

OUR CUSTOMER TERMS PENETRATION TESTING SERVICES

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OUR CUSTOMER TERMS

PENETRATION TESTING SERVICES

Certain words are used with the specific meanings set out under clause 14 and in the General Terms of Our Customer Terms at http://www.telstra.com.au/customer-terms/business-government/?red=/customerterms/bus_government.htm.

1 ABOUT THIS PART

- 1.1 This is the Penetration Testing Services section of Our Customer Terms.
- 1.2 The General Terms of Our Customer Terms at <https://www.telstra.com.au/customer-terms/business-government> also apply unless you have entered into a separate agreement with us which excludes the General Terms of Our Customer Terms.

2 PENETRATION TESTING SERVICES

Penetration Testing Services

- 2.1 We will supply you with the Penetration Testing Services. We will not intentionally conduct any Out-of-Scope Activities.
- 2.2 You may request Penetration Testing Services in accordance with the order process set out in clause 3 below.
- 2.3 Penetration Testing Services includes, at your request:
 - (a) a cyber-attack simulation or similar threat detection simulation intended to discover points of exploitation and breach security;
 - (b) a vulnerability notification report; and
 - (c) other reports that we agree to provide as requested by you.
- 2.4 The scope of the Penetration Testing Services (including the project specifications, environments tested and details of any reporting) will be set out in a Statement of Work we agree with you.

Availability

- 2.5 The Penetration Testing Services are not available to Telstra Wholesale customers or for resale.
- 2.6 You must not provide or assist with the provision of the Penetration Testing Services to any third party.

3 ORDERING

Order Process

- 3.1 Unless otherwise agreed by you and us in the Agreement, the order process is as follows:
 - (a) you will prepare a Customer Request approved by your Authorised Representative;
 - (b) as soon as practicable after receipt of the Customer Request, we will either confirm our intention to respond to your Customer Request or decline your Customer Request;

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- (c) if we notify you of our intention to respond to your Customer Request, we will as soon as practicable, compile a proposed Statement of Work and return it to you;
- (d) you may:
 - (i) accept the proposed Statement of Work by signing and returning it to us;
 - (ii) reject the proposed Statement of Work and withdraw the Customer Request; or
 - (iii) reject the proposed Statement of Work and ask that it be amended and resubmitted. Any request for amendments may be accepted or rejected by us at our discretion; and
- (b) following receipt of a signed Statement of Work from you, we will countersign the Statement of Work and return a copy to you.

3.2 A Statement of Work is not legally binding unless and until it is signed by each party's Authorised Representative.

Change Requests

3.3 If a party wishes to make a change to the Agreement or a Statement of Work under it, that party can submit a proposed Change Request to the other party.

3.4 If we receive, or submit, a proposed Change Request, we will:

- (a) assess the impact, costs, benefit and risk of the proposed change and discuss these with you; and
- (b) document all changes made to the Agreement in a proposed Change Request.

3.5 A proposed Change Request must include a validity period. During the validity period you may:

- (a) accept the proposed Change Request; or
- (b) reject the proposed Change Request.

3.6 If you do not accept or reject the proposed Change Request within the validity period, the validity period will lapse. If the proposed Change Request is rejected or the validity period lapses, the Agreement and any applicable Statements of Work will continue in force unamended.

3.7 No changes will be effective until the proposed Change Request is agreed and signed by each party's Authorised Representative.

4 TIMEFRAMES AND DELAYS

4.1 We aim, but don't guarantee, to meet the scheduled timeframes set out in the Agreement. Except where expressly agreed otherwise, the scheduled timeframes are estimates only and may change.

4.2 To the extent any delay is not caused by us:

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- (a) we will not be responsible for that delay;
- (b) the delivery date or due date for impacted services will automatically be extended by a period equal to the period of delay; and
- (c) notwithstanding any other provision of this Penetration Testing Services section of Our Customer Terms, you must pay us:
 - (i) additional fees for any additional work performed by us at our then prevailing rates; and
 - (ii) all additional out-of-pocket expenses incurred by us, as a consequence of the delay.

