



Terms of Business

G-Cloud 13
Lot 3 – Cloud Support

Version: 1.0 (April 2022)
Unrestricted

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Axis Pentest Limited is Registered in England and Wales
Company Number: 11654892
VAT Registration: 310 9427 27



Terms of Business

When you (the “Client”) hire Axis Pentest to perform penetration testing and/or IT security services, you do so on the terms and conditions set out in this document (the “Agreement”). This

Agreement is a binding contract between us, so you should ensure that you have read and understood it before you hire us.

We are Axis Pentest Ltd (“Axis Pentest”). Our registered company number is 11654892. Our registered office is at The Maltings, 2 Anderson Road, Birmingham, West Midlands, B66 4AR.

1 Axis Pentest’s Obligations

1.1 From the date of signing of this Agreement until it is terminated in accordance with clause 5 below, Axis Pentest shall, in consideration of the fees payable by the Client to us arising out of the performance of our obligations under this Agreement (the “Fees”), provide the services set out in our order form (the “Services”).

1.2 We will use reasonable skill and care to perform the Services.

1.3 When providing the Services, we will (subject to clause 2.5 below) use our reasonable endeavours to maintain the functionality of the Client’s hardware and software.

1.4 We will use our reasonable endeavours to complete our obligations in accordance with the timescale set out in our order form. However, we both agree that time will not be of the essence in the performance of these obligations.

1.5 Upon completion of the testing element of the Services, we will deliver to the Client a test report no later than ten (10) business days.

1.6 Axis Pentest will not disclose test results or related information to any third party without the Client’s prior written permission, unless required to do so by operation of law or a court order.

1.7 When providing the Services on the Client’s premises, we will (and we will procure that our employees and agents will) comply with all reasonable safety rules and procedures as are notified to us by the Client.

2 The Client’s Obligations

2.1 The Client shall:

(a) allow Axis Pentest, its employees and its agents access to the Client’s computer hardware and software (and any documentation pertaining thereto) as is reasonably necessary to enable Axis Pentest to provide the Services; and

(b) cooperate with Axis Pentest, its employees and its agents as is reasonably necessary to enable Axis Pentest to provide the Services.



2.2 prior to security testing the client will fully back-up all data and copies of all computer programs and data which are held. Ensure straightforward recovery and/or reinstatement of any and all data and/or computer programs lost or damaged (whether in whole or part) through provision of the Security Testing;

2.3 The Client shall not make any changes to its hardware and software without first informing Axis Pentest of such changes. Axis Pentest will not be responsible to the Client for any loss or damage that may arise out of Axis Pentest's performance of its obligations if the Client has not complied with the requirements of this clause 2.4.

2.4 The Client acknowledges that by signing this agreement and authorisation to test, the Client consents, for itself and on behalf of all its Affiliates, to Axis Pentest performing the Security Testing and confirms that it has procured, where necessary, the consent of all its (and its Affiliates') third party service providers (including ISPs), third party software vendors and equipment owners, employees, agents and sub-contractors for Axis Pentest (or its Affiliates) to carry out the Security Testing. Such consent includes authorisation for the purposes of Section 3 of the Computer Misuse Act 1990 that Axis Pentest, its Affiliates and their employees (including, but not limited to, the Consultant) and sub-contractors may perform Security Testing which may;

- a) impair the operation of the System;
- b) hinder access to the System; and
- c) impair the operation of any program and/or the reliability of any data relating to the System;

2.5 The Client acknowledges that IT security testing carried out in a live environment may cause unintentional disruption and/or interruption to the performance of the Client's networks and systems. The Client further acknowledges that it is wholly and exclusively responsible for the security of all of its own information. To that end, the Client shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to Axis Pentest as required.

2.6 When the Services (or any part of them) are provided on the Client's premises, the Client shall ensure that:

- (a) a suitable working environment is provided for Axis Pentest which shall include (but is not limited to) network access, access to data centres, server rooms and/or switch rooms; and
- (b) those premises are safe. The Client fully indemnifies Axis Pentest against all claims for death, personal injury and/or damage to Axis Pentest's property (or that of its employees and agents) arising out of the Client's breach of such obligation of safety.

3 Fees and Payment

3.1 The Client agrees to pay the Fees in accordance with this clause 3.

3.2 The Client shall pay Axis Pentest for any additional services provided by Axis Pentest that are not specified in our order form in accordance with Axis Pentest's



hourly rate in effect at the time of the performance or such other rate as may be agreed.

3.3 All sums payable by the Client to Axis Pentest pursuant to this Agreement:

(a) are exclusive of Value Added Tax, which shall additionally be payable by the Client at the prevailing rate; and

(b) shall be made within thirty (30) days of the date of the relevant invoice, without any set off, withholding or deduction.

3.4 The time of payment shall be of the essence of this Agreement. If the Client fails to make any payment on the due date in respect of any sum due under this Agreement, then Axis Pentest shall have the right to charge the Client interest on any sum outstanding at the rate of five per cent (5%) above the base rate of the Bank of England from the due date for payment until the date on which the payment is received.

