

General Terms and Conditions of Trade

About this Document

Axios provides custom software development services to customers seeking new business systems or wishing to launch a new software product or online service.

By providing detailed information about Axios' services, processes and terms of engagement, this document is designed to establish clear roles and responsibilities for both Axios and the customer within a software development project. This understanding will enable Axios to maximise customer satisfaction.

This document was last edited on 31 May 2010 and its terms became applicable as of 1 July 2010. Axios may update these terms from time to time and publish those updates on its website: www.axios-it.com.au at least 30 days before those updated terms apply. Please check Axios' website for any updated terms.

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Services

Performance of Services

Axios is a professional services organisation and charges on a time and material basis. As such, all time spent on a project (including time spent by Axios in administrative, preparatory and managerial tasks which are directly associated with a project; in testing, debugging, improving and supporting software; in training the customer; in travelling to and from the customer's premises; and in attending to customer instructions and queries) are billable, unless such time is specifically excluded from being billable under these terms.

At all times Axios will work in a courteous, diligent and professional manner in compliance with reasonable customer directions and applicable laws.

On rare occasions, Axios may sub-contract a third-party to assist in the completion of services for which Axios is engaged. Unless otherwise agreed, the customer will be charged Axios' rates for services performed by its sub-contractors and Axios will be responsible for any work completed by its sub-contractors. There may also be occasions where a consultant's or a specialist's assistance is required. Axios will advise the customer if such assistance is required and may, at its option, require the customer to personally engage a consultant or specialist for assistance on a project. Otherwise, Axios, acting as an agent for the customer, may engage a consultant or specialist for assistance on a project and if it does so, the customer agrees to indemnify Axios for all costs, losses, expenses, claims or threatened claims (including costs associated with defending such claims) incurred by or which are to be suffered by Axios; and to release Axios from all claims relating to the engagement of the consultant or specialist, or which relates to the professional services of the consultant or specialist.

As a general rule, Axios does not offshore work and would not do so without the customer's permission.

Casual Services

When working with a customer, it is Axios' preference to discuss immediate objectives with the customer and to complete the work requested on a casual basis. This allows Axios to be flexible with customer requirements.

When Axios is engaged on this basis, either Axios or the customer may terminate the commissioning of Axios at any time upon written notification to the other party.

Estimates

Where the total amount of work requested by a customer is significant, the customer may request an estimate of the total casually billed hours that will be invoiced. The provision of these estimates requires a small amount of additional project management time and such time is billable casually to the customer. Estimates are for informational purposes only and are not binding upon Axios.

Budgets

If a customer has a significant ongoing project, they may negotiate a monthly budget of hours. As in the case of estimates, the provision of or the approval by Axios of such a budget requires a small

amount of project management time to administer and such time is billable casually to the customer. Axios may provide an estimate of work which may be completed within any given month from the allocated budget, but this is informational only and is not binding upon Axios. Axios will ensure that the hours worked within a given month will remain within 10% of its estimate of work hours for that month, unless prior customer approval is given to exceed this amount.

Where a monthly budget of hours is in place, Axios undertakes to make resources available to complete the work. The customer must give Axios at least three months prior written notice of any planned reduction in its monthly budget. In the absence of this notice, Axios will reserve resources accordingly on the assumption that the customer will continue to provide casual work requests equivalent to the monthly budgeted hours.

If the customer fails to give Axios such notice, Axios may charge the customer for the full budgeted hours on any month, when it is given tasks within that month which requires work hours less than the budgeted hours for that month and:

- there is work outstanding on the customer's project that would lead Axios to reasonably assume the budget is still in place; or
- Axios is unable to reallocate the shortfall of work to other customers at an equivalent rate.

Subject to other terms described below, either the customer or Axios may terminate the commissioning of Axios on such projects, upon the provision of at least three months prior written notice to the other party.

Quotations

Axios may, at its option, offer a formal binding quotation at the customer's request.

All quotations are offered in writing and are referenced to the services or goods that are described in the applicable specification. Axios will not be held liable for any quotation that has not been offered in writing by the responsible project manager or which does not make reference to an appropriate item within the applicable specification. All quotations are also offered subject to the other terms contained herein.

Subject to the following terms, all quotations are valid for 60 days from the date the quotation is made.

If a quotation is made at the time a specification is presented to the customer and the specification subsequently needs to be amended, Axios will issue a new quotation based on the amended specification. This new quotation will be valid for 60 days from the date the new quotation is made.

For services provided by Axios, a quotation is given on the number of work hours that are required or budgeted to affect a requirement that has been described in the applicable specification. To work out the cost of affecting that requirement, the applicable Axios' charge out rate is applied to the quoted work hours. Axios' current charge out rates are described in Schedule 1, but Axios may, in accordance with the terms described in "Review of Terms and Rates", increase these rates. Any such increase will be reflected in the final price payable by the customer. As such, if a price is quoted, the

price may be subject to change in accordance with those terms. The customer should take this into account if the customer's project is likely to extend beyond the end of any financial year.

Before any quotation is given, Axios will, with the assistance of the customer, perform a scoping stage to determine the requirements of the job, suitable technologies and any risks that may be involved. At the end of the scoping stage, Axios will, in consultation with the customer, document the requirements of the project, as well as other matters which are reasonably relevant to the project. Time spent by Axios during the scoping stage, including time taken to prepare the specification document, is billable to the customer either casually or at an agreed price.

Upon payment of the fees associated with the scoping stage, the customer owns all produced specifications, designs and technical proof-of-concepts that may be created; and is free to use these materials to assist in gathering quotations from other suppliers.

A copy of this specification will be provided to the customer for its confirmation, prior to, or at the time Axios provides its written quotation. The written quotation will separately specify a quotation of hours that are either needed or that are budgeted for each requirement within the specification.

To assist the customer in its planning and budgeting of the project, Axios will, in consultation with the customer, classify each requirement into one of the following three classes:

- detailed specification available ("class D");
- further consultation required ("class C"); or
- prototype development ("class P").

A requirement that is classified under class D is agreed by Axios and the customer to be sufficiently detailed, and is deliverable within the quoted hours in the form documented in the specification. This classification is used when the requirement is precisely known up-front. This is typically so when Axios is commissioned to replace or update an existing piece of software- i.e. users of the existing software know exactly what they require and have articulated what changes are needed to the existing software. In such cases, Axios is able to fully specify what is to be built based on either:

- screen shots of the existing system and written changes or differences that are required; or
- exhaustive designs which are agreed upon.

Whether or not Axios is commissioned to replace an existing system, Axios will only agree to classify a requirement under this class if it decides that:

- the customer has a complete understanding of that requirement;
- the scoping stage has been carried out properly (which, without limitation includes, a proper assessment of any applicable design or designs proposed by Axios or the customer to affect the requirements); and
- the requirement, has been thoroughly and accurately described (which, without limitation includes, a reasonable description of applicable complexities and risk factors).

