

Master Services Agreement

1. PURPOSE OF DOCUMENT

- 1.1 The terms and conditions of this Master Services Agreement governs every Agreement (from the effective date stated below) for the supply of Services by ARKANCE to the Customer including as contemplated by any SOW or Service Schedule.
- 1.2 ARKANCE is not bound by any terms of purchase of the Customer or any other conditions which the Customer seeks to impose on, or that purport to apply to, the supply of Services by ARKANCE, unless and to the extent only that they are expressly stated and agreed in a SOW signed by ARKANCE.
- 1.3 The Customer agrees that the submission to ARKANCE, signing or acceptance of a SOW by it or requesting ARKANCE to supply Services constitutes acceptance by it of the terms and conditions of this Master Services Agreement.

2. ORDERING

- 2.1 If the Customer wishes to order any Services, it will notify ARKANCE of the particular Services it requires and may request that ARKANCE prepares a SOW.
- 2.2 Upon acceptance of such a SOW by the Customer (if so capable of acceptance) or acceptance by ARKANCE (as the case may be in accordance with its terms or the particular circumstances) such SOW shall incorporate the terms and conditions of this Master Services Agreement and together with any relevant Service Schedule mentioned as well as the Master Definitions + Interpretation Schedule and any other documents contemplated by clause 3 form a separate contractual Agreement between the parties.
- 2.3 A SOW must be signed by ARKANCE and the Customer to be valid.
- 2.4 Subject to compliance by the Customer with its obligations, ARKANCE shall perform the Services and provide relevant other Deliverables in accordance with the signed and accepted SOW.

3. ORDER OF PRECEDENCE

- 3.1 Subject to clause 3.2, if there is any inconsistency between clauses 1 to 31 of this Master Services Agreement, any SOW any Service Schedule and any other documents referred to in the Agreement of which this Master Services Agreement forms part or any of them, that inconsistency will be resolved using the following order of precedence:
 - (a) the relevant SOW;
 - (b) the relevant Service Schedule(s);
 - (c) clauses 1 to 31 of this Master Services Agreement;
 - (d) the Master Definitions + Interpretation Schedule; and
 - (e) any other documents referred to in the Agreement of which this Master Services Agreement form's part.

- 3.2 The parties may agree to disapply or vary the above provisions with respect to precedence or any clause in a contractual document. However, in order to do so the relevant SOW or other document must expressly identify the inconsistency, disapplication or variation, call it out by reference to this clause 3.2 and detail any conditionality or limitations in respect of the application of relevant contractual provisions. The purpose of this clause 3.2 is to ensure flexibility with respect to the ability of the parties to agree provisions that may differ in effect from the contemplated provisions in clauses 1 to 31 of this Master Services Agreement or as otherwise contemplated by clause 3.1.

4. TERM

- 4.1 The relevant term or duration of the Agreement and pertinent obligations under it shall be specified in the Agreement and commence from the Effective Date, unless the contrary is stated in the Agreement, or the context contemplates otherwise.
- 4.2 The obligations under the Agreement shall subsist (subject to any contrary provision or continuing terms) until its expiry or the date on which all Services specified in it have been provided to and (if required) accepted by the Customer, unless terminated earlier in accordance with the provisions of the Agreement.

5. DURATION OF SERVICES

- 5.1 A Service or the provision of any other Deliverable by ARKANCE to, or for the benefit of, the Customer shall commence on the relevant Service Commencement Date and end on the relevant Service End Date, unless the contrary is stated in the Agreement, or the context contemplates otherwise.
- 5.2 In the absence of any express statement to the contrary in the Agreement (such as for any agreed disengagement assistance or data migration Services, or Services provided for a lesser duration), Services shall automatically terminate and cease to be provided at the end of the Term of the Agreement.
- 5.3 This shall not affect the operation of clause 17.5.