5 YOUR AUTHORISATION AND LIABILITY TO US

- 5.1 You authorise us to conduct the Penetration Testing Services in accordance with the Agreement and any Statement of Work under it.
- 5.2 You must obtain all authorisations required from any third parties to enable us to conduct the Penetration Testing Services (and must provide us evidence of such authorisations on request).
- 5.3 You acknowledge that we rely on the timeliness and accuracy of the information you have provided.
- 5.4 You warrant to us that that the conduct of the Penetration Testing Services is legal where you are located and where your systems are located. You understand that we will actively attempt to breach security controls in order to obtain access to your systems and data and that such attempts would otherwise amount to criminal activity by us.
- 5.5 You acknowledge that Penetration Testing Services are inherently risky and while we will take reasonable measures to perform the Penetration Testing Services, to the maximum extent permitted by law, we are not liable to you for losses or downtime that occurs as a result of the Penetration Testing Services.
- 5.6 You warrant to us that you will review the impact and related risks of implementing any recommendation made by us in any report we provide to you. You are best placed to ascertain the applicability of security procedures and updates to your own environment.
- 5.7 If you report any activities we undertake as part of the Penetration Testing Services to any external body (including law enforcement agencies), you must promptly confirm to that external body that we were acting in an authorised manner.
- 5.8 You must indemnify us against all claims, cost, loss or liability which may arise in connection with your breach of any obligation or warranty under this clause 5 or clause 7. The limitations and exclusions of liability under the Agreement (if any) do not apply to this indemnity.

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6 OUR PERSONNEL AND ASSISTANCE

Our Personnel

- 6.1 Where our Personnel perform the Penetration Testing Services at your Premises, you will ensure that your Premises comply with all applicable health, safety, environment and community laws and regulations.
- 6.2 You will obtain any consent and fund any site access and induction fees necessary to enable our Personnel to access your Premises and perform the Penetration Testing Services.
- 6.3 You must not, and must ensure that your employees, contractors or agents do not, attempt to gain unauthorised access to accounts, computer systems or networks in connection with the Penetration Testing Services, through hacking, password mining or by any other means. You must not obtain or attempt to obtain any materials or information through any means not intentionally made available through the supply of the Penetration Testing Services.
- 6.4 You must not, and must ensure that your related bodies corporate do not, during the Restraint Period, seek to employ or engage the services of any of our Personnel involved in providing the Penetration Testing Services to you. This does not apply in relation to a person who responds to a genuine published advertisement. You acknowledge that the restraint in this clause 6.4 is reasonable in its extent and goes no further than is reasonably necessary to protect our interest in maintaining our Personnel.

Assistance

- 6.5 You must:
 - (a) provide us with all information or assistance that we reasonably request or that is otherwise necessary to supply the Penetration Testing Services, including by:
 - (i) making your staff available to answer questions;
 - (ii) making your third party suppliers co-operate with us and provide us with any information and assistance we reasonably require;
 - (iii) providing test user accounts;
 - (iv) providing advance notice (not less than 48 hours) of any planned downtime of the environment used for the Penetration Testing Services; and
 - (v) ensuring that you do not block our Penetration Testing Services traffic against the environment);
 - (b) ensure that all the information you provide us is accurate and complete;
 - (c) provide us with access to your network, systems and Premises on reasonable notice;
 - (d) if Penetration Testing Services are to be conducted in a test environment (as detailed in the Statement of Work), ensure the test environment:
 - (i) is available to us within the agreed timeframes;
 - (ii) mirrors your systems' live production environment;

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- (iii) is dedicated to us for the Penetration Testing Services, and is otherwise suitable for the Penetration Testing Services; and
- (iv) is segregated from any live production environment or data in a way that avoids or minimises the potential for detrimental impact to such live production environments or data; and
- (e) after the Penetration Testing Services have been completed, restore or remove from your systems any data, files and user accounts created in connection with the Penetration Testing Services.

6.6 You must appoint at least one appropriately skilled and qualified member of your staff to liaise with us on all matters relating to the Penetration Testing Services.

7 RISKS AND ADVERSE IMPACTS

7.1 You understand the Penetration Testing Services will involve access to data and systems accessible via your systems and there is a risk that the Penetration Testing Services may result in:

- (a) damage, loss, modification or impairment of such data and systems (including in respect of reliability, security, performance and operation);
- (b) reduction in the availability of network services and functionality; and
- (c) impairment of electronic communications.

7.2 You understand that the Penetration Testing Services:

- (a) may not identify all vulnerabilities within your systems;
- (b) are limited to an assessment of the current state of your environment; and
- (c) will not produce particular results or outcomes (including achieving any external accreditation or industry standard).

7.3 You must make your own assessment of the information and any recommendations provided by us and must satisfy yourself as to its appropriateness for your specific requirements, prior to implementing any recommendation We provide.

7.4 You must use good industry practice procedures and measures to avoid or minimise the impact of the risks identified in this clause 7, including by ensuring that:

- (a) the data and systems accessible via your systems are backed up regularly; and
- (b) the back-ups are promptly restored, if required.