If the customer is unsure that a requirement should be classified under class D, it must inform Axios and not accept any quotation given by Axios for this requirement which is based on this

classification. By accepting the classification of a requirement under this class, the customer accepts liability for all additional costs which are attributable to Axios carrying out work hours in addition to the quoted work hours, if:

- the requirement is changed for whatever reason; or
- new complexities and/or risk factors become known

after the specification is confirmed by the customer. All such additional costs are billable to the customer on a casual basis.

In Axios' experience, producing a specification where all or most requirements are classified under class D is more expensive up-front and is somewhat inflexible. This is because it does not easily allow for requirements to evolve as new ideas emerge without making a significant loss in prior design or development time. This classification does however give the greatest assurance of likely development costs and is a practical, low risk solution where all requirements can be clearly defined up-front.

A requirement that is classified under class C is agreed by Axios and the customer to be incompletely described, but which is capable of better description when that requirement has been partly developed and trialled by users. Following part development, the associated complexities and/or risk factors also become more apparent. This is typically the case when a totally new business system or product development is commissioned because users are rarely able to articulate exactly what is required until they have had an opportunity to use a trial system.

Axios will develop functionality that will satisfy the requirement, as described in the specification. Based on Axios' experience with similar functionality in past projects and on the assumption that there are no additional complexities and/or risk factors, Axios will quote a budget of hours for the initial development of this functionality plus some follow up consultation and minor refinement work. As the exact amount of refinement work required by the customer cannot be predicted by Axios, by offering this quotation, Axios does not guarantee that the customer will get functionality that meets its end requirement or that all complexities and/or risk factors have been taken into account in establishing the budget of hours. Rather Axios guarantees that it will build what it considers the best functionality possible within the budgeted hours for that requirement.

By accepting the classification of a requirement under this class, the customer:

- acknowledges that the functionality that is to be initially developed by Axios may not be fully developed within the budget of hours; and
- accepts liability for all additional costs which are attributable to Axios carrying out work hours in addition to the quoted work hours if:
 - any functionality that has been contemplated by Axios needs to be improved or changed at any stage, either by the customer or by Axios, acting properly;
 - the defined requirement is changed for whatever reason; or
 - the final consulted requirements are more complex or include a risk or functionality that was never initially communicated by the customer or contemplated by Axios at the time the quotation was given

after the specification is confirmed by the customer.

In Axios' experience, producing a specification where all or most requirements are classified as class C is not only significantly cheaper up-front, but is practical because design ideas may be generated and discussed during development. Typically, some additional casual hours are agreed upon and billed alongside the quoted price or several smaller refinement developments after the original development cycle are required if the customer's requirements are more complex than first contemplated or communicated to Axios. The customer should factor in such additional costs when considering its quotation.

A requirement that is classified under class P is agreed by Axios and the customer to be broadly described. This classification is used when the customer has only a broad concept of its requirement and relies heavily on proposal(s) by Axios on how functionality for that requirement may be developed. Typically, such a requirement is difficult to conceptualise without the production of one or more minimum functionality prototype(s). This prototype will be useful for demonstrating capabilities, proving technologies, and basic system operations. It is essentially a tool for generating further ideas and for identifying complex requirements leading in to subsequent development phases. It is also useful when such a prototype is needed to secure venture capital for further development.

Axios will develop such a prototype in accordance with the requirement described in the specification. Based on Axios' experience with similar functionality in past projects and on the assumption that there are no additional complexities and/or risk factors, Axios will quote a budget of hours for the development of this requirement in prototype form. By offering this quotation, Axios does not guarantee that the customer will get functionality that meets its requirement or that all complexities and/or risk factors have been taken into account in establishing the budget of hours. Rather, this quotation is offered for the production of one prototype or one set of prototypes for the given requirements with bare minimum functionality, for the stipulated requirement. The intention of this prototype process is to generate further ideas leading to class C and class D requirements which can be developed with further development cycles.

By accepting the classification of a requirement under this class, the customer:

- acknowledges that the prototype that is to be initially developed by Axios has only bare minimum functionality for the stipulated requirement or requirements and that it is essentially a tool for generating further ideas for subsequent development phases;
- accepts liability for all additional costs which are attributable to Axios carrying out work hours in addition to the quoted work hours if:
 - any functionality or prototype that has been contemplated by Axios needs to be improved or changed at any stage, either by the customer or by Axios, acting properly;
 - additional prototypes are required;
 - the defined requirement is changed for whatever reason; or

- the development of the prototype is more complex or includes a risk or functionality that was never initially communicated by the customer or contemplated by Axios at the time the quotation was given
after the specification is confirmed by the customer.

Regardless of whether a requirement has been classified as “class D”, “class C” or “class P” in the specification, if that requirement needs to be changed or new complexities and/or risk factors become known after the specification has been confirmed by the customer, Axios may, at its option, but acting reasonably:

- complete work on that requirement as originally documented in the specification and postpone any changes to that requirement to be made in the following development cycle; or
- continue work on that requirement, affecting and taking into account the change(s) that are required or the new complexities and/or risk factors, and billing all of such work casually; or
- stop all work on that requirement until a proper assessment of the change(s) or new complexities and/or risk factors is completed and either a new specification is prepared or the existing specification is amended and agreed upon.

Axios will use its professional experience to help guide the customer towards the most suitable quotation and development model. Ultimately the customer is responsible for:

- discussing its options with Axios;
- deciding on what level of detail should be included in the quotation, what should be consulted on during development and what should be left up to Axios to develop based on previous experiences with similar projects;
- ensuring that the customer’s requirements are accurately described in the specification;
- allowing for reasonable additional costs such as refinement development/changes or costs not included in the quotation as described under these terms; and
- making an informed decision as to whether to instruct Axios to proceed with the project as quoted.

For goods that are to be supplied by Axios, the written quotation will separately specify a quotation for each item of goods that is specified in the specification. The customer may choose to acquire any goods from another supplier or in consultation with Axios, vary the type or specification of the goods. If the customer decides to do so, it must inform Axios prior to its confirmation of the specification. Axios will issue a notation for this request which affects an amendment to the specification. The customer will then be required to confirm the specification, as amended by the notation.

Axios reserves the right to change any:

- quoted price that has been accepted by the customer if the cost of acquiring those goods has increased for any reason from the time the quotation is given, including increased supplier’s cost, increased transportation cost, increased insurance cost, increased taxes and levies or changes in monetary exchange rates; or

- item that has been described in the specification if that item is not readily available or may not be sourced. Axios will then endeavour to source a substitute that is comparable in its price, quality and specifications.

Axios will notify the customer in writing if any changes are made under this clause.

Subject to other terms described herein and without terminating any accrued rights, either the customer or Axios may terminate the commissioning of Axios on quoted projects, in writing:

- before confirmation of the specification for that project by the customer; or
- if the customer is notified that any technical challenges described in the specification cannot be overcome during the design stage (see “Design, Prototyping and Proof of Concept Work”); or
- after the presentation by Axios to the customer of all the functionalities or other products and goods that are required to satisfy the requirements described in the specification for that project (but without the need for the completion of any testing of these functionalities or products)

but not at any other time, unless the parties agree to do so in writing.

