Axios Terms and Conditions

Contents

Agreement

This is a legally binding agreement
Once accepted by a customer, the terms and conditions in this document ("T&Cs") will form a legally binding master services agreement between Axios IT Pty Ltd ("Axios") and that customer ("the customer") (each a "party" and collectively the "parties") with respect to work previously discussed or which is to be discussed between them.

These T&Cs contain everything required to describe the contractual relationship between the parties and any services provided on a time and materials basis. However, they may be supplemented by additional terms specific to a project or engagement (for example a scope of works, a fixed price etc). Where such terms ("supplementary terms") exist, and they do not constitute a variation, they form a new agreement between Axios and the customer, incorporating those supplementary terms and these T&Cs. Variations amend existing agreements once accepted, rather than create a new agreement between Axios and the customer. Whether or not such other terms are valid and which terms take precedence in the event of any conflict is handled later in these T&Cs.

Agreements binding Axios and the customer also bind their successors, permitted assigns and administrators.

Acceptance
Acceptance by the customer may be by way of signing these T&Cs (whether physically or electronically), any short-form version of these T&Cs, or any project or engagement proposal incorporating these T&Cs. Acceptance of any such proposal may also be given by email or inferred by conduct (for example by paying a commencement invoice).

Acceptance will supersede absolutely any prior agreements or representations concerning the subject matter of these T&Cs, unless otherwise stated.

General obligations

Diligent conduct
The parties will work with each other in a courteous, proper and diligent manner at all times, and in compliance with all relevant laws and trade customs.

Parties to give access to appropriate resources
The parties will provide each other with any information, systems access, site access or other resources (including time from key project team members) reasonably required to complete investigations or commissioned works.

The parties will use all resources provided under this clause diligently and only in furtherance of the work being undertaken between them.

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Sub-contractors

Axios may sub-contract any work to its associated entities without notice to, or agreement from the customer.

In any other case where Axios intends to subcontract more than 10% of the total planned work (by dollar value), it must be by agreement from the customer, acting reasonably. Axios is responsible to the customer for all such sub-contracted work as though the work was done personally by Axios.

Fees, disbursements and payment terms

All time is chargeable

Unless otherwise specified in a project or engagement proposal, the customer should assume that every hour of work completed by Axios will be chargeable under these terms. This includes customer meetings (other than an initial free consultation), planning, scoping and design work, preparing documentation (other than quotations), software development, testing, debugging, project management, support, implementation, consulting, contributing to tender responses or proposals on behalf of the customer, travel and any preparation time thereof.

Hourly rates

Unless there are supplementary terms to the contrary, Axios charges its standard hourly rates which may change from time to time in accordance with these T&Cs. Axios' current rate for standard work ("standard rate") is $180.00 per hour. Axios' current rate for urgent, after-hours, consulting or specialist work ("consulting rate") is $250.00 per hour.

Casual services are itemised and time spent is rounded up to the nearest 15 minutes on a per-person, per-job code, per-day basis.

Minimum charges for short engagements and travel days

Short engagements of less than 8 hours, regardless of the type of work completed, will be billed at Axios' consulting rate.

The minimum charge for any Axios team member to attend a meeting that is more than 100km from an Axios office is a full 8-hour day.

Estimates not binding

Estimates given are not formal quotations unless explicitly stated and the customer agrees to pay all invoiced amounts, even where this exceeds the estimate.

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Invoice terms

Invoices are raised monthly on strict 14-day terms except as noted below. Time is of the essence in respect of payment of invoiced amounts.

If an agreed commencement invoice is issued, it is payable upon receipt by the customer. Axios may delay work until payment is received. If the parties agree to the payment of an amount upon the completion of a project or engagement, a completion invoice will be issued immediately after the completion of that project or engagement and the amount invoiced is payable on 14-day terms.

Handling fee and disbursements

Axios will add a fee ("handling fee") of 10% on top of the cost of all third-party goods or services it sources and/or purchases on behalf of the customer. This fee is to cover the costs of credit, administration etc. Time spent sourcing or liaising with the customer or supplier is chargeable separately and in addition to (or may be covered in a support agreement) the handling fee.

All warranty claims or other recourse which relates to goods or services sourced from third parties are strictly between the customer and that third-party. Axios will be acting as a mere handler, not as a retailer or as an agent of the customer.

Disbursements such as travel and accommodation costs may be incurred or be expected to be incurred by Axios in the commission of work for the customer. The customer agrees to pay Axios the reasonable cost of such disbursements plus the applicable handling fee.

Credit card fees

Axios charges a fee of 1.9% to process credit card payments. An additional fee of $30.00 applies where Axios is required to manually process a credit card transaction (for example where a regular scheduled payment is declined).

Axios will waive credit card fees for any invoice paid in full within 24 hours of being sent, except for commencement invoices or any other invoices that would otherwise be due upon receipt anyway.

Any fees chargeable under this heading will appear on a subsequent invoice.

Time booked but not used

Axios will charge for any time requested or booked by a customer that is held aside and not used. This includes any time provisioned against a project or engagement that cannot be used as scheduled through no fault of Axios.

Deposits

Invoices labelled "commencement", "payment 1 of ..." or "deposit" are non-refundable deposits against a project or engagement. Such deposits will be forfeited by the customer if work is cancelled, or if it is delayed or suspended predominantly at the request or fault of the customer for a period of 6 months or more (cumulative). This shall not affect any other rights Axios may have against the customer.

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Discounts

Axios may offer discounts under certain circumstances (typically large or long-term projects) as part of a project or engagement's supplementary terms.

