the Client or third parties. Responsibility for decisions taken on the basis of advice given by PTC will remain with the Client.

3.4 The Client hereby acknowledges and agrees that PTC shall not be liable for any delay or failure to comply with its obligations hereunder, and shall indemnify PTC in full and on demand in respect of any costs, claims, damages or liabilities arising from any delay or failure by the Client to comply with the provisions of this clause 3.

4. PAYMENT

4.1 The Client shall pay the Charges in accordance with the terms of the Service Order or Proposal, where no payment terms are set out in the Service Order or Proposal, within thirty (30) days of invoice date.

4.2 No title to any devices or systems provided by PTC to the Client shall pass until full and final payment in respect of such has been received.

4.3 Unless otherwise expressly set out to the contrary in the Service Order or Proposal, the Client shall pay all expenses reasonably incurred by PTC that are attributable to the provision of the Services. Such expenses shall include without limitation delivery charges, the cost of travel outside normal business hours to and from the location of the Client's business operations, or any other location agreed between PTC and the Client, attendance at meetings, and preparation of reports.

4.4 PTC reserves the right to invoice the Client in advance in respect of all fees payable as disbursements to third parties such as Accreditation Bodies, Cyber Essentials Partners, hardware or software vendors.

4.5 All Charges are exclusive of VAT and all other taxes which shall be payable by the Client.

4.6 PTC reserves the right to charge the Client interest on any payment not made by the due date as set out as requested in the relevant invoice. Interest will be calculated on a daily basis, both before and after any judgement, at the rate of four (4%) per cent per annum above the base rate from time to time of the Bank of England for the period from the date such payment is due until the date on which it is actually paid.

4.7 Without prejudice to other remedies, PTC reserves the right to suspend provision of the Services forthwith in the event of the Client's failure to pay any outstanding monies.

4.8 The acceptance of any monies by PTC shall not be construed as an acceptance of such monies as the correct and full amount due and owing to PTC or as a waiver by PTC of any claims it may have against the Client.

4.9 Any Client whose principle place of business or registered office is outside

the UK is required to make cleared payments in full in respect of all charges to Pentest Cyber prior to commencement of any work. This includes creation of accounts, issue of credentials or any scheduling of tasks.

4.10 Cyber 101 and Premium No Refund Policy: Once digital documents, such as policy templates or other content, have been accessed, downloaded, or received, we are unable to offer refunds. This is in accordance with the UK Consumer Rights Act 2015, which states that digital content is non-refundable once the download or streaming process has begun. Refunds will not be provided for any service for which a meeting or consultation has been booked and confirmed. This includes any preparatory materials or resources provided in advance of the meeting. In the unlikely event that the digital content is faulty or not as described, you are entitled to a repair or replacement. If a repair or replacement is not possible, a refund may be issued in accordance with the UK Consumer Rights Act 2015.

4.11 CHECK services. Any client contracting for CHECK services agrees to have their name and details relevant to the CHECK service registered with the National Cyber Security Centre, "NCSC". Any CHECK client accepts that they have a contractual right to retain all protectively marked reports and make them available to the NCSC on request.

5. LIMITATION OF LIABILITY

5.1 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement or the Schedules whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.

5.2 Subject to clause 5.3, 5.4 and 5.5, the maximum aggregate liability of PTC (including its respective agents and subcontractors) arising from or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall not exceed the total Charges paid by the Client under the Service Order or Proposal.

5.3 In no event shall PTC (including its respective agents and sub-contractors) be liable for any loss or damage that is due to:

5.3.1 defects in systems, hardware or software owned by third parties or the Client, supplied to the Client by third parties or procured by PTC from third parties;

5.3.2 any interruption in Service caused by the ISP upon whom PTC relies for the provision of Services;

5.3.3 any defect or fault arising from or caused by any unapproved changes made to systems or resulting from abnormal usage;

5.3.4 any unauthorised access to systems

5.3.5 any failure of systems which results from interference (including inappropriate use, maintenance, development, modification, repairs or adaptation) by the Client or any third party not authorised by PTC which is not in accordance with standard use of the systems or PTC specific instructions;

5.3.6 any failure due to the Client's delay in providing information as reasonably requested by PTC. Any such failure which results in PTC spending additional time and expense to fulfil the Services shall be recoverable from the Client at PTC standard time and material rates; and

5.3.7 any failure of systems that are due to any integration or interoperability issues arising with any third party or Client systems or legacy systems.