Product and Online Services Development

Product and online services development involves conceptualising, developing and commercialising a software application for sale or an online service to generate revenue.

The cost for Axios’ services in this specialised area starts at around \$30,000 and increases depending on the complexity of the project. This is a considerable investment and must be weighed against the revenue potential of a successful commercialisation.

One common trap for customers new to product commercialisation is attempting to satisfy all users with an initial software version. Axios recommends approaching such a project in the following way:

- Conceptualise the product/online service and generate as many ideas as possible.
- Look at competitors’ products/sites and document similarities and points of difference.
- Identify possible users and key demographic groups.
- Identify requirements and functionalities based on users’ needs.
- Target an initial version at a specific user group based on the likelihood of success, eg market saturation, novel features etc.
- Segment preferred requirements and functionality based on the target user group.
- Consult with Axios for a scoping stage and a quote.
- Develop a business case to evaluate risk and potential reward, return on investment etc.
- Engage Axios to build a prototype or mock-up and seek capital investment (if required).
- If viable, move ahead with a stage of development targeting the identified user group.
- Conduct limited user trials with a known budget for enhancement work.
- Do not extend the scope of development or target additional user groups until the initial version is generating revenue.

It is not unusual for customers to underestimate the functionalities that are required for a successful launch and spend significantly over the original budget before a release is possible. By following the steps above and allocating a reasonable refinement budget the potential for success is maximised.

Custom Business Systems Development

Custom business systems development involves the analysis and automation of business processes through the development of a custom software system. Custom business systems can reduce manual handling, streamline processes, improve consistency, quality and customer satisfaction, and enable key reporting objectives.

The cost of Axios' custom business systems development services starts at around \$30,000 and increases depending on the size and complexity of the business. In general, these costs can be rapidly offset against efficiencies gained.

Customers with well-defined business roles, processes and reporting will see the fastest results. If these are not well-documented, customers will need to participate in significant business analysis and requirements gathering up-front and may need to consider an ongoing budget for refining their internal workflows alongside their custom software system.

In order to begin the business analysis process, it may be advantageous for the customer to first consider the following:

- Define the roles of each person in the organisation.
- Can these work descriptions be divided into a series of generic roles (ie one person may do several small roles and there may be several people doing larger roles)?
- Can these roles be divided into virtual departments or groups?
- What information needs to be captured in each group and what flows between groups?
- Who are the internal and external stakeholders and what information do they need?
- Can each group's business functions be described as a list of tasks?
- Can these tasks be assigned to roles through a responsibility matrix and can a process be written for each task?
- What reports would be useful to each department, managers, customers or other stakeholders?

Axios can often help to get a business started on these processes with only a few hours of initial consultation. This will enable the business to document their processes as a "system" and a software package can be written to streamline that system. As well as leading to an enhanced software tool the process of documenting a business in this way assists in staff management and training, key performance reporting, quality management and continual improvement objectives.

Project Process

Initial Correspondence and Meeting

Axios will invest up to four hours of otherwise billable time by senior staff in initial correspondence and meetings free of charge. The purpose is to establish if Axios is a good fit for the customer's requirements and to discuss any ideas or technical challenges associated with the customer's proposed project. Any additional time spent by Axios during its initial correspondence with the customer is time spent on consulting and will be billable casually to the customer.

Requirements Gathering and Specification Document

During this stage, also known as the scoping stage, Axios works with the customer to elicit and document the requirements of the project, as well as other matters which are pertinent to the project.

At the end of the scoping stage, Axios will, in consultation with the customer, prepare a specification document which will, if required and if it is feasible to do so, describe:

- all of the requirements of the project (including goods to be supplied, if any, by Axios or other suppliers);
- the classification for each of these requirements as described below;
- anticipated complexities and risk factors of the project;
- Axios' proposal on how each of these requirements, complexities and risk factors are to be addressed, including proposed functionalities, methodologies, processes, required hardware and/or software to be supplied either by Axios or the customer and risk management strategies;
- any division of responsibilities or work to be undertaken between Axios and the customer;
- the project plan (including any budgets, milestones, consulting and reporting requirements); and
- the tests that are to be carried out during acceptance testing and their associated acceptance criteria.

Sometimes the customer prefers Axios to make most of the design decisions based on their requirements, and in other cases, the customer has very detailed needs that are clearly defined or industry specific. Axios' role is to represent the technical capabilities of the software to be developed and offer ideas from our experience with similar software systems. The customer should not assume that Axios is intimately familiar with its business. The customer must describe, in appropriate detail, all of its requirements. These may include:

- For new product developments and online systems: existing prototypes or designs, similar systems already in existence and points of difference from those systems, extensive documented functionality, navigation and branding information.
- For business systems: existing databases, spreadsheets, templates and procedure documents as well as detailed notes about any additional requirements and/or changes from or shortfalls in the existing tools.

It is the customer's obligation to ensure that each of its requirements is accurately described in the specification document. Ideally, a requirement should be specified with as much detail as possible but often, the specifics of a requirement may not be fully known until some preliminary development work is carried out. If so, the requirement will be described in such a way as to enable changes to the specifics of the requirement to be made without the need for changes to the specification or to enable Axios to have considerable influence over the specifications of that requirement.

To assist the customer in its planning and budgeting of the project, Axios will classify each requirement in the specification in accordance with the scheme of classification described in "Quotations". Axios may do so even if it is commissioned on a casual basis or if a quotation is not given. The customer is advised to familiarise itself with the implications of each classification.

A copy of this specification document will be provided to the customer for its confirmation. The customer shall notify Axios of any amendment(s) to this document. If Axios agrees to the amendment(s), it will issue an amended specification to the customer for the customer's confirmation.

Once the specification is confirmed by the customer, its contents constitute part of the terms of the agreement between Axios and the customer. This is so even though at the time the customer's confirmation is sought, some information that is relevant to the project may not be available and as such, is omitted from the specification. The parties agree to document and confirm such information if it is reasonable for them to do so, as soon as it is practicable for them to do so. Until then, the parties agree to treat the specification as if it is complete. Once the omitted information is documented by Axios and confirmed by the customer, the parties agree to treat this information as part of the terms of their agreement at the time confirmation of the specification is initially made by the customer.

Design, Prototyping and Proof of Concept Work

The design process involves analysing requirements and breaking them into functional jobs for developers. These may be in the form of screen designs, database schemas, navigation maps and/or detailed technical directions from a senior designer/developer to other development team members.

Where creative content such as screen designs and navigation are included, there are often mock-ups or prototypes developed for approval by the customer. In a quoted project, the cost will include one set of designs and potentially minor revisions. A review meeting is then held and if the customer wishes to modify the design significantly, additional charges apply. Specific creative design requirements should be specified by the customer during requirements gathering to minimise any such rework.