3.5 Unless stated to the contrary on our order form, the Client shall reimburse Axis Pentest in full in respect of all expenses properly and reasonably incurred by Axis Pentest in connection with its provision of the Services, subject to the production of receipts.

3.6 The Fees shall include the preparation of a test report but shall not include (unless stated to the contrary on our order form) any remedial work to rectify problems identified in that report.

3.7 Upon signature of this Agreement, Axis Pentest will immediately begin to allocate resources and facilities and commit to third party expenditure to fulfil its obligations under this Agreement. Axis Pentest may, at its absolute discretion, allow testing to be rescheduled or cancelled but, if it so allows, the Client agrees that it shall pay Axis Pentest a proportion of the Fees as pre-estimated liquidated damages to reflect the losses that Axis Pentest will incur as a result of such cancellation or re-scheduling, as follows:

(a) cancellation more than thirty (30) days prior to the Start Date: twenty-five per cent (25%) of the Fees will be payable;

(b) cancellation between eight (8) and thirty (30) days prior to the Start Date: fifty per cent

(50%) of the Fees will be payable;

(c) cancellation within seven (7) days of the Start Date: ninety per cent (90%) of the Fees will be payable;

(d) request to re-schedule between eight (8) and thirty (30) days prior to the Start Date: twenty-five per cent (25%) of the Fees will be payable;

(e) request to re-schedule between three (3) and seven (7) days of the Start Date made with a firm re-booking date: fifty per cent (50%) of the Fees will be payable;

(f) request to re-schedule within forty-eight (48) hours of the Start Date made with a firm re-booking date: ninety per cent (90%) of the Fees will be payable.

3.8 The parties agree that the sums set out in clause 3.7 above represent a genuine pre-estimate of the loss Axis Pentest will incur in the circumstances.



4 Variation and Amendments

4.1 If the Client wishes to vary any details of the Services, it must notify Axis Pentest in writing as soon as is reasonably possible. Axis Pentest shall use our reasonable endeavours to make any required changes and any additional costs thereby uncured shall be separately invoiced to the Client.

4.2 If, due to circumstances beyond Axis Pentest's control, it has to make any change in the arrangements relating to the provision of the Services, it shall notify the Client as soon as is reasonably possible. Axis Pentest shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original arrangements as is reasonably possible in the circumstances.

5 Term and Termination

5.1 Axis Pentest's performance of its obligations under this Agreement shall commence on a start date agreed between the parties acting in good faith and shall continue (subject to earlier termination in accordance with this clause 5) until completion of the planned work.

5.2 The Client may terminate this Agreement with immediate effect and without any payment in lieu of notice by giving notice in writing to Axis Pentest if Axis Pentest commits any material or persistent breach of any of the terms or conditions of this Agreement or wilfully neglects or refuses to carry out any of its obligations.

5.3 Axis Pentest may terminate this Agreement immediately if:

- (a) the Client is in breach of any of its obligations hereunder;
- (b) the Client has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets;
- (c) the Client has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986;
- (d) the Client ceases or threatens to cease to carry on business; or
- (e) Axis Pentest is delayed in performing or fails to perform any of its obligations due to any cause beyond its reasonable control in circumstances where, having proper regard to the nature and extent of the actual or likely future disruption to the Services due to that cause, it considers that it cannot effectively provide, or any longer provide, the Services.

5.4 If Axis Pentest terminates this Agreement in accordance with this clause 5, Axis Pentest shall retain any sums already paid to it by the Client without prejudice to any other rights that either party may have, whether at law or otherwise.

6 Liability

6.1 The Client shall indemnify Axis Pentest against all damages, costs, claims and expenses suffered by Axis Pentest arising from loss or damage to any equipment (including that of third parties) caused by the Client, its agents or its employees.



6.2 Axis Pentest will indemnify the Client for personal injury or death caused by Axis Pentest's negligence in connection with the performance of the Services.

6.3 Axis Pentest will indemnify the Client for direct damage to tangible property caused by Axis Pentest's negligence in connection with the performance of the Services. Axis Pentest's total liability under this subclause shall be limited to £500,000 for any one event or series of connected events.

6.4 In no event will Axis Pentest be liable by reason of any breach by it of this Agreement or breach by it of any implied warranty, condition or other term of this Agreement, or any negligent or innocent misrepresentation, or any negligence or other duty at common law, for any:

- (a) loss of or damage to data;
- (b) loss of use of data;
- (c) loss of use of any hardware or software;
- (d) interruption to business;
- (e) loss of income or revenue;
- (f) loss of profit, contracts, business, business opportunity, or goodwill;
- (g) loss of anticipated savings; or
- (h) any indirect, special or consequential loss, damage, costs, expenses or other claims, whether or not the same were reasonably foreseeable or actually foreseen, arising from any act or omission of Axis Pentest in connection with the performance of its obligations under this Agreement.

6.5 Except as provided above in the case of personal injury, death and damage to tangible property, and below as to fraud or fraudulent misrepresentation, Axis Pentest's maximum liability to the Client under this

Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be limited to a sum equivalent to the price paid up until the point of claim to Axis Pentest for the Services that are the subject of the Client's claim, plus damages limited to twenty per cent (20%) of the same amount for any additional costs directly, reasonably and necessarily incurred by the Client in obtaining alternative products and/or services.