6. FEES + PAYMENT

- 6.1 The Customer shall pay when due (without deduction or set-off, whether in law or in equity) all Fees detailed in or contemplated by the Agreement.
- 6.2 If Fees are not specified in the Agreement, then the applicable Standard Rates shall apply.
- 6.3 All Fees are exclusive of GST and other similar sales taxes.
- 6.4 Interest is payable on any overdue and unpaid Fees, commencing on the date the amount became overdue, at the rate per annum of 2 per cent above the RBA Cash Rate from time to time.
- 6.5 Unless specified to the contrary in the Agreement, payment is due to ARKANCE 7 days from the date of the relevant invoice.
- 6.6 Subject to clause 6.7, all Fees are to be paid to ARKANCE by direct credit to the bank account nominated by it (including by EFT or BPay), or as otherwise agreed by the parties in writing.
- 6.7 ARKANCE accepts credit card payments, but a surcharge applies, being Visa / MasterCard / AMEX (1.8%).

- 6.8 A remittance advice must be sent to the ARKANCE Accounts Department to ensure correct and timely allocation of funds, by email to the following email address: receivables-anz@arkance.world.
- 6.9 ARKANCE may in its sole discretion accept the payment of Fees in instalments upon such terms as it sees fit from time to time.
- 6.10 ARKANCE reserves the right to revoke at any time any credit extended to the Customer because of its failure to make any payment when due or for any other reason.
- 6.11 The Customer agrees to pay to ARKANCE any costs incurred by it in the collection of payment of any Invoice.
- 6.12 The Customer must also pay to ARKANCE
- (a) all applicable taxes (including GST).
 - (i) 6.13 If the parties agree a fixed price in respect of Services under the Agreement, the Customer must (if requested by ARKANCE) pay additional Fees on a time and materials basis for any additional work and/or Services requested by, or agreed with, the Customer outside the scope of work or Services contemplated, including where assumptions, dependencies, timelines, Customer responsibilities or scope materially change.
- 6.13 The Customer acknowledges that any indications as to price, approximations or estimates do not constitute a fixed or maximum amount payable for pertinent Services.
- 6.14 Fees payable may likewise be subject to assumptions as stated in the Agreement.
- 6.15 6.16 Unless otherwise stated, purchased Services, consulting days, training credits or advisory allocations must be consumed within 90 days from purchase. Unused Services may expire without refund.

7. ACCEPTANCE

- 7.1 The Customer is deemed to have accepted Services supplied when the Customer intimates to ARKANCE that the Customer has accepted them.
- 7.2 The Agreement may detail agreed arrangements in respect of the Acceptance of any relevant Services.
- 7.3 ARKANCE must submit each documentary Deliverable to the Customer for approval on or before the applicable due date.
- 7.4 Before submitting any documentary Deliverable, ARKANCE must use its best endeavours to ensure that the documentary Deliverable meets all applicable acceptance criteria as may be agreed in writing between the parties.
- 7.5 The Customer must, within 5 Business Days (or any other timeframe agreed between the parties in writing) of receiving a documentary Deliverable, review that Deliverable and notify ARKANCE in writing that either:
- (a) it accepts the documentary Deliverable; or
 - (b) it rejects the documentary Deliverable and requires reasonable amendments to the documentary Deliverable.

- 7.6 If the Customer notifies ARKANCE that it requires amendments to a documentary Deliverable under clause 7.5(b)), ARKANCE must, within 5 Business Days (or any alternative timeframe agreed between the parties in writing), prepare a revised documentary Deliverable which addresses all of the amendments reasonably required by the Customer.
- 7.7 The parties must repeat the process in this clause 7 until the documentary Deliverable meets all applicable requirements specified in the Agreement.
- 7.8 For the purposes of this clause 7 document and documentary means:
- (a) any owner or user documentation ordinarily supplied with any Deliverable; and
 - (b) any reports or documentation developed and supplied by ARKANCE under the Agreement.
- 7.9 The Customer will not unreasonably withhold or delay acceptance.
- 7.10 7.10 A Deliverable shall be deemed accepted where the Customer uses the Deliverable operationally, does not reject the Deliverable within the review period or unreasonably delays acceptance testing or review.

8. DATA PROCESSING

- 8.1 If forming part of the Agreement, the Data Processing Service Schedule and the Data Processing Annexure shall apply with respect to the Processing of Personal Data.
- 8.2 In any event, the Customer acknowledges and agrees that if ARKANCE Processes the Personal Data of any person in connection with the Service provided to the Customer, the Customer is responsible for and undertakes to provide all legally adequate privacy notices, obtain all necessary consents and approvals as well as comply with all relevant laws applicable to it with respect to the Processing of such Personal Data by ARKANCE.

