

## **MASTER SERVICES AGREEMENT**

This Master Services Agreement (“**Agreement**”) sets out the terms and conditions that apply to the Customer and the Company in relation to the provision of services in a SOW. The Customer and the Company each agree that the terms of this Agreement are incorporated into each SOW and that they have read, understood and agree to be bound by the terms of this Agreement.

### **Recitals**

- A. Company is engaged in the business of providing services in the nature of strategy and consulting, design and implementation and maintenance and training, and access and use, regarding certain managed package software.
- B. Customer may from time to time require the Company to provide those services.
- C. This Agreement sets out the terms and conditions agreed by the parties for the parties’ ongoing relationship and the provision of certain of those services by the Company to the Customer.

Therefore, and in consideration of the mutual covenants and promises contained herein, this Agreement is made as follows:

### **1. Definitions**

In addition to terms defined in this Agreement, the following definitions apply to this Agreement:

**"Company"** means **Arxxus Technology Partners Pty Ltd** (ABN 45 128 705 733), with offices at Level 11, 155 Castlereagh Street, Sydney, NSW, 2000, Australia.

**"Confidential Information"** means all confidential, non-public or proprietary information (including a party’s Intellectual Property Rights or the terms and conditions of each SOW), regardless of how the information is stored or delivered, exchanged between the parties before, on or after the commencement of the Term, relating to the business, technology or other affairs of the party disclosing the information, but does not include information:

- (a) which is in, or becomes part of, the public domain other than through breach of this Agreement or an obligation of confidence;
- (b) which the party receiving the information can provide by contemporaneous written documentation was already known to it at the time of disclosure by the other party or independently developed by the party receiving the information without reference to the confidential information of the party disclosing the information; or
- (c) which the party receiving the information acquires from a source other than the other party or any of its representatives, where such source is entitled to disclose it on a non-confidential basis.

**"Customer"** means the entity specified as the customer in a SOW as the "Customer".

**"Developed Materials"** means any materials developed or created by the Company in the course of, or associated with, the Professional Services (including without limitation all data and reports), solely for the Customer but excludes any Existing Materials (or enhancement or modifications of Existing Materials).

**"Existing Material"** means all documents, data, design, software systems, processes, inventions, reports, databases, computer software, hardware and other information and intellectual property belonging to the Company which the Company makes available to the Customer or otherwise employs for the purposes of performing the Professional Services.

**"Fees"** means all of the fees payable by the Customer under this Agreement (including any Professional Service Fees) and each SOW.

**"Intellectual Property Rights"** means all copyright, trademark, patent, design, semiconductor, confidential information, moral, trade secret, circuit layout rights or any like rights to the foregoing, whether arising by common law or by statute or any right to apply for registration under a statute in respect of such rights.

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"**Loss**" includes direct disbursements, losses, liabilities, damages, charges, costs and expenses (including legal costs and expenses on a solicitor/Customer basis), claims, demands, actions or proceedings.

"**Start Date**" means the applicable date specified in a SOW.

"**Term**" has the meaning as defined in clause 7.1 of this Agreement.

### 2. Statement of Work and provision of Professional Services

- 2.1. During the Term, the Company and the Customer may agree on one or more Statements of Work (each a "**SOW**"), in such form as reasonably specified by the Company from time to time. Each SOW will contain a description of the professional services to be performed by the Company under the SOW ("**Professional Services**"), the work products, deliverables or similar results to be produced by the Company ("**Deliverables**"), the place of performance (if relevant), the fees for the provision of the Professional Services ("**Professional Service Fees**") and the Deliverables, the payment milestones (if relevant), payment terms, the obligations to be discharged by the Customer ("**Customer Obligations**") and such other matters as the parties may deem fit to include in the SOW.
- 2.2. In respect of each SOW agreed to by the Company and the Customer:
  - 2.2.1. the Company will provide the Professional Services and the Deliverables; and
  - 2.2.2. each party will carry out their respective obligations, in accordance with the terms of this Agreement and the SOW.
- 2.3. In the event of any inconsistency between this Agreement and any SOW, the provisions of the SOW shall prevail on all technical and operational matters (to the extent of the inconsistency), while this Agreement shall prevail on all other matters (to the extent of the inconsistency).
- 2.4. Subject to any provision in a SOW which is expressed to override this clause, if the SOW expressly states that a Deliverable is subject to the approval or acceptance of the Customer ("**Review Item**"), then the following provisions will apply:
  - 2.4.1. the Customer must, at its own cost and expense, review and test the Review Item;
  - 2.4.2. the Customer must not reject the Review Item unless the Customer's review or test objectively demonstrates that the Review Item does not comply with the requirements as set out in the SOW ("**Relevant Requirements**");
  - 2.4.3. if the Customer rejects the Review Item, it must promptly notify the Company, and provide the Company with the objective evidence demonstrating that the Review Item does not comply with the Relevant Requirements;
  - 2.4.4. if the Customer rejects a Review Item and the Company agrees that the Review Item does not comply with the Relevant Requirements, the Company will promptly correct or replace the Review Item, in which case the process in this clause 2.4 will reapply; and
  - 2.4.5. if the Customer does not notify the Company that it rejects the Review Item within seven days of receipt of the Review Item, the Customer is deemed to have accepted or approved the Review Item.
- 2.5. Unless otherwise agreed by the parties in writing, the Company is not obliged to supply any goods or services to the Customer under this Agreement in the absence of an agreed SOW.