7.5 If you reasonably believe that the Penetration Testing Services are materially adversely impacting any person, system or data, you:

- (a) must notify us as soon as possible; and
- (b) may direct us to suspend the Penetration Testing Services if reasonably required to minimise the material adverse impact.

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- 7.6 If you direct us to suspend the Penetration Testing Services in accordance with clause 7.5, we will:
- (a) suspend the Penetration Testing Services as soon as possible; and
 - (b) meet with you within 24 hours (or such other agreed period) to agree the timeframe to resume Penetration Testing Services and any changes reasonably required to minimise the likelihood the material adverse impact will recur.

8 VULNERABILITIES IN COTS PRODUCTS

- 8.1 If during the Penetration Testing Services, we identify vulnerabilities in underlying Commercial Off-The-Shelf (COTS) software or hardware products, in addition to reporting these vulnerabilities to you, we will also follow the following process:
- (a) We will develop a vulnerability notification report describing the identified vulnerability, and will forward this to the vendor of the relevant product(s). You will not be identified through this process.
 - (b) We will publicly release the vulnerability notification report when the vendor has developed and released a 'fix' or 'workaround' to the identified vulnerability. You will not be identified through this process.
 - (c) In the event that the vendor does not develop and release a 'fix' or 'workaround' within three (3) months, we may request permission from you to publicly release our vulnerability notification report.
 - (d) We will not publicly release the vulnerability notification report without either
 - (i) a 'fix' or 'workaround' being available from the vendor; or
 - (ii) permission from you.

9 PRIVACY

- 9.1 You agree and consent that:
- (a) we may use and disclose Personal Information that is made available to us as is reasonably required in order to provide the Penetration Testing Services to you including disclosing Personal Information to third parties including our subcontractors and suppliers who provide services to us; and
 - (b) we may use or disclose Personal Information in accordance with the Telstra Privacy Statement (available at <http://www.telstra.com.au/privacy/privacy-statement/index.htm>), this section of Our Customer Terms and in accordance with our Agreement with you.
- 9.2 You warrant to us that:
- (a) you have taken all steps necessary in accordance with Privacy Laws to permit us and any third parties who provide services to us to collect Personal Information and to use, disclose, store and transfer such Personal Information as contemplated under this clause 9.1; and

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- (b) you have notified or made the relevant individual aware of the matters, required in relation to notification of the collection of Personal Information under Privacy Laws, in respect of the use and disclosure of that individual's Personal Information as contemplated under this clause 7.

9.3 You indemnify us against any claim, cost, loss or liability which may arise in connection with your breach of the warranty in clause 9.2 above.

10 INTELLECTUAL PROPERTY RIGHTS

Licensed Material

- 10.1 We grant to you a non-exclusive, non-sub-licensable and non-transferable licence to the Intellectual Property Rights in the Licensed Material to use, adapt and reproduce the Licensed Material in the Territory solely for your internal business purposes.
- 10.2 We, or our suppliers, retain all right, title and interest (including all Intellectual Property Rights) in and to the Licensed Material, and you acquire no interest in or to the Licensed Material, other than the licence under clause 10.1.
- 10.3 Except to the extent expressly permitted by applicable law or under the Agreement, you must not, and must not permit others to, use, copy, reproduce, adapt, merge with other software, modify, decompile, reverse-engineer, disassemble or translate all or any part of the Licensed Material.
- 10.4 You must not use the Licensed Material other than in accordance with the terms of the Agreement and our reasonable instructions.
- 10.5 You must not challenge or impair the validity of our title to, or interest in, any Intellectual Property Rights in the Licensed Material.

Your Material

- 10.6 You or your licensors retain ownership of the Intellectual Property Rights in Your Material. You grant us a royalty-free licence in the Intellectual Property Rights in Your Material to use Your Material for the purpose of performing our obligations under the Agreement including the right to:
 - (a) copy, modify, adapt and make derivative works of Your Material; and
 - (b) permit our subcontractors to use, copy, modify, adapt and make derivative works of Your Material.
- 10.7 We acknowledge that the licence granted in clause 10.6 does not transfer to us any Intellectual Property Rights in any of Your Material.
- 10.8 You indemnify us for any and all loss, damage, liability, costs or expenses incurred by us as a result of a claim that Your Material or its use by us in accordance with the terms of this Agreement infringes any Intellectual Property Rights, or any other rights, of a third party.

Ownership of Intellectual Property in developed Material

- 10.9 Unless otherwise agreed, we (or our suppliers) own all Intellectual Property Rights in and to all Material arising out of the provision of the Penetration Testing Services and you hereby

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assign all such Intellectual Property Rights to us on and from the date those rights are created.