5.4 In no event shall PTC (including its respective agents and sub-contractors) be

liable for:

5.4.1 any loss of profits, anticipated savings, loss of data, business interruption, loss of use, loss of contracts, loss of management time, loss of goodwill and reputation (whether direct or indirect); or

5.4.2 any special, indirect, incidental, punitive, exemplary, or consequential damages arising out of or in connection with this Agreement, even if PTC has been advised of the possibility of such damages; whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations howsoever caused even if it is advised of the possibility of such loss.

5.5 For the avoidance of doubt, nothing in this Agreement shall be deemed to exclude, restrict or limit liability of either party (or their respective agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraudulent misrepresentation.

5.6 Both parties accept that the limitations and exclusions set out in this Agreement are reasonable having regard to all the circumstances.

6. TERM AND TERMINATION

6.1 This Agreement shall come into force on the Commencement Date and shall remain in force until terminated by either party unless terminated earlier in accordance with clause 6.3.

6.2 Notwithstanding the foregoing, all or any part of the Services may be suspended in the event that the Client does or suffers anything to be done that jeopardises the provision of the Services by PTC. No such suspension shall affect the liability of the Client to pay charges and other amounts to PTC hereunder.

6.3 In any event the Agreement may be terminated immediately on written notice:

6.3.1 if the Client fails to pay any amount due under this Agreement within 7 days of the due date for payment;

6.3.2 by either party if the other party is in material breach of its contractual obligations and has not remedied such breach within thirty (30) days after receipt of a written notice of Fault from the other party; or

6.3.3 by either party if the other party: a) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; b) becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or, composition with its creditors or is otherwise insolvent; c) has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or d) ceases, or threatens to cease, to carry on business.

6.4 Termination of this Agreement shall be without prejudice to any rights of either party arising on or before termination, which includes without limitation, all sums due to PTC for Services supplied (including for the avoidance of doubt any Charges incurred in respect of work in progress) prior to the date of termination.

6.5 On termination of this agreement for any reason, the Client shall immediately pay any outstanding unpaid invoices and interest due to PTC. PTC shall submit invoices for any services, systems or devices that it has supplied, but for which no invoice has been submitted, and the Client shall pay these invoices immediately on receipt.

6.6 If in breach of the terms of this Agreement the Client terminates an order for the Services, the Client shall pay PTC on demand 100% per cent of the Service Charges, as set out in the Service Order or proposal to PTC by way of liquidated damages. The parties confirm that this sum represents a genuine attempt to pre-estimate the loss that PTC would suffer in the event the Client terminates in breach of the terms of this Agreement. The parties confirm that this clause does not operate by way of a penalty.

6.7 The provisions of clauses 4 (to the extent of any unpaid obligations), 5, 6.5, 7, 8, 9 and 12 shall survive the termination of this Agreement and shall remain in full force and effect.

7. PROPRIETARY RIGHTS

7.1 References to systems and devices in this clause 7 means systems and devices provided by PTC to the Client.

7.2 Subject to the terms of this agreement, PTC grants the Client a non-exclusive, non-transferrable, non-sublicensable licence for the duration of this Agreement, until termination by either party, to access and use the systems, devices and Documentation. The Client has no right to resell use of the systems, devices and Documentation to third parties.

7.3 The Client acknowledges and agrees that PTC and/or its licensors own all the intellectual property rights in the systems, devices and Documentation. Except as expressly stated herein, this agreement does not grant the Client any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the systems, devices and Documentation.

7.4 PTC confirms that it has all the rights in relation to the systems, devices and Documentation that are necessary to grant all the rights it purports to grant in accordance with, the terms of this agreement.