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### **3. Intellectual property rights and data collection**

- 3.1. All Intellectual Property Rights subsisting in the Existing Material will remain the exclusive property of the Company.
- 3.2. Subject to payment of all relevant Fees, all right, title and interest in the Developed Materials (including Intellectual Property Rights) will vest in the Customer. In furtherance thereof, Company shall assign all Intellectual Property Rights in respect of such Developed Materials to Customer, at Customer's cost but for no extra fee.
- 3.3. To the extent that any Deliverable incorporates any Existing Materials, the Company grants to the Customer a perpetual, royalty-free, non-exclusive licence to use and reproduce the Existing Materials, but solely for the purpose of, and only to the extent required, to enjoy the benefits of the Deliverable.
- 3.4. Notwithstanding anything to the contrary in this Agreement, any SOW or other correspondence between the parties, the Company shall not be restricted from using for its own benefit or for the benefit of a third party the domain knowledge and skill sets acquired in the course of performing the Professional Services.
- 3.5. To the maximum extent permitted by law, the Customer must not:
  - 3.5.1. reverse engineer, decompile or disassemble the whole or any part of the Existing Materials, or create derivative works based on the Existing Materials;
  - 3.5.2. permit or enable unauthorised access or use of the Existing Materials or accompanying written materials by third parties; or
  - 3.5.3. directly or indirectly allow or cause a third party to do any of those things, without Company's prior written consent.

### **4. Warranties and liability**

- 4.1. The Company warrants that the Professional Services will be provided with reasonable care and skill.
- 4.2. Except as expressly set out in this Agreement, to the maximum extent permitted by law, and subject to clause 4.3, the Company excludes all representations, warranties, terms, conditions and undertakings in respect of the Professional Services and the Deliverables, including any warranties regarding merchantability or fitness for purpose.
- 4.3. In relation to any condition, warranty or representation implied by law that cannot be excluded, where permitted by law, the Company's liability is limited, at the sole discretion and option of the Company, to the minimum obligations or liabilities permitted by law, such as by supplying the services or deliverables again or paying the cost of having the services or deliverables supplied again.
- 4.4. The Customer acknowledges that it is relying solely on its own skill and judgement in determining the suitability of the Professional Services and the Deliverables for its business or for any general or specific purposes.
- 4.5. To the maximum extent permitted by law, the Company is not liable to the Customer in any circumstances for any indirect, economic, special or consequential loss, or in any event for any loss of revenue, loss of production, loss of profit, or loss of data.
- 4.6. Notwithstanding anything to the contrary in this Agreement or any SOW, to the maximum extent permitted by law, the Company's aggregate liability to the Customer on any basis and in any circumstances (including liability for negligence) will not exceed the amount equal to the Fees paid by the Customer in the first year of the Term.

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- 4.7. The Customer indemnifies the Company against all Loss of any kind incurred or suffered by Company arising directly or indirectly as a result of or in connection with:
- 4.7.1. a breach or non performance of any of the obligations of the Customer under this Agreement;
  - 4.7.2. the Customer's use of the Deliverables or the Professional Services; or
  - 4.7.3. any claim or proceedings against the Company arising out of or in connection with the Customer's use of the Deliverables or the Professional Services.

### **5. Fees**

- 5.1. The Company may invoice the Customer, and the Customer must pay all relevant Fees, in accordance with the SOW.
- 5.2. Unless expressly stated otherwise in the SOW, the Customer shall pay all invoices issued by the Company on the earlier of the due date for payment specified on the SOW and seven (7) days after the invoice date.
- 5.3. If the Customer fails to pay an amount on the due date for payment, the Customer must pay to the Company interest at the rate of 18% per annum on that amount, calculated and payable daily, computed from the due date until the amount is paid in full.
- 5.4. Without limiting any rights the Company may have, the Company may suspend the provision of any Professional Services or Deliverables if any amount remains unpaid for a period of longer than sixty (60) days.
- 5.5. Other than taxes on the Company's net income, all amounts invoiced by the Company shall be exclusive of foreign, federal, state or local taxes (including GST), and the Customer must pay an additional amount on account of any such taxes (which will be calculated by the Company and set out in the invoice).