Discounts offered are not fundamental rights of the customer and Axios reserves the right to suspend or cancel any offered discounts (and re-adjust the project value accordingly) where the customer has not substantially adhered to its obligations under these or any supplementary terms. This includes, but is not limited to on time payment of invoiced amounts and the customer not introducing any significant delays into the project.

Late payment

Cashflow is critical to Axios and payment terms are strictly enforced. Time is of the essence in respect of payment of invoiced amounts.

Notwithstanding any agreement by Axios to temporarily extend payment terms, Axios charges a fee ("late payment fee") of $40.00 or 0.4% of the invoiced amount, whichever is greater, for each week or part thereof that an invoice remains unpaid past its original due date. The customer agrees that this is reasonable to cover Axios' costs of administering late payments, and to provide credit etc.

Axios may suspend work for the customer, submit the debt to a recovery agent or commence legal proceedings to recover a protracted debt without complying with the dispute resolution process if the customer has not initiated that process or negotiated extended terms before the invoiced amount falls due. The customer agrees to be liable to Axios for any associated legal or recovery costs on a full indemnity basis.

Where the dispute resolution process has been initiated by the customer, any undisputed portion of Axios' invoice must be paid before the due date.

No right of set off

A disputed amount under one project or engagement does not entitle the customer to set off this amount against payments due for other projects or engagements. Each project must be settled under its own terms, and where applicable, the dispute resolution process applies.

Revision of fees, other changes to these terms

Fee changes

Axios may revise its hourly rate from time to time and publish an updated set of these terms on its website.

Where the customer engages Axios on a time and material basis, Axios shall apply its standard hourly rates which may be updated from time to time. Any such changes to rates will come into effect automatically 30-days after they are published or at some later date as specified. Continuing to request Axios' services after this date constitutes acceptance of these new rates and Axios advises customers to periodically check Axios' website for updates.

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Fee changes will not affect fixed-price engagements but will be factored into any extensions or variations thereto that are agreed upon after the new rates come into effect.

Revision of other terms, supplementary terms, precedence

Axios may make changes to its processes and work delivery from time to time without notice to the customer provided that the customer's fundamental rights under its agreement with Axios are not modified. The customer is deemed to have accepted these changes.

In the ordinary course of work communications between Axios and the customer, there may also be agreement on minor changes to the terms of agreement between Axios and the customer. These are only valid where they do not affect the fundamental rights of either party or they are made by written agreement between authorised representatives of Axios and the customer. This clause is intended to prevent the unintentional modification of terms between Axios and the customer by project staff.

Subject to the provisions of the paragraph above, where these terms are changed by the incorporation of supplementary terms or by amendment through a permitted variation, those terms shall take precedence.

Quotes

Quotations are based on booked resources

Axios bases its quotations on when and for how long each key project resource will need to be booked.

The customer acknowledges that Axios stands to lose the productive use of its resources and/or other work opportunities if work is delayed by the customer. Axios will seek to recover such costs from the customer under these terms.

What's included in a software development quotation

Unless otherwise stated in a software development quotation, a quoted price will cover the items below:

- Creation of a project management plan that is maintained throughout the project.
- Allocation of a project team and associated resource bookings over the planned life of the project.
- Design of a software application that meets the business requirements specified or referenced in the quotation and is substantially of the form of any conceptual designs provided.
- Development of the software, consistent with the designs and project management plan.
- Testing and debugging so that the software meets or exceeds the standards in Axios' quality policy.
- Regular communications about the project's status, to-do items (for Axios and the customer), achievements and risks.

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- Any extensions of the allocated resourcing for overruns caused by risks specifically ascribed to Axios (see below).
- Implementation of the software on the target environment.
- Intellectual property licensing/rights as per these T&Cs.
- Services offered as part of the chosen support plan (including hosting if applicable).

The risks ascribed to Axios are limited to additional work or time delays associated with: Axios staffing/key-person availability; third-parties (or sub-contractors) brought in by Axios; and work taking longer purely as a result of being under-estimated. Under-estimation does not extend to requirements, functionality, complexity, edge cases, design elements or user preferences that were not specifically agreed to and documented but are later expected by the customer ("scope creep").

What's not included in a software development quotation

A quoted price will not cover any of the items below:

- Scope creep, including any functionality change during or after development that is not a result of Axios' development being inconsistent with its quality policy or with its designs (software can be inconsistent with unstated expectations or preferences without being inconsistent with designs if the designs are silent on those expectations or preferences).
- Delays or additional work as a result of third-parties brought in by the customer or at the customer's instruction.
- Support or bug-fixing that is not covered under the support plan while such a plan is current, or any support or bug-fixing whatsoever if that plan is allowed to lapse.

- Any documentation or materials not required by Axios to properly conduct the project or otherwise included in the quotation.
- Anything else (including any delays or extensions of project timeframe or resourcing) not explicitly mentioned as included.

Contingency

Axios recognises that a project may reasonably encounter any one or more of the following situations during the life of that project:

- The customer missed an aspect of (or Axios oversimplified and the customer did not pick this up in the documentation review) a critical business requirement, resulting in the need to update requirements, designs and/or development.
- The need to address a minor usability or user preference issue that would not ordinarily be covered under Axios' quality policy.
- A delay introduced predominantly by the customer as a result of not being able to answer a question, give feedback or dedicate resourcing to the project when requested.
- A question of scope or inclusion that, due to ambiguity, might be arguable as included by the customer but where Axios reasonably believes that it is not included.

To keep the project moving along smoothly, and to accommodate the situations described above under this heading, Axios will cover any such issues arising in a quoted project up to a total of 10% of the total project value ("contingency"). Axios will account to the customer for all access to the contingency upon request.

For the avoidance of doubt, this contingency is the absolute limit of Axios' liability for any such occurrences. All additional work by Axios which is in excess of the contingency is chargeable to the customer either on a time and materials basis or as part of a quoted variation.