If the proposed project involves significant technical challenges, then a proof-of-concept will be developed by a senior developer before the project progresses. This ensures that technical risks are not carried forward into later stages of the software development. Axios reserves the right to cancel a project and bill any time spent on a casual basis if a technical challenge cannot be overcome during a proof-of-concept stage prior to full-scale development commencing.

Development

During the development stage, a senior developer is responsible for reviewing jobs, adding any technical and design detail, and selecting appropriate technologies and solutions for complex technical issues that may arise. For smaller projects the senior developer will also complete the development work. If the project is of a sufficient size, tasks may be assigned to additional team members including junior developers at their respective rates.

At the customer's election or upon Axios' recommendation, mission critical projects or projects that span many months will have several developers at any one time. This reduces delays due to staff unavailability and provides risk management for the project. The costs associated with orienting several developers or "ramping up" project resources are payable by the customer. Axios is responsible for this cost if a staff member is replaced.

Testing and Debugging

Testing and debugging are an integral part of software development; it is important to dispel the myth that software can be developed "bug free" if only a developer had more knowledge or experience. Software development involves writing thousands or hundreds of thousands of lines of code and even with a low error rate, bugs are introduced. Consider the analogy of editing a book – this is simply part of the overall cost of production.

In order to ensure that bugs have little or no impact on final software releases, testing is the responsibility of both Axios and the customer (see "Customer Acceptance" and "Customer Involvement" for more information).

Axios may release interim alpha or beta releases (see "Software Releases") to facilitate such testing and, if the software is commissioned through a quoted arrangement with Axios, this will be accounted for under the quotation. Additional interim releases required by the customer for demonstration purposes, or additional testing required by the project team due to a lack of customer involvement, can lead to additional fees.

Under a quoted arrangement, allowance will be made within that quotation for testing and bug fixing within the acceptance period (see "Acceptance Period" for more information). All fixing work required outside the acceptance period are billable casually to the customer. In a casual cost charging arrangement, all testing, debugging, acceptance and change control work are billable on an hourly basis as they are core aspects of releasing a high quality software product.

Axios will coordinate releases (see "Software Releases") based on information and testing that are in part carried out by the customer. It is at all times the customer's responsibility to ensure that a finished product is both suitable (meets requirements) and is fit (of appropriate quality) for the purpose for which it was developed, before the software is used in any production environment or on any critical data. Until a production release is certified by the customer or is deemed to have been accepted by the customer (see "Customer Acceptance"), the released product is at alpha or beta stage and should be used for demonstration or testing purposes only.

Implementation

Implementation is the process of taking a production release of a software project and either installing it in a production environment (typically for business systems or online services) or developing and handing over an installation package (for a software product).

The term implementation may also refer to installing a system on to a test environment for demonstration or testing purposes if that release is an alpha or beta release.

Where implementations are required within a quoted arrangement and such implementations are described in the specification document, they will be included in the quoted price. All additional tests or demonstration implementations requested by the customer, or any implementations required under a casual charging model, are billable casually to the customer.

Performance Testing and Optimisation

Where a software project involves complex database requirements, new technologies, unusual or legacy hardware configurations, or interfacing to external systems, some performance tuning may be required. Systems where many changes have been introduced from the original design, or where the system has more than the anticipated number of concurrent users, are also particularly prone to suffering minor performance issues once they go into production use.

Performance tuning during the acceptance period is included as part of the pricing in quoted arrangements but additional fees will apply if the performance tuning is conducted outside the acceptance period. If Axios is commissioned on a casual basis, all work performed during performance tuning will be billed casually on a time basis.

Customer Acceptance

A software release must not be used as a production release (in a live environment or on critical data) until it has been formally accepted by the customer. Acceptance involves the customer certifying that it has tested the software and found it suitable and fit (of appropriate quality) for use in a live environment taking into account any risks that may exist.

For casual projects, the acceptance period commences when Axios hands over a beta version and ends when the customer accepts the beta version for production usage. The customer is advised to complete acceptance within a reasonable timeframe (four to six weeks) to minimise disruption to the project. The customer will be billed casually for all work that is carried out during the acceptance period, including any work that is carried out to rectify any defect or non-compliance with the specifications of the commissioned software described in the specification document. Where acceptance is not given and no new work is communicated within 12 weeks, the project may be archived. Additional costs may be charged to retrieve projects from archives, re-orient team members or allocate resources.

For quoted projects, the acceptance period is six weeks from the beta release date during which time the customer must test the software and report any non-conformities to the project manager.

Where the non-conformity is a defect or the software does not meet the agreed specifications, these will be fixed without additional charge to the customer within the acceptance period. Where any

agreed specification does not meet the customer's requirements (and therefore neither does the software), work carried out to change the specification and software will be billable casually, in addition to the quoted price. This distinction is made because it is the customer's responsibility to ensure the specification meets the customer's requirements prior to development commencing (see "Requirements Gathering and Specification Document").

Once all non-conformities have been reasonably addressed, the customer will be deemed to have formally accepted the software and Axios will release the production version of the software to the customer. From the date the software goes into production, the customer has six weeks to report any performance-related non-conformities. These issues will be rectified without additional charge if the software is not performing within defined expectations.

The customer will be deemed to have accepted the version of the software that has been released to the customer if it does not notify Axios of any issues arising from that software within the acceptance period. In this case, Axios may at its option decide to proceed with the remaining phase(s) of the project and the customer will be liable to pay Axios for its charges on the remaining work.

If during the acceptance period the customer does not meet their obligations under these terms (including appropriate involvement with the project, testing and paying all invoices on time), the acceptance period will be deemed to have been waived/forfeited by the customer and any rework will be billable casually to the customer.

Any remaining acceptance period will also be waived if changes to the documented specifications of the software are initiated by the customer for development before the end of that acceptance period.

The acceptance process ensures the final product has been well tested and that any changes thereafter can be better planned and implemented on a finished product of a known quality.

In some cases customers may request that development be carried out quickly or changes be made to the original specification before a quoted phase has been completed and gone through acceptance. Axios is generally flexible in such situations (but see Axios' option to agree to carry out such changes in "Quotations") but cannot take financial responsibility for potential quality issues that may arise from this development strategy. By undertaking any expedited development timeframe, avoiding proper testing or release schedules, or waiving the acceptance period, the customer is acknowledging that work in addition to work that had been quoted, may be necessarily taken by Axios to affect the changes. In addition to such additional time, the customer will be charged casually for any debugging or performance tuning required from the point when the acceptance period is waived. If Axios agrees to carry out such changes and if such changes result in a cost saving for the customer, Axios will pass on that cost saving to the customer.

Project Management

All projects undertaken will be assigned an Axios project manager. The project manager is the primary point of contact for any feedback, new ideas, change or support requests unless the project manager nominates another team member to carry out some of these tasks.