6.6 The parties acknowledge and agree that the limitations contained in this clause 6 are reasonable in the light of all the circumstances.

6.7 These limitations shall apply cumulatively, and shall apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action.

6.8 Nothing in this Agreement is intended to or will exclude or limit Axis Pentest's liability for death or personal injury caused by Axis Pentest's negligence, or for fraud or fraudulent misrepresentation by Axis Pentest.

6.9 For the purposes of this clause 6, "Axis Pentest" shall include its employees, subcontractors and suppliers.



6.10 The employees, agents, sub-contractors and suppliers of Axis Pentest shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.

6.11 Axis Pentest will only identify vulnerabilities that are already known at the date on which any tests are carried out, and which are capable of being exposed by the range of testing tools deployed by Axis Pentest. The Client acknowledges that it is in the nature of security testing that there may be flaws that will be uncovered in the future or by the use of alternative tools and attack methodologies, none of which could normally be identified at the time of testing. The Client therefore agrees that it will not, now or in the future, hold Axis Pentest liable for such matters.

7 Confidentiality

7.1 During the term of the Agreement and after its termination for any reason for a period of five (5) years, the following obligations shall apply to a party disclosing Confidential Information (the “Disclosing Party”) to the other party (the “Receiving Party”).

7.2 Subject to sub-clause 7.3 below, the Receiving Party:

- (a) may not use any Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under the Agreement;
- (b) may not disclose any Confidential Information of the Disclosing Party to any person except with the prior written consent of the Disclosing Party; and
- (c) shall make every effort to prevent the use or disclosure of the Confidential Information of the Disclosing Party.

7.3 The obligations of confidence referred to in the provisions of this clause 7 shall not apply to any Confidential Information of the Disclosing Party that:

- (a) is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party;
- (b) is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
- (c) is required to be disclosed by any applicable law, regulation or court order; or
- (d) is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect of it and who imposes no obligations of confidence upon the Receiving Party.

7.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled.



7.5 The obligations of the parties under the provisions of this clause 7 shall survive the expiry or the termination of the Agreement for whatever reason.

8 Sub-Contracting and Assignment

8.1 Axis Pentest may sub-contract to third parties all or any part of the Services to be carried out under this Agreement.

8.2 The Client shall not assign to a third party any or all of its rights or obligations under this Agreement without the prior written consent of Axis Pentest, such consent not to be unreasonably withheld or delayed.

9 Force Majeure

Neither party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include (but are not limited to) power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

10 Waiver

10.1 No waiver by Axis Pentest of any breach of this Agreement by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of this Agreement shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.

10.2 No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

11 Severance

If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.

12 Notices

12.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice.

12.2 Notices shall be deemed to have been duly given:

(a) when delivered, if delivered by courier or other messenger (including recorded delivery mail) during normal business hours of the recipient; or



(b) when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

(c) on the third business day following mailing, if mailed by ordinary national first-class mail, postage prepaid, in each case addressed to the most recent address or e-mail address notified to the other Party.

12.3 Service of any document for the purposes of any legal proceedings concerning or arising out of this Agreement shall be effected by either party by causing such document to be delivered to the other party at its registered or principal office, or to such other address as may be notified to one party by the other in writing from time to time.

13 Other Important Clauses

13.1 Each party hereby undertakes to the other that, for a period of twelve (12) months following termination of this Agreement, neither of them will either directly or by an agent or otherwise induce or endeavour to induce any officer or employee of the other party to leave his or her employment or an associate or contractor of any sort to breach the terms of his or her contract with the Client or Axis Pentest (as the case may be).

13.2 Axis Pentest and the Client are independent contractors and neither shall hold itself out to be, nor shall anything in this Agreement be construed to constitute either party as, the agent, representative, employee, partner or joint venture of the other. Neither party may bind the other without the other party's prior written consent.

13.3 Axis Pentest will only collect or retain personal data where it is relevant and necessary for analysis and reporting purposes in the provision of the Services and is legally permissible. Axis Pentest will protect personal data in accordance with the provisions of the Data Protection Act 1998.

13.4 Axis Pentest keeps logs of the actions taken during testing and, in line with its data retention policy, these logs are retained, along with other Client files, for six (6) months and are then destroyed. Such logs and Client files will be encrypted, stored on hardware with restricted access and backed up in their encrypted form.

13.5 Axis Pentest warrants and represents to the Client that it is under no obligation, covenant or restriction which would or might operate to prevent or restrict Axis Pentest from performing its obligations under this Agreement, or which may give rise to any conflict of interest between Axis Pentest and the Client.

13.6 This Agreement and our order form constitute the entire understanding and agreement between the parties relating to the subject matter of this Agreement and supersede any previous agreement between the parties.

14 Governing Law and Jurisdiction

14.1 This Agreement shall be governed by the laws of England and Wales.

14.2 Any dispute between the parties relating to this Agreement shall fall within the exclusive jurisdiction of the courts of England and Wales.