9. WARRANTIES

- 9.1 ARKANCE shall provide the Services with reasonable skill and care (subject to clause 11.3) and shall provide them by the time stated in the Agreement and if no such time is stated then within a reasonable time.
- 9.2 ARKANCE warrants to the Customer that it has all rights and powers necessary to enter into and perform the Agreement.

10. SERVICE LEVELS

- 10.1 Any applicable Service Levels are detailed in the applicable SOW or Service Schedule(s)) (as the case may be).
- 10.2 Service Credits may be available in respect of service levels or guarantees of that nature. To the extent offered (if at all) in the Agreement, a Service Credit is the sole remedy (excepting a right of termination) of the Customer for a failure to meet a service level or guarantee of that nature and the parties agree that they represent a genuine pre-estimate of the losses arising in respect of such a failure or breach.

11. ACCESS + DELAYS

- 11.1 The Customer must, at its own expense, provide ARKANCE with:
- (a) such access to the premises and relevant equipment of the Customer or a Customer RBC (including Permitted Operating Environment), upon application to the Customer's IT Personnel, during Business Hours as is reasonably necessary for ARKANCE to supply the Services and comply with its obligations under the Agreement;
 - (b) all information reasonably required by ARKANCE to comply with its obligations under the Agreement; and
 - (c) all reasonable assistance required by ARKANCE.
- 11.2 ARKANCE must ensure that, when accessing the Customer's premises, its Personnel shall comply with the Customer's reasonable and lawful rules in relation to workplace health and safety matters.
- 11.3 If the Customer, a Third Party service provider or any other person (not being a sub-contractor of ARKANCE acting in that capacity) causes a delay in the provision of Services then the time period for performance by ARKANCE (including any milestones) shall be extended by an equivalent period of time plus any additional period as is reasonable in all the circumstances.
- 11.4 11.4 Scheduled Services, workshops, consulting sessions, training, project activities or other booked resources may not be cancelled, postponed or rescheduled by the Customer except upon prior written notice to ARKANCE. Where the Customer cancels, postpones or reschedules booked Services: (a) more than 5 Business Days prior to the scheduled commencement date, no cancellation fee shall apply; (b) between 2 and 5 Business Days prior to the scheduled commencement date, ARKANCE may charge 50% of the applicable Fees; and (c) less than 2 Business Days prior to the scheduled commencement date, ARKANCE may charge 100% of the applicable Fees. ARKANCE reserves the right to invoice for committed Personnel time, preparation activities, non-cancellable third-party costs and reasonable remobilisation costs incurred in connection with the scheduled Services. Repeated postponement, fragmentation or rescheduling of Services by the Customer that materially impacts delivery efficiency or resource utilisation may require repricing, revised scheduling commitments or the issuance of a revised SOW or change request.
- 11.5 11.5 Where Services are delayed due to Customer inactivity, delayed approvals, unavailable resources or other Customer-caused delays, ARKANCE may revise schedules, reallocate resources, apply remobilisation charges, invoice committed effort and issue a revised SOW or change request.

12. SUSPENSION RIGHTS

- 12.1 Without prejudice to any other rights or remedies available to ARKANCE, if any Fees are not paid when due (excepting any bona fide good faith dispute) or if the Customer is subject to an Insolvency Event, then ARKANCE shall be entitled, in its sole discretion, to cease or suspend providing all or any part of any Services with immediate effect. Any resumption or reinstatement of the suspended Services, in whole or in part, will be at ARKANCE's sole discretion.

13. NO AGENCY ETC

- 13.1 Except where expressly stated otherwise, the Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

14. STATUTORY RIGHTS

- 14.1 Certain provisions of the Competition and Consumer Act 2010 (Cth) (including, without limitation, the ACL) provide consumers (as that expression is used in the ACL) and others with certain rights (collectively, the consumer guarantees) in relation to goods or services purchased by consumers.
- 14.2 Nothing in the Agreement excludes, restricts or modifies any condition, warranty, consumer guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.
- 14.3 If section 23 of the ACL applies to any provisions in the Agreement, any such provision(s) shall be void to the extent they are unfair within the meaning of section 24 of the ACL.