In a quoted project the project manager's time is included in the price. Any additional time spent consulting with the project manager about future development work, changes to requirements or support incidents that turn out to be user and not software issues are chargeable casually.

Documentation

Axios produces documentation and/or artefacts for the software we are commissioned to develop. This is largely internal documentation and, while it is owned by the customer upon project completion, it is not generally of a form that is understandable by a layperson.

As a minimum, Axios will produce the following artefacts during the development process:

- The specification document.
- Internal design notes such as screen designs, database schemas and technical instructions for the development team.
- Testing notes for the QA team and any required user acceptance notes.
- Job and progress reports.

Any additional documentation required by customers will be charged at standard rates or, in the case of a quoted project, will be built into the cost if agreed in the scoping stage. Such documentation may include:

- Detailed requirements analysis and business process documents.
- Software design documentation.
- Technical specifications.
- Project management plan.
- Comprehensive test documentation including a test plan, test cases and user scenarios.
- User manuals or references, training material or online help.
- Reporting, such as feature and requirements coverage or test executions.

Resourcing

Where a quotation, estimate or budget indicates what can be achieved within a certain timeframe, this begins from the point when resources are allocated and not from when the quotation or estimate is given. Axios will not allocate resources until our next resourcing meeting (typically monthly) after customer confirmation and a purchase order is received. The allocation of resources is done on a first-in basis.

It is advisable that customers confirm as soon as possible, and certainly before the beginning of a new month when the project or applicable stage of the project is to commence, if time is of the essence.

Customer Involvement

Customers should be actively involved in their project and take a share of the responsibility as it is being developed. At the very least, the customer is expected to:

- Provide clear and precise requirements and not make any assumptions about what Axios "ought to know" about the customer's business or users.

- Provide a project manager with the authority to make decisions regarding questions raised or clarification required, product testing, coordinating support requests and final acceptance.
- Adhere to change control and other procedural guidelines used by Axios.
- Give timely answers to any questions raised or any testing required.
- Allocate a contingency budget for further enhancements based on the likelihood of new requirements or changes emerging during development.
- Pay invoices within any agreed payment terms.
- Provide feedback and information regarding areas of possible improvement to Axios on a regular basis.

Axios manages roles and responsibilities within our organisation so that the customer can rely on the information they are given. We will assume that customer staff who give directives against work being carried out are authorised to do so, unless we have a written advice to the contrary. If any directives result in casual work being undertaken by Axios in good faith, then the customer is responsible for payment under these terms.

Build and Platform Technologies

Axios builds its software using industry standard technologies such as ASP.NET and Microsoft SQL Server. These technologies are designed to run on server platform technologies such as Windows Server with Internet Information Services and client technologies such as Windows and/or within browsers such as Internet Explorer. Building within these technologies gives the greatest access to common tools, expert resources and support, and it builds on the scalability of these technologies.

Axios cannot be held responsible where one of these third-party technologies or platforms introduces downtime or additional development requirements. As these technologies evolve (such as new browsers being released, Windows updates etc) Axios may need to perform new testing and/or make minor changes and this time is billable casually to the customer.

Where Axios has used component suites or any other third-party tools during the development process, these tools may need to be updated if later subsequent development phases are contemplated. Any time applying such updates is billable to the customer, in addition to any quoted time.

Change Control

Change control is the process where software changes are requested, their impact and cost is agreed and, if approved, they become part of the new specification for work to be completed. Typically changes are requested either as new requirements are identified, as a result of level 3 support requests (see "Support"), or as a result of testing or work carried out to comply with new platform or browser technologies.

Requesting changes will invalidate any estimates or quotations in place and may affect the deliverables possible when working within an agreed budget.

Unless instructed otherwise, Axios will assume that when working to a budget, the customer's monthly budget for that project, as initially proposed to and agreed by Axios, will remain unchanged

as this will assist Axios in its planning for that project. If the customer makes a request for other additional work which will require additional unbudgeted time and where it is not clear whether existing work or those requested changes should receive priority, Axios may call upon the customer to make any such clarifications.

When working on a quoted project the customer should, if possible, request changes after a completed milestone and acceptance period. This preserves the correct development process and allows the impact of changes to be assessed from a finished and tested state. In some cases this is not possible, in which case the customer will be charged casually for any debugging required for initiating changes mid-development (see "Customer Acceptance").

Changes to casual projects are not usually an issue because Axios is in constant consultation with the customer and largely working under their direction.

The customer must consult with Axios' project manager regarding any proposed changes. If the proposed changes are feasible, the changes will then be recorded either by the customer or by the project manager. In any case, the customer must confirm in writing the changes that are to be made. Time spent by Axios in its consultations with the customer, in recording changes that are to be made and in clarifying written instructions for changes are casually billable.

Support

Axios divides support activities into three levels:

- *Level 1* support involves walking users through a list of common questions and solutions.
- *Level 2* support deals with issues that require problem solving by an experienced user of the application.
- *Level 3* support is where requests can be escalated to a developer and typically involve software bugs or changes (see "Change Control").

While Axios can provide all three levels of support, it is far more cost effective for customers to have internal users providing level 1 and level 2 support. As a result of the customer's involvement during the project's development, most would have at least one staff member with the necessary capability.

When Axios provides a quote it will typically include level 3 support within the acceptance period, and minimal "train the trainer" sessions to orient one of the customer's staff members to provide level 1 and level 2 support. Additional customer training costs are charged casually to the customer along with level 1 or level 2 support provided by Axios.

General Terms and Definitions

Agreement

If accepted by the customer, the following will collectively constitute the terms of an agreement between Axios and the customer:

- these terms, subject to any amendments thereto that are made prior to the commencement of the agreement which are published by Axios at its website;
- all amendments to these terms that are made after the commencement date, that have been made in accordance with these terms;
- the content of all documents that are subsequently prepared in accordance with the applicable terms.

The customer is deemed to have accepted the aforesaid terms if it is presented with this document or is directed as to how a copy of this document may be obtained, and subsequently continues to seek the services of Axios. Without prejudicing the effect of the preceding part of this paragraph, Axios may, at its option, provide a copy of this document for the customer's execution if the customer continues to seek the services of Axios.

Notwithstanding this, if any document or part of a document that is to be prepared in accordance with these terms:

- has not been prepared and/or agreed upon by the parties; or
- is unenforceable,

that document or that part of the document will be severed from the agreement between Axios and the customer and will not affect the enforceability of the remaining terms of their agreement.

Commencement and Ending of Agreement

The agreement between Axios and the customer:

- effectively commences at the time the customer makes its initial consultation with Axios regarding a project; and
- ends without terminating accrued or continuing rights and obligations if:
 - either party exercises its right of termination under the agreement and does so in accordance with the terms of the agreement;
 - by application of any term of the agreement, the agreement ends; or
 - the project is completed in accordance with the terms of the agreement.