10.10 You agree to perform any actions and sign any documentation we require in order to give effect to clause 10.9.

11 THIRD PARTIES

11.1 Unless otherwise agreed in the Agreement:

- (a) the Penetration Testing Services are provided for your benefit only;
- (b) you must not use the Penetration Testing Services for a third party's benefit or allow a third party to use them; and
- (c) we are not responsible for the use by a third party or use by you for the benefit of a third party of the Penetration Testing Services.

11.2 You indemnify us for any loss, damage, liability, costs or expenses we incur as a result of any use by a third party or use by you for the benefit of a third party of the Penetration Testing Services (unless such use is expressly permitted in the Agreement).

11.3 You acknowledge that we may purchase some components of the Penetration Testing Services from third party suppliers. If one of our third party suppliers suspends, cancels or terminates a service that we rely on to provide you with a Penetration Testing Service, we may:

- (a) replace or modify that Penetration Testing Service;
- (b) suspend or cancel that Penetration Testing Service;
- (c) terminate the affected part of the Agreement; or
- (d) terminate any affected Statement(s) of Work.

11.4 If we exercise our rights under clause 11.3, we will give you as much notice as is reasonably practicable in the circumstances and in the event of cancellation or termination no early termination fees will apply.

12 FEES AND CHARGES

General

12.1 Unless otherwise stated, all fees and charges set out in the Agreement are:

- (a) denominated in Australian dollars (\$AUD); and
- (b) GST exclusive.

12.2 You must pay to us the fees in the amounts and at the times set out in the Agreement.

12.3 You must also reimburse us for out-of-pocket expenses reasonably and actually incurred by us in performing the Penetration Testing Services, provided that we:

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- (a) first obtain verbal approval for each expense from you; and
- (b) produce a valid invoice or receipt when claiming the expense.

Variation to quoted price

- 12.4 Where the Agreement sets out a price for any part of the Penetration Testing Services which is not calculated on a time and materials basis, that price is subject to the assumptions and dependencies set out in the Agreement remaining valid and being fulfilled.
- 12.5 Where we believe the quoted price will be impacted as a result of any change to the assumptions and dependencies, or any change or delay in your provision of the Inputs referred to in clause 12.4 above, we will be entitled to charge you additional fees which relate to these factors provided that:
- (a) we notify you as soon as possible after we become aware of one of these factors occurring; and
 - (b) we tell you what additional fees will be charged.
- 12.6 Unless otherwise stated in the Agreement, if the increased price which we notify to you under clause 12.5 above is more than the Adjusted Price you may cancel the supply of Penetration Testing Services by notice to us within 5 business days of the date we notify you of the Adjusted Price. Where you exercise this right to cancel, you must pay us for all Penetration Testing Services performed up to the date of cancellation and must pay any additional charges specified in the Agreement.

Capped Fees

- 12.7 If your Agreement specifies that fees are capped, and that cap is reached (other than in the circumstances contemplated by clauses 12.4 to 12.6 above, in which case that section applies), then we will:
- (a) notify you in writing and may suspend all work in relation to that Agreement; and
 - (b) inform you of our estimation of the additional time and cost required to complete the Penetration Testing Services under that Agreement.
- 12.8 Following a notice under clause 12.7(a), you and we will meet in an effort to agree to a revised cap for the applicable Penetration Testing Services.
- 12.9 If a revised cap is not agreed:
- (a) you will be responsible for payment in respect of all work undertaken to the date of a notice under clause 12.7(a) regardless of whether the Penetration Testing Services have been completed;
 - (b) we will have no further obligation or liability to complete the Penetration Testing Services; and
 - (c) we may immediately terminate the part of the Agreement under which we provide Penetration Testing Services, including any Statements of Work under it, by notice to you if no agreement is reached for a revised cap within 14 days of the notice under clause 12.7(a).

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Payment in advance

- 12.10 Where the Agreement specifies that you will pay for Penetration Testing Services periodically (monthly, for example) in advance for a specified amount of time (days or hours, for example) of Penetration Testing Services within that period, then:
- (a) unused amounts of Penetration Testing Services time in a period will be forfeited by you and will not be applied to a subsequent period;
 - (b) you will not be entitled to a refund for that unused Penetration Testing Services time in that period; and
 - (c) where we perform Penetration Testing Services in addition to the specified time in the Agreement, then we will charge you, and you must pay us for that additional time during that period at our then prevailing rate.