The customer is encouraged to set aside a contingency budget of their own for quoted projects where there is a reasonable likelihood of the customer's requirements being changeable or incapable of being described with precision (as the contingency allocated above is unlikely to be sufficient in these cases).

Quote may lapse

A quote that is not accepted within 30 days shall without notice be deemed withdrawn by Axios and no longer valid without Axios' express consent to extend the offer.

Timeframes and delays

Turnaround time on requests from Axios to the customer

Axios may periodically seek input from the customer with regards to requirements, designs, providing feedback on developed screens etc.

Unless otherwise stated, Axios will require responses within 3 business days. Where the customer does not respond fully within the time allocated, this may delay the project.

Delays introduced by the customer

Where a customer's delay affects Axios' ability to efficiently use planned resources or issue milestone-based invoicing, Axios may send a formal notice to the customer ("delay notice"). If the customer has not provided the information or resources requested, or otherwise resolved the delay within 7 days, Axios may without further notice do any one or more of the things listed below:

- Complete the work requested of the customer, and charge the customer for that time at Axios' appropriate hourly rate.
- Deem any material Axios was waiting on feedback for as accepted and continue on with the project (any later changes would then constitute a variation).
- Issue any milestone-based invoice that is being delayed.
- Place the project on hold, reallocate resources and archive project materials (there will be a fee to re-start the project).
- Do any other things allowed under these T&Cs such as charging for the time booked but not used (note that these actions do not require a delay notice to have been sent).

Timeframes represented by Axios are indicative but not binding

Unless explicitly stated, any completion timeframes provided by Axios are estimates only. Axios will make reasonable efforts to achieve any indicated timeframes. However, the customer is not entitled to withhold any payments or take any other adverse action against Axios where specified timeframes are not achieved.

Factors that may impact Axios' ability to accurately plan or hit timeframes include the degree of complexity or uncertainty in a work assignment, injury or illness of key project staff, delays with third-parties, holidays and closures, timeliness of customer feedback and any critical support requests we may receive from other customers.

Intellectual Property and restraints

Customer materials and retention of intellectual property rights

The customer will provide Axios with materials at the commencement of a project ranging from broad business needs through to defined algorithms and pre-developed code. The customer may supplement these materials throughout the engagement. The customer warrants that Axios will not be in breach of any other third-party's intellectual property rights by using the materials as provided for in these terms.

The customer retains full ownership of any intellectual property rights in any such documents, designs, trademarks, code or patentable process ("customer IP"). The customer licenses the customer IP to Axios for the purposes contemplated under these terms.

For some types of projects, Axios will assign created IP to the customer

Axios' work will be deemed to be a straightforward extension of customer IP when:

- Axios is commissioned only to maintain, and not significantly change or extend, an existing live system's codebase ("maintenance project"); or
- Axios' work amounts to a mere translation of highly detailed specifications provided by the customer, including:
  - a detailed (typically IEEE 830 compliant) Software Requirements Specification; and
  - a full (typically IEEE 1016 compliant) Software Design Document incorporating a data model design, system architecture design, all processes and algorithms fully documented, and all user interface and external systems interfaces fully designed ("code only project").

Alternatively, the customer and Axios may specifically negotiate that a project must contain only customer IP, newly created IP and third-party IP to the exclusion of any of Axios' background IP ("first principles project"). The customer is advised that such a project is not recommended by Axios as it will not benefit from the inclusion of Axios' code libraries (which are designed to speed up development, lower costs and improve quality) and therefore, the project is likely to cost significantly more to develop. Axios cannot include its background IP if the customer wishes to have IP assigned to it.

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A project will not be considered a maintenance project, a code only project or a first principles project unless this is requested by the customer, written into the project agreement and accepted by both the customer and Axios.

Where the project is accepted as a maintenance project, a code only project or a first principles project, Axios will (upon full payment and compliance with the project or engagement agreement, incorporating these T&Cs) assign the intellectual property rights in the code and screens created ("created IP") to the customer. Axios will not include any of its own code libraries, processes or inventions without seeking the customer's approval (which will trigger a transition, see below). Axios will account for any third-party code libraries or tools ("third-party IP") added to the project and will ensure that it holds the appropriate licences for that third-party IP.

For all other software development projects, Axios will retain title of the IP and license it to the customer

Any software development project that is not accepted as a maintenance project, a code only project or as a first principles project (an "inventive project") will require Axios to use its own techniques and processes to help refine requirements, design new and novel user interface designs, and solve development and other challenges using a combination of its own commercial processes, pre-developed code libraries and know-how ("background IP"). It will not be possible to separate straightforward and inventive extensions of the customer IP, Axios' background IP and new screens and code created specifically for such projects or engagements as they will be inextricably bound together in the final product.

Axios will therefore retain the intellectual property rights in the background IP and the created IP and license these to the customer on the terms below.

Axios' licence to the customer shall be (upon full payment and compliance with the project or engagement agreement) a non-exclusive, perpetual, irrevocable and fee free licence to use, copy, modify, or sub-license the software or any of its designed screens or code. For the avoidance of doubt, the customer will receive a copy of their code upon request and subject to the following, the customer's licence will allow them to do almost anything the owner would be able to do, including giving that code to another developer to maintain or build upon. The customer cannot sell or assign title to the code but they may assign (whether for a fee or otherwise) their licence to the code granted by Axios (upon notification to Axios, including the particulars of the assignee).

This licence is conditional on the customer not separating out any substantial section of code for the purposes of using that part to start a new project or transplant that part into any other project. The customer is responsible for ensuring that any other party which has access to the code through the customer (either knowingly given access or otherwise) complies with this restriction and all terms of the licence granted to the customer. Extensions or enhancements on the project for which the IP was created and licensed shall not violate this clause.