Completion Timeframes

Axios will make every effort to deliver work within agreed timeframes. Due to the nature of the work, the interdependence on the customer and potentially other third-parties, Axios cannot guarantee that work will be completed on any date. As such, all dates provided by Axios are time estimates only and the customer is not entitled to withhold payment of any invoiced amount if Axios fails to meet any date indicated by it or the customer. The customer should advise Axios if a project

or if a certain phase of a project is time critical. In this case, Axios will endeavour to satisfy the customer's time expectations but not warrant that this be so.

Software Releases

When software is made available to a customer it is done so as an alpha, beta or production release. Each of these releases has a specific purpose:

- An *alpha* release is used to demonstrate partially completed or untested functionality and to obtain feedback.
- A *beta* release is either complete or has entire sections complete that have undergone basic testing by the developers. Beta releases are often released to the customer for internal testing but should never be sold or used in production or on critical data.
- A *production* release has been through testing by Axios and the customer, and has been certified as suitable and fit for purpose by the customer. Production releases are ready to be sold or used in a live environment

It is important to understand that a production release may not be "bug free" – it has simply gone through appropriate testing to deliver a product of appropriate quality as certified by the customer for the purpose it will be used.

Fees and Disbursements

With the exception of time given free of charge in an initial meeting (see "Initial Correspondence and Meeting") the customer should assume that all time spent by Axios on a project is billable under Axios' standard rates (either casually or included in a quote).

Axios charges for consultation time and time spent on all aspects of the software development lifecycle, including testing and debugging, support and any travel or associated travel preparation.

Fees are calculated by time logged against each job rounded up to the next billable increment on a per person, per job, per day basis.

All reasonable expenses incurred by Axios in the commission of work, including travel, accommodation, third-party consultants (if these are to be engaged by Axios on behalf of or as agent for the customer) and development tools, are to be reimbursed by the customer along with any handling fees.

The job, milestone and project sub-totals and an overall total are presented in a project report included with each Axios invoice. All fees quoted by Axios are exclusive of GST unless stated otherwise.

Invoices and associated project reports are rendered either monthly or upon completion of agreed milestones, whichever comes first, at Axios' discretion.

Deductible Gift Recipients

Axios may, at its option, offer to make a donation of up to 10% of the GST exclusive amount of its invoiced fees to any deductible gift recipient if Axios is commissioned by such a deductible gift recipient to carry out work which is expected to take in excess of 150 hours for completion. This

offer relates only to services provided personally by Axios and does not include disbursements to third-party supplier of goods and/or services.

Full fees are charged up front, and if a donation is offered, the donation is made upon completion of the project or a specified milestone, provided that all terms of engagement are adhered to (including meeting all payment terms on time).

Discounts

Axios does not offer volume discounts to customers, however, with large projects some work can generally be completed by junior staff which reduces the average hourly rate.

Payment Terms

Unless otherwise agreed upon in writing, all Axios invoices are payable within 14 days.

Axios may require a deposit which must be paid and cleared before work is actioned.

Axios strictly enforces payment terms and may charge the late payment fees described in Schedule 1 without notice for any account that is overdue. Axios will also charge interest at the rate described in Schedule 1 for any account more than 21 days past its due date and may appoint a collections agency to collect such debts. The customer will be liable to pay the charged interest, all costs relating to the recovery of the customer's debt(s) charged by the collections agency, and all costs, losses and expenses that arise out of the customer's failure to satisfy its debt(s) that are incurred or which are to be suffered by Axios.

If the customer disputes the whole or any portion of the amount claimed in an invoice submitted by Axios, the customer shall pay the portion of the amount stated in the invoice which is not in dispute and shall notify Axios in writing (within 7 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then the customer shall pay the amount finally resolved together with interest on that amount in accordance with the terms of payment set out in this document.

Intellectual Property

It is important that Axios' customers understand the ownership of intellectual property surrounding the product that Axios creates and what they own once their project is completed and payment has been settled.

Axios may create intellectual property during initial consultation with a customer. If such consultations do not result in our engagement, Axios retains ownership of all such IP. All customer IP remains the property of the customer and is subject to the confidentiality provisions in these terms.

When commissioned to create documents, electronic content, designs or software products, Axios may use any combination of background IP, third-party IP, customer IP and foreground IP. If Axios uses customer IP, the customer is deemed to have agreed to the use of such IP by Axios for the purposes of the commissioned project. All third-party IP used by Axios for a commissioned project will be licensed to Axios for this purpose.

Axios creates commissioned projects on behalf of the customer and, subject to payment of all invoiced amounts in accordance with these terms, Axios will transfer ownership of all such commissioned projects and foreground IP to the customer.

Axios may not use any commissioned projects, customer IP or foreground IP for any purpose other than that which has been authorised by the customer.

Notwithstanding the foregoing, all background IP used by Axios remains the absolute property of Axios. Unless specified otherwise, Axios grants the customer a perpetual, non-exclusive, fee-free licence to use, copy and modify the background IP for the purposes of the commissioned project. Third-party IP may form part of commissioned projects and the customer agrees to adhere to all terms of use of such third-party IP. The customer may request from Axios a copy of such terms. Furthermore, the customer may not isolate or use separately from a commissioned product any background IP or third-party IP.

Confidentiality and Use of Information

All confidential information disclosed by either party must remain confidential and must not be used for any reason other than for which it was disclosed.

Unless otherwise explicitly agreed in writing, Axios reserves the right to:

- Disclose information required to orient new staff members or external contractors for the purposes of working on the customer's project.
- Disclose information to professional advisers such as our accountant, lawyer, financial planner or banker.
- Publish Axios' involvement in the project, with or without naming the customer on Axios' website or similar marketing material, as long as any such content does not disclose any commercially sensitive material.
- Perform credit checks of any customers to establish levels of work that can be completed without pre-payment.
- Disclose any information required by law.

Axios may send unsolicited e-mails if it believes in good faith that the customer may benefit from the information provided. A customer's request to receive no further unsolicited e-mails will be honoured.

Archiving

Axios maintains common project archiving and backups to protect against data loss. Archiving is completed automatically and data is stored in encrypted files. Whether a project is contemplated and not commenced, in-progress or completed, there may be data relating to that project in the common archive files.

Where a customer requests project records to be returned or destroyed, this generally does not include Axios removing data from common archive files. This information may be removed at the request of the customer and a fee will be charged.

Exclusions, Limitation of Liability and Indemnity

Axios excludes:

- from this offer all conditions, warranties and terms implied by statute or general law or custom, except any non-excludable condition;
- all liability to the customer in contract or equity for consequential damages arising out of or in connection with this offer even if Axios knew they were possible, or they were otherwise foreseeable;
- all liability to the customer in 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 arising out of or in connection with this offer;
- all liability to the customer for any inability on Axios' part to make any supply in accordance with any timeframe estimated by Axios or which is imposed by the customer without Axios' express and written agreement;
- all liability to the customer due to any extraordinary risks relating to a project which the customer has not notified Axios in accordance with the terms of this document; and
- all liability to the customer due to any third-party claim

and the customer accepts these exclusions by releasing Axios from such liabilities.