### **6. Confidentiality**

- 6.1. Each party may use the other party's Confidential Information solely for the purposes of this Agreement, must keep confidential all Confidential Information of the other party, may disclose the other party's Confidential Information only to its representatives if the person to whom disclosure is made is under an obligation to keep confidential any information so disclosed; or to the extent necessary to comply with any applicable law, any court proceedings, the requirements of any regulatory body, or the rules of any stock exchange on which the shares of that party or any related body corporate of that party are listed or are proposed to be listed.

### **7. Term and Termination**

- 7.1. Term. Unless terminated earlier in accordance with these provisions, this Agreement will commence on the Start Date set out in the first SOW between the parties and will remain in full force and effect until termination of this Agreement as set out below ("**Term**").
- 7.2. Termination due to Breach. In the event either party materially breaches this Agreement, the innocent party may, without prejudice to its other rights and remedies, terminate this Agreement by giving prior written notice of thirty (30) days, provided that the breach remains uncured at the end of such notice period.

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- 7.3. Termination for Insolvency. Either party may terminate this Agreement upon written notice to the other party ("**Defaulting Party**") in the event: (i) the Defaulting Party suspends payment of its debts; (ii) the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001*; (iii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days); (iv) a controller (as defined in section 9 of the *Corporations Act 2001*) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days); (v) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*; or (vi) an event happens analogous to an event specified in paragraphs (i) to (v) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied.
- 7.4. Termination for Convenience. Either party may terminate this Agreement or any SOW for convenience upon written notice to the other party of not less than thirty (30) days.
- 7.5. Consequences of Termination. Upon termination of this Agreement, all outstanding SOWs will automatically terminate. If the Company or the Customer terminates a specific SOW, only that SOW will terminate without affecting this Agreement or any other SOWs. If this Agreement or a SOW is terminated: (i) the Company is released from all obligations to provide the relevant Professional Services or the Deliverables which have not yet been provided, (ii) each party in receipt of another party's Confidential Information shall, at the disclosing party's direction, either return or destroy that Confidential Information and certify in writing that it has done so, and (iii) all Fees and any other amounts due and payable, including any expenses and costs incurred by the Company specifically for the Customer as identified in the relevant SOWs, shall be paid by the Customer to the Company immediately.

### **8. Governing Law and Dispute Resolution**

- 8.1. This Agreement shall be governed by the laws of the State of New South Wales, Australia. Disputes under this Agreement, if not first resolved amicably between the parties within sixty (60) days from the written notification of the existence of such dispute by one party to another, shall be submitted for Alternative Dispute Resolution to the Australian Commercial Disputes Centre (**ACDC**) located at Level 16, 1 Castlereagh Street, Sydney NSW 2000. Nothing in this clause, however, prevents a party from seeking interlocutory or injunctive relief.

### **9. General**

- 9.1. Assignments. A party's rights under this Agreement (and each SOW) must not be assigned or novated by either party without the other party's prior written consent, which shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of both parties, their successors and permitted assigns.
- 9.2. Notices. Communication of a routine nature may be transacted by email. Communication of a non-routine nature, including notices for termination shall be given in writing and transmitted by prepaid registered mail addressed to the address specified in a SOW and marked to the attention of the principal points of contact indicated in the applicable SOW.
- 9.3. Independent Contractor. The relationship of the parties to each other shall be that of independent contractors and shall not be interpreted to constitute an agency, partnership or joint venture.

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- 9.4. Non-Solicitation. To the maximum extent enforceable by applicable law, during the Term and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly, for itself or on behalf of any other person (i) hire or solicit for hire any employee of the other party except through a general advertisement; (ii) in any manner attempt to influence or induce any employee of the other party to leave the employment of such party; or (iii) disclose to any person or entity any information obtained while rendering services to or receiving services from the other party concerning the names and addresses of the other party's employees.
- 9.5. Force Majeure. Neither party shall be liable for any failure to perform its obligations (other than obligation to make payment) under this Agreement if prevented from doing so by a cause or causes beyond its reasonable control. Without limiting the generality of the foregoing, such causes include acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, lockouts, acts of terrorism, wars or war operations, restraints of government or other cause or causes which could not with reasonable diligence be controlled or prevented by such party.
- 9.6. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the same shall not affect the remaining provisions hereof, which will remain in full force and effect. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- 9.7. Entire Agreement/Amendment. This Agreement together with each agreed SOW and any exhibits attached to this Agreement or a SOW shall form the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior or contemporaneous negotiations and agreements, oral or written, between them regarding the subject matter hereof. An amendment or variation to this Agreement or a SOW is not effective unless it is in writing and signed by the parties.