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Non-software-development projects

Axios will retain all intellectual property rights, excluding any customer IP, in any consulting engagement, graphic or website design project or any other project not explicitly covered above.

Transitionary arrangements

The intellectual property terms for all project agreements which exist between Axios and the customer prior to the customer's acceptance of these T&Cs (each a "legacy project") will continue to apply to that project, notwithstanding any acceptance by the customer of these T&Cs. However, the other terms of these T&Cs will apply to such projects.

Axios and the customer may agree in writing to transition a legacy project, a maintenance project, a code only project or a first principles project to an inventive project.

Axios may impose conditions on any transition, for example, that any required rebuild or remediation work be carried out on a previously developed codebase.

Upon such a transition, the customer assigns back any IP assigned to it under that project model's terms and adopts the licensing and assignment provisions which are applicable to inventive projects (as above).

Axios' use of IP rights, restraint

Axios runs its own programme of research and development into areas such as advanced software algorithms, decision support, security, mobile development and other emerging technologies. Axios does this on its own behalf using background IP and incorporated elements of created IP for which Axios has a licence or title. Axios uses this intellectual property both for the benefit of customers (when building inventive projects) and to further develop its own products and services. The customer acknowledges and accepts that Axios has a legitimate interest in retaining title to such work under these terms.

Axios agrees that it will not use any substantial element of created IP to form the basis behind a largely identical piece of software (same feature mix, available to the same users) for a competitor of the customer. For the avoidance of doubt, this does not prevent Axios from working with competitors, even on similar projects, so long as the restriction above is honoured. It also does not prevent Axios from using the created IP for any purpose which is not competitive as defined in the restriction above.

The customer licenses its customer IP, and any created IP which has been assigned to the customer by Axios (along with any confidential information that may be inextricably bound to the customer IP, background IP or created IP) to the minimum extent required to enable Axios to exploit its intellectual property rights and to carry out work for other clients, provided that Axios complies with the described restraint.

To be clear, Axios works with many customers and it does not intend to be restrained from working with several customers within any industry. A mere similarity in software developed (design elements, screen layouts, functionality, intended users etc) does not constitute a breach of these terms by Axios unless the customer can prove that Axios has used licensed customer IP or created IP contrary to the restriction described above.

The restrictions on Axios' use of created IP subsist for a period covering the project, the warranty period (as may be extended by mutual agreement) and a further two years. Axios' absolute limit of liability (including for consequential damages) for any unintentional breach under this section shall be to remove the offending intellectual property and pay costs and losses not exceeding $50,000 in the aggregate.

Third-party IP licensing

Wherever third-party IP is incorporated into a project, Axios will ensure that it holds appropriate licences to develop using that IP without breaching the third-party's licensing agreements. Unless otherwise agreed by the customer, such licence will allow the customer to use, copy and sell licences of their software as they see fit, without royalties to the third-party.

If the customer wishes to modify (or have another development firm modify) their code, then they will need to purchase a developer licence of the third-party IP. Axios can supply a list upon request, as well as any third-party licensing terms incorporated.

Restraint against the customer

The customer agrees that it will not employ, offer employment (as an employee or a contractor) or in any way induce (or be complicit in the inducement of) an Axios employee to leave Axios. The customer acknowledges that Axios will suffer losses if the customer solicits the employment of an Axios employee or in any way induces such an employee to leave Axios. Upon demand by Axios, the customer agrees to pay a liquidated damages sum of $20,000 to cover hiring, on-boarding and training costs to replace that employee should the customer breach this restraint.

The liquidated damages sum above does not cover Axios' damages for loss of income. Axios may reasonably calculate the sum of lost income as a result of such inducement by the customer and the customer agrees to pay such damages upon demand.

Nothing under this heading shall preclude Axios from exercising its rights of restraint against any Axios employee.

Confidentiality and exclusions

All confidential information disclosed by either the customer or Axios must be kept confidential by the other party and must only be used for purposes for which such information was disclosed.

Despite any other term in these T&Cs or any NDA between the customer and Axios, either pre-existing or agreed upon in future, Axios reserves the right to:

1. disclose relevant confidential information to such associated entities, staff, contractors and other third parties who are involved in the customer's project or who supply any services relating to the contracted work;
2. disclose relevant confidential information to its professional advisers and bankers;

3. carry out credit checks on the customer and share credit performance information with credit reporting agencies;

4. publish Axios' involvement in the customer's project on Axios' website or other marketing material, naming the customer, the approximate size or value of the project, and the general nature of work for that customer;

5. attribute work carried out by placing a link at the bottom of any websites or web applications created, naming Axios as the technology provider (such attributions not to be removed by the customer);

6. demonstrate parts of the customer's project to new or potential customers, such demonstrations shall exclude material which may reasonably be deemed to be commercially sensitive;

7. use any confidential information (in its minimum form) that may be inextricably bound to any intellectual property for which Axios otherwise has rights to use or exploit;

8. disclose information relating to taxation and R&D incentives to relevant authorities; and

9. disclose any information required by law.

The customer may disclose relevant confidential information to such associated entities, staff, contractors and other third parties who are involved in the customer's project, as well as to its professional advisers and bankers. For all permissible disclosures, the disclosing party will use reasonable endeavours in ensuring that all confidential information is kept confidential by such parties.

Non-Disclosure Agreements

Often a customer will wish to have Axios sign a Non-Disclosure Agreement ("NDA") before disclosing information about a proposed project.

In many cases this will be unnecessary given the terms of this agreement. However, Axios is happy to oblige such a request. Axios has a standard form NDA which we can supply (this does not constitute legal advice in any way) or we are happy to review and potentially sign one provided by the customer.