Axios' liability to the customer for breach of:

- the warranty given hereunder; or
- any other express provision of these terms or any non-excludable condition (except a non-excludable condition referred to below or one implied by section 69 of the Trade Practices Act 1974 (Cth))

is limited at Axios' option, to any one of: supplying, replacing or repairing the goods or supplying again the services, in respect of which the breach occurred; or refunding the sum of all amounts paid by the customer for the goods or services, if such goods or services are provided personally or directly by Axios. For goods and services that are not supplied personally or directly by Axios, the customer will rely on the warranties (if any) that are provided by or which implied warranty obligations may be attributable by statute to the third party supplier.

The limited warranty contained in this clause:

- is subject to the customer having fully complied with its obligations under these terms;
- is not a warranty that the performance of the subject of the commissioned project or the information that may be generated from the use of the commissioned project will accord with the customer's own expectations (if such expectations are not described in the specification document or have not been agreed upon by Axios in writing);
- is not a warranty that the information generated by the subject of the commissioned project will be error free;
- does not operate where the subject of the commissioned project fails to perform substantially in accordance with its specifications because of:

- improper installation by the customer or any of its employees or contractors other than Axios;
- the inappropriateness or failure of the equipment on which the subject of the commissioned project is installed or of any software or materials not personally or directly supplied by Axios; or
- events which are beyond the reasonable control of Axios, including corruption of the subject of the commissioned project by viruses, spyware, the effects of any third party software, operator error or negligence.

If the customer is a consumer as defined under the Trade Practices Act 1974 (Cth), Axios does not exclude or limit its liability to the customer for breach of any non-excludable condition in respect of goods or services of any kind ordinarily acquired for personal, domestic or household use or consumption.

Notwithstanding the above releases and limitations, Axios will maintain professional indemnity and public liability insurance at all times to a value of at least \$1M.

The customer is responsible for notifying Axios if the project could expose the customer or Axios to extraordinary risk, or if there is a risk of third parties claiming damages should the project incur delays or be faulty and this exceeds \$1M. Where such notification has not occurred in writing, the customer releases and indemnifies Axios against all amounts claimed which in total exceeds \$1M, regardless of whether Axios is insured for a higher amount or not at the time of the claim.

Where such risks are identified by the customer and additional insurance is required, Axios may pass on part or all of this expense to the customer.

Subject to the exclusions described above, each party indemnifies the other against any costs, losses, expenses, claims or threatened claims (including costs associated with defending such claims) that arise out of the first party's breach of these terms, or out of any wilful, neglectful or negligent act or omissions by that party.

Conflict of Interest

To avoid any conflict of interest, Axios will not accept instructions to simultaneously engage in multiple projects from different customers that compete with each other. Notwithstanding this, Axios reserves the right to accept instructions from a customer who is a competitor of another customer if the project for that other customer has been completed and has been handed over to that customer for a period of at least a year.

If Axios believes that accepting a particular project will potentially conflict with our core services for other customers or potential customers and result in a broad exclusion of work from such customers or potential customers, Axios may by negotiation with the customer, charge a premium on its hourly charge out rate for that project or decline to accept work which relates to certain parts of the project.

Additionally, in any circumstances where Axios is called upon to supply hardware or third-party software as part of a project, our wholly-owned subsidiary Indigo Business Computer Services Pty

Ltd will be our default supplier of choice. Axios is happy to engage in wider quote gathering at the customer's request and any time spent doing so will be billable casually to the customer.

Warranty

Other than the expressed warranties described hereunder, Axios makes no other warranties to the customer.

Axios warrants that the commissioned software as described in the specification document will perform substantially in accordance with its specifications for a period of 90 days after the final version of the software is released to the customer. For all other services, Axios warrants that the work that it has been commissioned to carry out will substantially satisfy the agreed and written requirements of the customer for a period of 90 days following completion of the work, subject to any exclusions and risks which Axios brings to the customer's attention in writing.

Fair Usage

Axios may, at its discretion, offer to the customer free usage of certain services and equipment such as remote access to our servers, test sites, on-line training and loan equipment. Axios may withdraw or limit such usage at any time.

The customer will be liable for any damage to loaned equipment and for any losses incurred by Axios due to unreasonable or unauthorised usage.

Assignment

Neither party may assign its rights or obligations under these terms without the consent of the other party.

A change in the ownership structure or management structure of a party which has the effect of changing the person or persons in effective control, will be deemed an assignment for the purposes of these terms.

Title and Risk

Ownership of any goods procured by Axios as part of a project for a customer, along with the ownership of any created works, remains with Axios until all fees are paid. Once such fees are paid, full title and any associated risk will pass to the customer.

Review of Terms and Rates

Axios periodically reviews its terms to make sure that they are clear and establish effective common expectations between Axios and the customer.

For all casual projects, Axios may review and amend the terms on which it is commissioned at any time upon written notification to and approval by the customer. The customer is deemed to approve the amended terms if it continues to seek the services of Axios following notification.

For all projects where a quotation had been given but which had not been accepted by the customer, Axios may review and amend the terms on which the quotation is made at any time upon written notification to the customer.

For all other projects:

- Axios may make changes that clarify existing terms or add to the business efficacy of the terms so long as those changes fairly and reasonably take into account the interests of both Axios and the customer. Any such changes come into effect 30 days after they are published on Axios' website. Such changes may affect budgeted projects and quoted projects.
- Axios may also make one change to its rates per year, to come into effect on the 1st of July immediately following the end of Axios' financial year, as long as the change does not exceed a 10% rise in its rates. This will have an effect on the amount that is payable by the customer to Axios, if the customer has received a quotation from Axios and the customer's project extends beyond the end of a financial year or requires ongoing support. All quotations are based on hours of work and not rates as detailed in "Quotations" and the customer is required to plan for any such minor rate changes if this applies to the customer. It will also affect projects where monthly budgets are in place and these extend beyond the end of a financial year.
- The customer will be notified directly of any change that affects a quoted or budgeted project pursuant to the terms above.

Force Majeure

A party will not be liable for its inability to perform obligations under these terms if its inability to do so is a direct consequence of an act of God, national emergency, war, prohibitive government regulations, labour dispute, act of terrorism or any other cause beyond the party's reasonable control. If such a force majeure event occurs, the party suffering it will notify the other party of the occurrence and expected duration of the event. The party suffering the force majeure event must use all reasonable endeavours to perform its obligations under these terms. If a force majeure event renders performance of an agreement between Axios and the customer impossible for a continuous period of at least three months, either party may by notice to the other terminate their agreement. A termination pursuant to this clause will not prejudice the parties' rights or remedies which arose prior to the termination.

Governing Law

Despite any contrary rule or implication of law, all contracts between the customer and Axios shall be deemed to be made in South Australia, pursuant to South Australian laws. Any dispute resolution procedure will take place in South Australia.