8. CONFIDENTIALITY

8.1 Neither party will during the term of this agreement or after it has ended (except as required by law, or, where applicable, in compliance with Rule 4 of the Solicitor's Code of Conduct (as amended from time to time)) disclose to any person any confidential information or trade secrets relating to the other's business. Such matters include, without limitation, information or secrets relating to: corporate and marketing strategy, business development and plans, sales reports and research results, business methods and processes, technical information and know-how relating to the other's business and which is not in the public domain, including inventions, designs, programmes, techniques, data base systems, formulae and ideas; business contacts, lists of Clients and suppliers and details of contracts with them; and any document marked "confidential".

8.2 During the term of this agreement and for a period of five (5) years after its termination, the parties will use all reasonable endeavours to prevent the publication or disclosure of any such information or secrets. These restrictions will not apply during or after this agreement has terminated to information which has become available to the public generally, otherwise than through unauthorised disclosure.

9. NON-SOLICITATION

9.1 During the period this Agreement is in effect and for a period of six (6) months thereafter, the Client agrees not to solicit or to offer employment to any employees of PTC or any sub-contractors used by PTC hereunder without the prior written consent of PTC.

9.2 In the event that the Client breaches clause 9.1, it shall be liable to pay, immediately on demand, and without prejudice to any other remedy that PTC may have, the equivalent of twelve (12) months gross salary of the employee so solicited and/or employed.

10. FORCE MAJEURE

10.1 If PTC is prevented or delayed from or in performing any of its obligations under this Agreement by Force Majeure, then:

10.1.1 its obligations under this Agreement (or, where the Force Majeure only affects some of the Services, such obligations as relate to those Services) shall be suspended for so long as the Force Majeure continues and to the extent that that party is so prevented, hindered or delayed;

10.1.2 the parties shall, without prejudice to the other provisions of this clause 10.1.2 consult with a view to taking such steps as may be appropriate to mitigate the effects of such Force Majeure;

10.1.3 PTC shall use all reasonable endeavours to mitigate the effects of the Force Majeure upon the performance of its obligations under this Agreement.

10.2 If any Force Majeure prevails for a continuous period in excess of two (2) months, either party shall be entitled to terminate this Agreement in its entirety (if the provision of all Services are affected by Force Majeure) or in part (insofar as it relates to the Services affected by Force Majeure) by giving not less than ten (10) days' notice in writing to the other party.

11. MISCELLANEOUS

11.1 PTC may engage any person, company or firm as its agent or sub-contractor to perform all or any of its obligations or duties under this Agreement.

11.2 The headings are included for convenience only and shall not affect the interpretation or construction of this Agreement.

11.3 The waiver by either party of its rights in respect of any breach of any provision of this Agreement shall not be taken or held to be a waiver in respect of any subsequent breach thereof.

11.4 Neither party or any of its employees, servants, agents or sub-contractors shall be under any liability whatsoever to the other party for any non-performance, defective performance or delay in the performance of any of the services or work to be supplied hereunder caused directly or indirectly by an Act of God or by any other event or circumstance beyond the reasonable control of that party.

11.5 No alteration, modification or addition to this Agreement shall be valid unless made in writing and signed by the duly authorised representatives from both parties.

11.6 If any part of this Agreement is found to be unreasonable, invalid or unlawful under any enactment or rule of law the Court shall have the power to strike out or override that part whether it be an entire clause or clauses or some

part or parts thereof and enforce this Agreement as if the offending part or parts had not been included.

11.7 In this Agreement the singular shall be deemed to include the plural and the plural shall be deemed to include the singular unless the context requires otherwise.

11.8 Nothing in this Agreement shall give, directly or indirectly, any third party any enforceable benefit or any right of action against PTC and such third parties shall not be entitled to enforce any term of this Agreement against PTC.

11.9 Neither party may assign the benefit of all or part of this Agreement without the prior written consent of the other party which shall not be unreasonably delayed or withheld.

11.10 This Agreement constitutes the entire Agreement between the parties. Other than as expressly stated otherwise in this Agreement neither party shall be under any liability for any understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, made prior to or during the operation of this Agreement.

11.11 This Agreement shall be governed and construed in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.