To avoid delays, the customer should ensure that any NDA provided does not attempt to adversely affect Axios' fundamental rights with respect to records retention, confidentiality, privacy or intellectual property.

Records and customer data

Axios maintains internal information including meeting notes, e-mails, designs, source code, test/diagnostic data, documents and legal/contract paperwork ("records"). These records may be stored electronically or in hard-copy and they may reside either at our office(s) from time to time, our offsite physical records storage facility or on internal or external/cloud hosted servers.

At the completion of a project or the termination of Axios' agreement with the customer, Axios will hand over materials supplied by the customer and any project artefacts that the customer is entitled to receive under the terms of that work. Despite any other term in these T&Cs or any NDA between the customer and Axios, either pre-existing

or agreed upon in future, Axios will retain copies of records of work conducted for the customer, including records which the customer may consider to be confidential information. These records will be retained for prudent risk management, taxation/R&D, quality management and other reasonable purposes. Axios will keep all such records reasonably secure and will only use them for purposes permitted by these T&Cs.

Research and Development work

Research and Development ("R&D") registration and services

Axios is registered under Section 29A of the Industry Research and Development Act 1986 (registration RSP88363).

Axios may assist the customer in work that qualifies for the R&D Tax Incentives. Any advice given on the eligibility of such work, or any assistance in writing up project documentation or calculating project costs is to be considered general advice only. It must be reviewed by the customer and a tax practitioner prior to submission. Axios charges its consulting rate for any such work.

R&D work requires forward planning

The customer is reminded that the R&D Tax Incentive may require additional project documentation that is better developed in the inception stage of the project and maintained throughout. Axios cannot guarantee that it can urgently create or reconstruct any such documentation retrospectively.

Axios advises (subject to the advice provision above) that work intended to be part of an R&D Tax Incentive claim must demonstrate an element of financial risk on the part of the customer. If the customer is considering making such a claim, they should consult with their tax advisor before engaging Axios on a fixed-price/quoted basis as a time and materials basis may be more appropriate.

Axios may have R&D Tax Incentive claims

The customer acknowledges and agrees that Axios may develop or advance its own knowledge or intellectual property pursuant to its engagement by the customer. Where Axios undertakes such work but on its own behalf, it may claim the R&D Tax Incentive for activities that meet the eligibility criteria of the R&D Tax Incentive.

Hosting

Axios may offer to host developed applications on behalf of customers. Hosting services will generally be offered under separate agreements that also incorporate these terms.

Hosting will utilise the Microsoft Azure platform unless otherwise specified.

Axios acts as a mere handler of any such services (meaning the handling fee applies as do the limitations on Axios' liability for third-party services).

Security

Axios is not a specialist information security firm. Axios generally recommends that all work completed is audited by an information security professional before being deployed into a live environment (real users and data). This includes assessing the suitability of any hosting provided by Axios. This is especially important where systems are to be hosted on a publicly accessible server, where those systems hold private or sensitive data, or where the cost of disruption caused by a security breach is high.

Axios will resolve any security issues found by such an audit, through its own (limited) investigations or as a result of any security breach, so long as they are reported within the warranty period. Axios does not represent that it is able to find all such potential vulnerabilities and this is why it is important that customers make their own reasonable risk assessments and act accordingly.

The customer hereby releases Axios and holds Axios harmless for any security breach. Further, the customer indemnifies Axios against any losses, damages or costs associated with such a breach, including consequential damages and any third-party costs or losses.

Basic warranty, exclusions and limitations of liability

Axios warrants that its goods and services will perform substantially in accordance with their documented requirements, designs or specifications for a period of 3 months. Such warranties apply only to goods or services Axios provides under this agreement. The customer must rely on any warranty obligations offered by third-parties for any other goods or services.

Axios typically extends the warranty and support provisions for project engagements, and this will be captured in the supplementary terms for that engagement. The consumer warranties under the Australian Consumer Law ("ACL") may apply to some supplies provided by Axios. Axios will provide the greater of any warranties specified herein, contained in any supplementary terms, or provided by the ACL (the "Axios warranty").

Axios at its sole option will limit its warranty obligations to the customer to repairing, replacing or supplying again any goods or services in respect of which the breach of warranty occurred; or refunding the sum of all amounts paid by the customer for the goods or services.

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Unless specifically provided for in the ACL, the Axios warranty does not cover any of the following and the customer releases Axios for all claims and liabilities:

- as described in the terms on security, acceptance of work and hotfixes;
- relating to work on project that meets the definition of a maintenance project, whether or not that project is defined as a maintenance project for IP purposes (as Axios did not create the original codebase), unless otherwise offered in writing;
- relating to warranty work that would otherwise have been covered under a support plan, but was foregone by the customer in favour of completing other work;
- arising out of or in connection with Axios' inability to supply any goods or services within any timeframe estimated by Axios or imposed by the customer;
- in contract or equity for consequential damages arising out of, or in connection with supplies by Axios, even if such liabilities were foreseeable;
- for negligence or other non-contractual cause of action in respect of which liability can be excluded for acts or omissions of Axios, its employees, agents and contractors;
- which are instigated by a third-party claim or claims;
- associated with unmet expectations relating to any work, where those expectations were not specifically documented as part of the scope of works to be performed;
- resulting from any failure as a result of improper modification, use, installation, interaction with third-party equipment or software or any actions of third-parties not acting under Axios' direct instruction;

- resulting from events which are beyond Axios' reasonable knowledge or control, including extraordinary risks or non-obvious usage scenarios which the customer uses or intends to use any work products created by Axios; and
- arising from all other warranties expressed or implied by statute, general law or custom.