Timesheets

- 12.11 Where agreed in the Agreement that our Personnel will maintain and submit timesheets, upon receipt of a timesheet from our Personnel, you must, within 2 days:
- (a) sign and return the timesheet to us; or
 - (b) notify our Personnel why the timesheet has not been accepted, in which case our Personnel will:
 - (i) confirm the timesheet submitted was accurate; or
 - (ii) submit a revised timesheet.
- 12.12 Any dispute in relation to timesheets does not affect our rights to bill you, or your obligations to pay, for Penetration Testing Services in accordance with this Penetration Testing Services section of Our Customer Terms. If the dispute is resolved in your favour and gives rise to an adjustment to fees already paid then we will refund or credit any such adjustment to you.

13 TERMINATION

Terminating the Penetration Testing Services

- 13.1 In addition to a party's other rights under the Agreement, if a party materially breaches the Agreement and does not remedy that breach within 30 days of receiving a notice to do so, then the other party may cancel the affected Penetration Testing Services (in whole or in part).
- 13.2 You may cancel the Penetration Testing Services (in whole or in part) at any time by giving us not less than 30 calendar days' prior written notice (or such other notice as may be specified in the Agreement). We must cease work in accordance with that notice.
- 13.3 Upon cancellation of the Penetration Testing Services by us or by you (other than for our material breach or failure to continue providing the service in the event included under clause 9.3) you must pay to us the following early termination charges (together, the **Early Termination Charge**):
- (a) for each time and materials component specified under the Agreement:

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- (i) the fees for all Penetration Testing Services supplied before the date of cancellation; plus
 - (ii) the amount of any unavoidable out of pocket expenses; plus
 - (iii) any amortised charges that are payable with respect to Penetration Testing Services; and
- (c) for each fixed price component specified under the Agreement:
- (i) any unpaid portion of the fixed price fee; plus
 - (ii) the amount of any unavoidable out of pocket expenses; plus
 - (iii) any amortised charges that are payable with respect to any Deliverables.

13.4 We will advise you of the amount of the Early Termination Charge calculated in accordance with clause 13.3 upon request.

13.5

14 SPECIAL MEANINGS

Adjusted Price means a price which is 20% higher than the original price under clause 12.4, unless otherwise specified under the Agreement.

Agreement means:

- (a) an application form; and / or
- (b) an agreement,

as applicable, entered into between you and us, in relation to Penetration Testing Services and Deliverables under this Penetration Testing Services section of Our Customer Terms and includes each Statement of Work under them.

Authorised Representative means the person with the appropriate authority to enter into a contract on behalf of a party.

Change Request means a written request (in a form specified by us) for a change to any Specifications or to any work to be carried out under the Agreement or a Statement of Work under it.

Customer Request means your request of specific Penetration Testing Services to be performed, and Deliverables to be supplied, by us.

Early Termination Charge has the meaning given in clause 13.3.

Intellectual Property Rights means all current and future registered rights in respect of patents, copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.

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Licensed Material means Material (excluding hardware, software and any software tools which must be provided by us to you on separate terms) comprised in a Deliverable but does not include Your Material.

Material means all material in any form, including documents, reports, products, hardware, information, data, software, software tools and software development methodologies.

Out-of-Scope Activities means any activities specifically listed as out-of-scope or excluded in the Agreement and Statements of Work under it.

Personal Information has the meaning given under the Privacy Act 1988 (Cth).

Personnel means:

- (a) in your case, your employees, agency workers, consultants, agents, subcontractors, suppliers and other personnel engaged by you; and
- (b) in our case, any person, company or other contracting party engaged to provide services to you or on behalf of us under a contract of services, either directly or indirectly (for example, through a third party) and includes employees, agency workers, consultants, agents and suppliers who perform the Penetration Testing Services.

Premises means the premises specified in the Agreement or a Statement of Work under it.

Privacy Laws means the Privacy Act, the Spam Act 2003 (Cth), the Telecommunications Act 1997 (Cth), any registered APP Code that binds a party and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

Penetration Testing Services means the penetration testing services described in the Agreement and Statements of Work under it.

Restraint Period means:

- (a) the SOW Term; plus
- (b) an additional period specified in the Statement of Work or Agreement, and if no period is specified, 3 months.

SOW Term means the period described in the Statement of Work.

Statement of Work means the statement of work (or similar document), if any, agreed between you and us under the Agreement.

Territory means the place(s) specified in the Agreement and each Statement of Work under it, or if none is specified, Australia.

Your Material means Material:

- (a) in which you own the Intellectual Property Rights; or
- (b) in which you are licensed the Intellectual Property Rights by a third party (other than us or our subcontractors),

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and excludes the Licensed Material and any improvements to it.