15. LIMITATION OF LIABILITY

- 15.1 ARKANCE does not (to the extent lawful and subject to clause 14) give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, written or oral, arising by statute, operation of law, course of dealing, usage or trade or otherwise with respect to the supply by ARKANCE of any Services in connection with the Agreement, except as expressly stated in it or any collateral pertinent document concerning warranties against defects (as may be relevant).
- 15.2 Except as expressly agreed to the contrary in the Agreement and subject to clauses 14, 15.3, 15.4, 15.5, 15.6 and 15.7 the aggregate liability of ARKANCE for breach of and all liabilities under, in respect of and in connection with the Agreement, as well as its duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or on any other basis concerning the same is limited to an amount equivalent to the Fees paid by the Customer in the last 12 months under the Agreement (calculated by reference to the date when the cause of action first arose or in the case of multiple causes of action with respect to related facts or claims then the first such date).
- 15.3 To the extent that ARKANCE has failed to comply with a consumer guarantee under the ACL which cannot be excluded, the liability of ARKANCE is limited (to the extent lawful) to, at ARKANCE's option:
- (a) in the case of goods - the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; or
 - (b) in the case of services - the supply of the services again or the payment of the cost of having the services supplied again.
- 15.4 To the extent lawful, ARKANCE shall have no liability to the Customer for, or concerning, any Third-Party Products (including, without limitation, Autodesk® Software) in respect of which the applicable terms and conditions of the Third-Party Product supplier shall apply.
- 15.5 To the extent lawful, ARKANCE shall have no liability to the Customer for, or concerning, any Customer-induced Issue.

- 15.6 In no circumstances will either party be liable to the other or its successors in title or permitted assignees for Consequential Loss arising out of, in connection with or relating to the performance, breach, termination or non-observance of the Agreement.
- 15.7 Nothing in the Agreement shall exclude or limit the liability of a party for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud, deceit or fraudulent misrepresentation; or
 - (c) any breach by the Customer of any applicable licence terms or provisions regarding ownership or licensing of IPRs.
- 15.8 Nothing in the Agreement shall be construed as an agreement to be bound by or submit to any laws or jurisdiction not mentioned in clause 30.
- 15.9 No person other than a named party may enforce the Agreement.

16. TERMINATION

- 16.1 In addition to any other express termination rights specified in the Agreement, a party may by notice in writing terminate the Agreement if the other party:
- (a) commits a material breach of the Agreement (as the case may be):
 - (i) that cannot be remedied; or
 - (ii) if capable of being remedied, it has not been remedied within 20 Business Days after a notice from the non-defaulting party requiring the defaulting party to do so; or
 - (b) suffers an Insolvency Event.
- 16.2 ARKANCE may by a notice in writing terminate the Agreement (in whole or in part) if:
- (a) ARKANCE's relationship with a Third-Party partner, vendor or licensor who provides software or other technology that ARKANCE uses or relies upon to provide a relevant Service expires, terminates or requires ARKANCE to change the way it provides the software or other technology as part of the Service;
 - (b) required in order to comply with relevant laws or requests of governmental entities;
 - (c) any Fees are not paid when due by the Customer (excepting any bona fide good faith dispute); or
 - (d) the Customer breaches a licence or the terms of use of any software or an obligation of confidence (in each case, relevant to the Agreement).
- 16.3 A termination under clauses 16.1 or 16.2 will take effect on the date when the notice is deemed to have been given under clause 23.

17. CONSEQUENCES OF TERMINATION

- 17.1 Termination or expiry of the Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to that termination or expiry (including the right to seek injunctive relief or any other remedy).
- 17.2 On termination or expiry of the Agreement, the Customer must immediately pay all Fees that have accrued prior to the termination which are due to ARKANCE. This includes any Recurring Fees and any amount payable in respect of any minimum period or duration that may otherwise extend beyond termination, or which is payable on deferred terms.