Termination

Without limitation to or prejudice to any right or remedy which a party has under common law or statute, Axios may at its discretion immediately terminate its agreement with the customer by notice to the customer if:

- the customer breaches a term of the agreement and if the breach is capable of remedy, fails to remedy the breach within 14 days of receiving a notice from Axios specifying the breach and requiring it to be remedied;
- the customer is presumed insolvent within the meaning of section 459C(2) of the Corporations Act 2001, is placed into liquidation, has an administrator or a receiver or

manager appointed or a mortgagee takes possession of any substantial assets of the customer or if any proceedings are issued or an event occurs intended to lead to any of those consequences or if any other action relating to insolvent debtors occurs in relation to the customer or if the customer ceases to carry on its existing business;

- any final judgement is entered against the customer for a sum of not less than \$20,000 and is not satisfied by the customer within 14 days of being entered; or
- the customer commits a serious criminal offence.

If Axios terminates its agreement with the customer, for any one or more of the reasons described above, the customer remains liable to pay Axios for all work which have been completed up to the date Axios terminates the agreement and to indemnify Axios for all costs, losses, expenses, claims or threatened claims arising out of attempts by Axios to recover any debts owed to it by the customer.

If Axios exercises its option not to terminate its agreement with the customer for any breach by the customer, upon notification by Axios that it intends to do so and to the extent possible, Axios will commence work to rectify problems that have arisen because of the customer's breach and such work will be billable casually to the customer as additional charge(s). The customer will be deemed to have agreed to such work being carried out by Axios.

In addition to termination in accordance with the terms described above, the parties may terminate their agreement in accordance with the terms described under the headings "Casual Services", "Budgets" and "Quotations".

Waiver

The failure by one party to insist upon strict performance by the other party of any of the terms of the agreement will not be deemed a waiver of any term or of a breach by the other party of any term of the agreement. A waiver of any term of the agreement by a party must be in writing, executed by that party or by one of its duly authorised officers or legal representative.

Survival of Agreement

Subject to any provision to the contrary, Axios' agreement with the customer shall inure to the benefit and be binding upon the parties and their successors, trustees, permitted assigns and receivers but shall not inure to the benefit of any other persons.

The covenants, conditions, and provisions of Axios' agreement with the customer which are capable of having effect after the expiration or termination of that agreement shall remain in full force following the expiration or termination of that agreement.

Costs

Each party will bear its own cost in respect of the preparation of this document and all other documents which are contemplated by the terms of this document.

The defaulting party will pay all costs and losses incurred by the non-defaulting party in consequence of any breach by the defaulting party of any term of the agreement (but without limit to any other rights or remedies which the non-defaulting party may have as a result of that breach).

Severance

Any part of the agreement between Axios and the customer that is unenforceable will be severed from that agreement and will not affect the enforceability of the remaining parts of that agreement.

Dispute Resolution

The parties must follow the following procedure to try to resolve disputes arising under their agreement or any claimed breach of their agreement.

The complainant must tell the respondent in writing:

- the nature of the dispute; and
- what outcome the complainant wants; and
- what action the complainant thinks will settle the dispute.

The parties must then try to agree on how to resolve the dispute.

If the parties cannot agree within 14 days following the notification described above, the parties will refer the matter to a mediator. If the parties cannot agree on a mediator, any party may ask the President of the Law Society of South Australia from time to time (or his nominee) to appoint a mediator. The mediator may decide on the time and place for mediation. The parties must attend the mediation and try to resolve the dispute. The parties are equally liable for the costs of mediation, unless they agree otherwise. The parties must pay for their own costs of attending the mediation. All discussions for the purpose of mediation are without prejudice. In the event that the dispute is not resolved within 14 days of the appointment of a mediator, or any other period agreed by the parties in writing, the mediation ceases. The role of the mediator is to assist in negotiating a resolution of the dispute. The mediator may not make a decision that is binding on a party unless that party's representative has so agreed in writing.

If the parties are unable to resolve the dispute through mediation, they must refer the dispute to arbitration in accordance with the Commercial Arbitration and Industrial Referral Agreements Act 1984 (SA) for the conduct of commercial arbitrations by one arbitrator chosen by the parties or if they cannot agree, by the Institute of Arbitrators and Mediators Australia. Each party must bear its own costs of complying with this clause unless a binding decision of the arbitrator states otherwise.

A party may apply to court for urgent injunctive relief. Otherwise, a party will not commence court proceedings in connection with any dispute under or in relation to the agreement between Axios and the customer unless the above procedure for dispute resolution has been complied with.

Interpretation

- A. "agreement" means the agreement between Axios and the customer; and "terms" means the terms of that agreement or the terms described herein, as the context requires.
- B. "Axios" means Axios IT Pty Ltd ACN 114 708 753 of Level 2, 40 Greenhill Road, Wayville, SA 5034.
- C. "background IP" means all intellectual property created by Axios as a tool to aid in the production of commissioned projects.

- D. "complainant" means the person who starts the procedure described under the heading "Dispute Resolution".
- E. "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.
- F. "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.
- G. "customer IP" means all intellectual property which a customer authorises Axios to use for the production of commissioned projects.
- H. "deductible gift recipient" means a customer that is a fund, authority or institution which is listed in the Income Tax Assessment Act 1997 as a deductible gift recipient, or which has been endorsed by the Commissioner of Taxation as a deductible gift recipient.
- I. "foreground IP" means all intellectual property that are uniquely created by Axios for a specific customer project.
- J. "GST" means Goods and Services Tax imposed by *A New Tax System (Goods and Services Tax) 1999*.
- K. "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.
- L. "non-excludable condition" means any implied condition or warranty, the exclusion of which will contravene any statute or cause the clause which excludes such implied condition or warranty to be void
- M. "respondent" means the person with whom the complainant has a dispute.
- N. "specification document" or "specification" means the document that is to be prepared by Axios in consultation with the customer, described in "Requirements Gathering and Specification Document".
- O. "third-party IP" means all intellectual property which are licensed to Axios for the purposes of producing commissioned products.

Schedule 1 – Rates and Charges

The following are the standard fees and charges applied by Axios commencing 1 July 2010.

Rate	Description	Cost	Billable Increment
Rate 1	Standard rate	\$150.00/hour	0.25 hours
Rate 3	Discounted rate applied to junior staff working on a major project	\$95.00/hour	0.5 hours

Additionally the following charges are applicable to Axios' services:

	Description	Charge
Handling Fee	Axios will add this fee to any expenses Axios incurs on the customer's behalf	4%
Reminder Fee	Billable to the customer in the event that a second reminder email/notice is sent (typically at 7-days overdue)	\$40.00
Recovery Fees	Axios will refer any customers with accounts more than 21-days overdue to our collections agent who will levy fees as a percentage on top of Axios' invoice. Axios will additionally charge interest.	Approximately 15% of the amount owed, as determined by the collections agency, plus 1% of the amount owed per month interest