To make a warranty claim, the customer must notify Axios in writing, specifying sufficient detail for Axios to locate or reproduce the issue or defect. This must be done within the applicable warranty period.

Any work done by Axios in investigating, liaising with the customer or addressing an issue that is not covered by the Axios warranty shall be chargeable on a time and materials basis at Axios' prevailing rates. The customer agrees to pay such charges.

Notwithstanding any other term herein, Axios' absolute limit of liability for any claim (except where successfully limited by any other provision) shall be capped absolutely to $1M. This cap shall apply unless the customer notified Axios that it requires a higher limit of liability and Axios accepts this higher limit in writing.

Axios will maintain professional indemnity insurance for at least $1M at all times.

Any term or provision above that is void or unenforceable shall be read down or severed, leaving the maximum allowable limitations and exclusions intact.

Support and extended warranty plans

Axios may offer extended warranty and support in the form of a software assurance plan or a premium support plan ("support plan"). These will be in the form of a separate agreement which incorporates these T&Cs.

Axios may also require that certain projects or engagements subscribe to a support plan as part of the quotation or proposal. This will be the case where a project's success is likely to hinge on the customer receiving high levels of support during the implementation or launch of the project.

Direction of work

Work is done under the instruction of the customer

Axios provides technical and commercialisation expertise but essentially all services offered are under the instruction of the customer. Work will only ever be a good fit for the customer's needs where the customer has given accurate and detailed specifications or instructions.

Much of Axios work will be iterative in nature and may require active participation and feedback from the customer prior to completion. This is the nature of custom software development.

Instructions by the customer's staff

Axios may accept any seemingly reasonable instructions from any employee of the customer.

Acceptance of work

The customer must test and accept software development work

All software development work completed by Axios (except for hotfixes, detailed below) will be installed on a test server and offered to the customer for acceptance testing. Axios will complete basic software testing but the customer is in the best position to validate that their software is of appropriate quality and is fit for purpose against realistic test data and in likely usage scenarios.

The customer must not move (nor instruct Axios to move) the system onto a live server (real users and data) until it has thoroughly completed acceptance testing. Insofar as there is any downtime, inconvenience, loss or corruption of data, loss of business or reputation, or any other undesirable consequence ("adverse outcome") caused by not properly completing acceptance testing, the customer hereby releases Axios and holds Axios harmless. The customer also indemnifies Axios against any losses, damages or costs associated with such adverse outcomes, including consequential damages and any third-party costs or losses.

Time allowed for software acceptance testing

Axios provides 4 weeks for acceptance testing to be completed by the customer for major software development releases and 2 weeks for minor releases and variations ("acceptance period").

The customer may request assistance or extensions of time from Axios where a reasonable effort has been made to comply with this clause

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so that acceptance testing can be completed properly. In the event that the acceptance period lapses and no extension or assistance is requested (and given), Axios may deem acceptance (for the purposes of commencing the warranty period and issuing any final invoices) without notice to the customer. This deemed acceptance does not remove the requirement on the customer to fully certify their software before using it in a live environment.

Urgent "hotfixes" and other responses

A "hotfix" is an urgent change or fix that is actioned straight away by Axios (typically completed in a matter of hours). Hotfixes are developed and deployed straight out to the live server, with minimal testing and generally no opportunity for acceptance testing by the customer.

Hotfixes should be considered high risk. Customers should only request hotfixes where the impact of delay outweighs the inherent risk of using a hotfix.

Axios will assume that any issues reported by the customer as critical in the Axios Customer Portal (or by phone or email using words like "urgent" or "critical") are of the urgency and importance where a hotfix may be appropriate, and that the customer has consented to Axios applying a hotfix if required.

Further, the customer authorises Axios to act on situations where live system monitoring reports an issue, and upon investigation, Axios discovers that the site is either substantially non-functional/offline or has suffered any form of security breach. Such actions may include applying a hotfix.

Axios does not guarantee that it will be available after hours or within any specific response timeframe unless otherwise specified in a support agreement.

Hotfixes are completed on a "best endeavours" basis and the customer bears all risks associated with a hotfix. Consequently, the customer hereby releases Axios and holds Axios harmless for any adverse outcomes resulting from a hotfix being applied. The customer also indemnifies Axios against any losses, damages or costs associated with any issues arising from a hotfix, including consequential damages and any third-party costs or losses.

The customer may opt-out of receiving hotfixes by notice in writing if it is not willing to accept these provisions. Such notice is not effective until acknowledged by Axios in writing.

Acceptance of consulting and other work

Consulting engagements are deemed complete when all objectives in the associated proposal have been addressed and handed over. Axios is not required to provide revisions or further iterations unless specifically provided for in the proposal or within the terms of the Axios warranty.

The customer is not entitled to withhold acceptance or payment on the basis that unstated expectations have not been met or that they do not agree with or are not happy with the outcomes or advice given.

Quality policy

Axios aims to meet or exceed the following standards when building (but not necessarily maintaining) software:

- Functionality, screens, workflows and behaviours will be developed consistently with documented requirements (where documented requirements specify what the software must achieve but not how it must look or the manner in which it must achieve these requirements, Axios will use its professional judgement).
- Functionality, workflows, calculations and reports should follow documented rules and arrive at correct results.
- The system should not be overly sensitive to user error and any incorrect usage by a user must be able to be recovered from or worked around.
- Screens should be (reasonably) aesthetically pleasing, intuitive (relative to the complexity of the tasks to be performed) and consistent within the application.
- Data entry fields must be validated to ensure obviously incorrect inputs are reduced.
- The system must be scalable and perform as stated under expected/ reasonably anticipated load.
- The system must be built in such a way as to be able to be maintained and reasonably extended.
- The system design should consider appropriate security considerations (but noting that Axios recommends third-party auditing by a security professional in most circumstances).
- All code will be neat, easy to read and maintain and utilise industry standard techniques that could be taken over or maintained by other suitably qualified developers.