- 17.3 Subject to any applicable laws, the Customer shall not be entitled to any refund of Fees paid prior to termination of the Agreement.
- 17.4 Any indemnity or any obligation of confidence is independent and survives termination.
- 17.5 Termination or expiry of the Agreement shall not affect the continuance of any perpetual licence of software that is fully paid up for the duration of such licence unless the relevant licence provides to the contrary.
- 17.6 In the event of termination or expiry of any licence or a right of use of or access to any software, Service, hardware, documentation, materials or thing the Customer must immediately cease using the same and likewise any confidential information of ARKANCE.
- 17.7 The Customer must in such circumstances, at its own cost and expense, to the extent relevant and as may be directed by ARKANCE, return, erase or destroy all copies of such any software, documentation, materials or thing and (as may be demanded by ARKANCE) confidential information of ARKANCE. It must also certify to ARKANCE within 10 Business Days following termination that it has done so.
- 17.8 The Customer acknowledges and agrees that loss, termination or expiry of a right of use of, licence or access to any software, hardware, service, documentation or material (including any reduction of service scope) may necessitate additional work by ARKANCE or a Third Party Product vendor or licensor or other person concerning the Customer's IT which is affected by such event. This may include modifications, de-installation, re-configuration or other work as ARKANCE may reasonably determine.
- 17.9 Unless agreed in writing to the contrary, any such de-installation or modification work or Services supplied by ARKANCE or other person (including any transition out, migration, data transfer or other termination or expiry-related Services) will be supplied by ARKANCE or other person (if ARKANCE or another person so agrees or has agreed) on a chargeable time and materials basis at then applicable Standard Rates or other applicable rates (as the case may be).
- 17.10 Termination or expiry for any reason of the Agreement shall not bring to an end any provision which is expressed, needed or required to survive termination (including, without limitation, a provision in the Agreement to give effect to meaning) and such provisions shall remain in full force and effect until they are satisfied or by their nature expire.
- 17.11 For the avoidance of doubt, the following clauses of this document survive termination of the Agreement: clauses 1 (purpose of document); 3 (order of precedence); 6 (Fees); 7 (acceptance); 8 (data processing); 10.2 (service credits sole remedy); 13 (no agency etc); 14 (statutory rights); 15 (limitations of liability); 17 (consequences of termination); 19 (infosec); 20 (customer data); 22 (GST); 23 (notices); 24 (force majeure); 25 (non-solicitation); 26 (assignment); 27 (general); 29 (disputes); 30 (governing law); and 31 (definitions + interpretation), together with (unless the contrary is stated) any provisions reliant on such clauses.

18. INSURANCE

- 18.1 ARKANCE must affect and maintain during the relevant term or duration of a SOW:
- (a) professional indemnity insurance cover for not less than €10 million per annum in the aggregate;
 - (b) public liability insurance cover for not less than €10 million per annum in the aggregate; and
 - (c) workers' compensation and any other insurance required by Regulatory Requirements.

19. INFORMATION SECURITY

- 19.1 ARKANCE adopts information security controls which it considers appropriate to its business and relevant Services.
- 19.2 The Customer acknowledges and understands that any such controls are not a guarantee of information or data security and may be impacted by the activities of third persons (including of a foreign person, state or country) and the conduct of the Customer and its Personnel. To the extent lawful, ARKANCE accepts no liability with respect to information security other than to implement (as far as it is within its control) the above security controls.

20. CUSTOMER DATA + USE OF SYSTEMS

- 20.1 The Customer shall retain ownership of any data or other content or information relating to its business (Customer Data).
- 20.2 The Customer shall ensure that no Customer Data is unlawful and may not use any systems, hardware, software, Services or Deliverables made available or facilitated by ARKANCE for unlawful or immoral purposes (in any relevant jurisdiction).
- 20.3 No unlicensed software or other Intellectual Property Rights may be used on (or in conjunction with) systems, hardware, software, Services or Deliverables made available or facilitated by ARKANCE.
- 20.4 ARKANCE shall use reasonable commercial endeavours (which for these purposes includes the application of information security controls), subject to clause 19 and the Data Processing Service Schedule and the Data Processing Annexure, to keep confidential any Customer Data of a confidential nature which comes into its possession or control.
- 20.5 In any event, clause 20.4 does not apply to information that (whether before or after the Effective Date or other time):
- (a) is rightfully known by or in the possession of ARKANCE and not subject to a confidentiality obligation;
 - (b) is public knowledge otherwise than as a result of a breach of an obligation of confidentiality by ARKANCE; or
 - (c) has been obtained without any restraints as to secrecy from a Third Party and ARKANCE has no knowledge that the Third Party does not have a bona fide right to disclose the same on a non-confidential basis.