Privacy policy

Axios collects information for the purposes of completing work requested by the customer. Axios may also use information collected to market services to customers that Axios' reasonably believes may be useful to that customer.

Axios will endeavour to comply with the National Privacy Principles ("NPPs") with regards to the collection, storage and use of all personal information at all times. Customers have the right to request to see or correct any information Axios may have collected and Axios will comply with the NPPs in regards to processing such requests.

Axios may collect sample or diagnostic data from the customer (or their systems) for the purposes of testing and supporting developed software. Such data may contain private or sensitive information about third-parties that deal with the customer. The customer is responsible for notifying any such third parties if required under the NPPs. The customer is also required to notify Axios if any of this information constitutes sensitive information under the NPPs and must work with Axios to ensure that any additional security procedures or de-identification required is properly implemented.

For the purposes of NPP 9 (trans-border data flows), Axios hereby declares that some records are stored in cloud hosted servers that may not reside in Australia. By agreeing to these terms the customer consents to the transfer of such records.

Cancelling work, repudiation by the customer

Where Axios is engaged on a project basis (there is a fixed scope of works or a project value is otherwise calculable) then it will have allocated resources and stands to suffer losses if the customer attempts to cancel, significantly change, shrink, delay or in any other way repudiate the original project agreement. Such costs and losses typically arise from (1) the time spent, potential legal fees for contracts, any hiring or sourcing of specialist resourcing and other costs associated with commencing the project (which are factored into the project); (2) foregoing or delaying other jobs or opportunities in order to get the customer's work completed on time; (3) holding staff that may be unproductive (or making them redundant) where long lead times make it difficult to replace the work lost; and (4) management and resource planning disruption and the effects on other customers' projects and milestone billing.

Unless the customer and Axios can agree on the terms of such a change in a way that does not disadvantage Axios, then the customer shall be liable for a liquidated damages sum equal to the shortfall in the project value that has not yet been invoiced and paid by the customer towards that project. This liquidated damages sum does not cover any legal or other third party costs incurred by Axios in its recovery of amounts claimable under this heading. Axios reserves its right to claim for such incurred costs on a full indemnity basis. The customer agrees that they will pay such liquidated damages upon Axios issuing an invoice for that amount. The customer agrees that the amount sought by Axios

as described is reasonable to indemnify Axios for its losses, and that it does not constitute a penalty payment. Without limiting or prejudicing the preceding in any way, if the amount of liquidated damages claimed by Axios in the preceding is found not to be enforceable, the customer agrees to pay Axios a liquidated damages sum equal to 75% of the shortfall in the project value that has not yet been invoiced and paid by the customer towards that project; and if this is also found not to be enforceable, the customer agrees to pay Axios a liquidated damages sum equal to 50% of the aforesaid shortfall; and this is also found not to be enforceable, the customer agrees to pay Axios a liquidated damages sum equal to 25% of the aforesaid shortfall.

Once all amounts claimable in the paragraph above have been paid, Axios may terminate its agreement with the customer.

The provisions under this heading do not apply where Axios has seriously or persistently breached the terms of its agreement with the customer and the customer seeks to terminate the agreement by complying with the termination clause below.

Termination

If Axios is engaged on an ad-hoc basis (without a fixed scope of works), either party may terminate this agreement by providing the other 30 days written notice.

The customer may terminate its agreement with Axios where Axios has seriously or persistently breached the terms of its agreement with the customer, and the customer has complied with the dispute resolution process.

Regardless of whether Axios is engaged on a casual or project basis, Axios may, at its option, terminate its agreement with the customer, immediately and without notice, if the customer: (1) triggers liquidated damages under the cancelling project work/repudiation terms above; (2) suffers; or threatens, resolves, or is in jeopardy of becoming subject to any form of insolvency administration, receivership or bankruptcy proceeding; (3) ceases; or threatens, resolves, or is in jeopardy of winding up or ceasing trade; (4) is a partnership and dissolves; or threatens, resolves, or is in jeopardy of dissolving; (5) dies or (6) is in breach of this contract and such breach is not remedied within 14 days of notification by Axios claiming the breach, and the aforesaid dispute resolution procedure has been complied with.

In addition to termination in accordance with the above terms, the parties may terminate their agreement by mutual consent or in accordance with the force majeure terms.

Termination does not end or prejudice any accrued rights or remedies, nor does it end terms which impliedly should continue following termination.

Dispute resolution

This arbitration agreement is governed by the laws of South Australia. Any dispute resolution conducted must be conducted in South Australia.

The parties agree to resolve any difference or dispute arising out of or in connection with this agreement (or otherwise between them) by complying with the following dispute resolution procedure.

In this section, the "claimant" is the party that initiates this procedure and the "respondent" is the other party.

The claimant agrees to notify the respondent of any difference or dispute that requires resolution. Such notification should include particulars of the dispute and what action the claimant believes will adequately settle the dispute. The parties will each appoint a representative to negotiate a satisfactory outcome in good faith.

Arbitration should not commence unless, at the conclusion of 14 days from the date of the above notice being sent, either party feels that a satisfactory outcome has not been agreed upon, is not likely to be agreed upon, or that the matter has not been adequately responded to by the other party.

Once the condition precedent above is satisfied, either party may (and the other party will then be bound to) submit their dispute to binding arbitration in accordance with the Commercial Arbitration Act 2011 (SA) (the "CAA").

Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of the Resolution Institute. Such nomination will be binding unless validly challenged and replaced under the CAA.

The arbitrator may select a set of institutional rules for the arbitration. Insofar as the guidance below does not derogate from the CAA and is able to take precedence over the institutional rules chosen, the arbitrator must conduct the arbitration in a way that respects the following wishes of the parties:

- The arbitral tribunal shall consist of one arbitrator.
- The arbitrator should adopt a "fast track" arbitration procedure, allowing for the award to be rendered (save for costs) in not more than 150 days (for example Schedule 2 of IAMA's Arbitration Rules, 2007).
- Where the total amount in dispute is less than $50,000, the chosen fast track procedure should allow for submission of documents only (no hearings) unless otherwise reasonably determined by the arbitrator.
- The arbitrator must establish a reasonable cap on their fees, and a reasonable cap on all other costs such as expert witnesses and legal representation claimable by the parties (s33B(2) of the CAA).
- The arbitrator may adopt an inquisitorial approach if there are clear benefits to the expedience of settling the dispute.

- The arbitrator shall not have the power to order specific performance (s33A of the CAA) except as it relates to the removal of any created IP used in contravention of the restrictions in these T&Cs.

For the avoidance of doubt, this clause constitutes its own separate arbitration agreement under s7 of the CAA and survives termination of the rest of the agreement. It is to be read in such a way that enables the widest range of disputes or differences between the parties (including non-contractual) to be referred to arbitration. Should any of the provisions above be unenforceable or render this clause ineffective, then they may be severed to that extent.

Other general terms

Force majeure
No party shall be held to be in breach of this agreement where they are prevented from performing by an external circumstance beyond their reasonable control. Failing to plan for or implement roper controls around normal business risks shall not constitute a force majeure event. During such a force majeure event, the party unable to perform must take all reasonable steps to overcome the difficulties and maintain frequent proactive and forthright communication with the other party.

A force majeure event persisting on a party for a period of 90 days or more shall entitle the other party to terminate this agreement by written notice.

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Project communications and formal notices

Unless otherwise agreed in writing, project communications may be by phone, email or through the Axios Customer Portal.

Formal notices will be by email, to any senior project team member or representative. A notice is deemed to have been received when it successfully leaves the sender's outbox unless it can be proven that the recipient did not receive it. Some notices under these terms may explicitly require acknowledgement to be effective.

No waiver

No failure to act within a certain time on any breach of terms between the parties shall constitute a waiver or prevent that party from asserting its rights at any other time with respect to that or future breaches.

Assignment

The parties may not assign or otherwise transfer their rights or obligations under this agreement without the written consent of the other party. Such consent not to be unreasonably withheld.

Goods and Services Tax ("GST") payable

All amounts mentioned or quoted by Axios are exclusive of GST unless otherwise stated. The customer must also pay any applicable GST.

Interpretation and terms used within these T&Cs

"associated entity" has the meaning defined in Section 50AAA of the Corporations Act 2001 (Cth).

"authorised representative" or "representative" of the customer or Axios means a general manager, chief executive or director of that party. "Axios employee" for the purposes of the customer restraint, includes a current (or previous, within the last 12 months) employee or contractor of Axios or any of its associated entities.

"confidential information" means any financial or other business information pertaining to Axios, its suppliers or the customer in any form disclosed to the other party. Such information includes, but is not limited to the identity of clients or suppliers, research and development information, business plans, strategies, internal processes and documents, ideas, concepts and information concerning intellectual property.

"consequential damages" means any indirect, special, consequential, punitive or exemplary damages, expenses, losses or costs including loss of anticipated or actual revenue or profits, loss of or inability to use equipment, a failure to realise anticipated savings, lost data, down time costs or loss of goodwill.

"fundamental rights" means those rights established in the terms of agreement between Axios and the customer relating to scope, timeframe and price (except discounts or where scope, timeframe and price are modified in accordance with a variation), diligent conduct, access to resources, estimates/timeframes not binding, time booked but not used, late payment, delays, privacy, direction/acceptance of work, confidential information, intellectual property, security, records retention, restraints, termination, dispute resolution, and exclusions or limitations of liability.

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"GST" means Goods and Services Tax imposed by A New Tax System (Goods and Services Tax) 1999.

"intellectual property" or "IP" means all intellectual property rights at any time protected, conferred or recognised by any statute or common law in Australia or elsewhere in the world and whether registered or unregistered, including copyright, trademarks, patents, patentable inventions, design rights, knowhow and rights in circuit layouts, software codes, documents, specifications and details of functionality.

"project value" means the total value that Axios could reasonably expect to invoice the customer over the life of that project or engagement. For quoted projects or engagements this is the quoted price plus any applicable support agreement value. For fixed-scope time and materials projects, this is the estimated project price contained in the supplementary terms plus any applicable support agreement value. For a monthly retainer agreement or support plan, this is the minimum monthly spend multiplied by the minimum term in months of that agreement.

"substantial", in relation to the use of copyright materials, has the same meaning as it would under s 14 of the Copyright Act 1968 (Cth).

"variation" means an increase or modification to a scope of works with commensurate adjustments to the timeframe and cost of the underlying project engagement.

Let's get started

Executed as an agreement by the undersigned on behalf of the customer. The undersigned personally warrants that he/she is authorised by the customer to bind it legally.
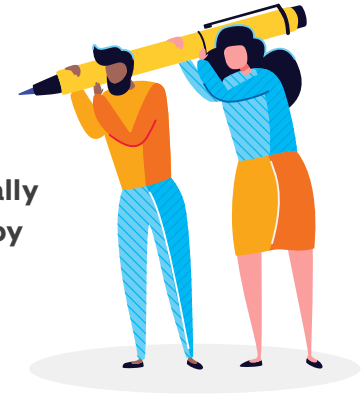
Signature

Print name

Position held

Business/Company

Date