- 20.6 ARKANCE may disclose or transmit Customer Data to such persons as required by Regulatory Requirements, the rules of any relevant stock exchange, as directed or permitted by the Customer or its Personnel, for the purpose for which it is disclosed or provided (including the provision of the Services and any permitted Processing activities) and as contemplated (if it forms part of the Agreement in respect of a relevant Service) by the Data Processing Service Schedule and the Data Processing Annexure.

21. NO WAIVER

- 21.1 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

22. GST

- 22.1 If GST is imposed on a Supply made under or in connection with the Agreement, then, to the extent that:
- (a) the consideration for that Supply is not already stated to include an amount in respect of GST; or
 - (b) the amount of GST stated to be included in the consideration is less than the amount of the GST liability actually incurred by the Supplier in respect of that Supply,
- the Supplier of the Supply may increase the consideration by the applicable amount of GST and the Recipient must pay that increased amount at the same time and in the same manner as any part of the consideration is payable to the Supplier in respect of the Supply.
- 22.2 Where any expenses incurred by a Supplier are to be reimbursed by the Recipient under the Agreement the reimbursable amount shall be determined as follows:
- (a) first, any amount which the Supplier is entitled to claim as an Input Tax Credit shall be deducted from the cost to the Supplier of the expense item to arrive at an actual cost; and
 - (b) second, the actual cost shall be increased by and to the extent of the amount of GST payable by the Supplier in respect of the Supply to the Recipient for which the expense item is consideration.
- 22.3 If the GST payable by the Supplier on a Taxable Supply is varied pursuant to any change in legislation, the consideration payable under this Master Services Agreement must be increased or decreased to reflect that variation of the GST.
- 22.4 The Recipient is not required to pay any amount of GST to the Supplier unless the Supplier has provided a Tax Invoice to the Recipient.
- 22.5 For the purposes of this clause 22 and, unless the context otherwise provides, any other clauses using the defined terms, Input Tax Credit, Recipient, Supplier, Supply, Tax Invoice and Taxable Supply have the meanings attributed to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

23. NOTICES

- 23.1 All notices and consents required or permitted to be given in relation to the Agreement (Notice) must be in writing and given by personal service, mail (postage prepaid with proof of dispatch retained and airmail if to or from an address overseas) or email to the relevant party at its address stated in the Agreement) or to a registered office address or such other address as a party may designate to the other by written notice or to its registered address or an ostensibly operable email address (which for these purposes means that a bounce back message of non-delivery is not given within 1 hour of sending) of that party.
- 23.2 A Notice is taken to be given and received (unless evidence sufficient to raise material doubt is adduced to the effect that the Notice was not actually delivered):
- (a) in the case of a pre-paid posted letter posted by registered or recorded mail, on the 3rd (or 7th, if posted to or from a place outside Australia) Business Day after posting;
 - (b) if delivered by personal service on, or before, 5.00pm on a Business Day at the place of delivery, upon delivery, and if later that day, then on the next Business Day; and
 - (c) in the case of email, when an electronic message is sent to the information system of the recipient party using the email address provided by that recipient party but if after 5:00pm or not a Business Day in the place of receipt then on the next Business Day.

24. FORCE MAJEURE

- 24.1 Notwithstanding any other provision in the Agreement, no default, delay or failure to perform (excepting an obligation of payment) on the part of either party will be considered a breach if such default, delay or failure to perform is shown to be due to a Force Majeure Event.
- 24.2 If a Force Majeure Event arises, the time for performance required of the party subject to the Force Majeure Event will be extended for any period during which performance is prevented by the Force Majeure Event.
- 24.3 Nothing in this clause 24 entitles a party to any relief from its obligations which are not affected by the Force Majeure Event.

25. NON-SOLICITATION

- 25.1 Neither party shall, directly or indirectly, solicit or seek to procure, without the prior written consent of the other, the employment or engagement of the other's employees or contractors during the Relevant Period.
- 25.2 The purpose and intent of this clause 25 is, among other things, to protect each party from the poaching of its staff, especially (as regards us) those engaged or connected to the provision of Services.
- 25.3 Relevant Period means the Term of the Agreement plus a further period of 12 months, provided always that in respect of an employee or contractor who ceases to be employed or engaged by the relevant party during the Term, the applicable period shall end on the date which is 12 months from the date such person ceased to be so employed or engaged.

26. ASSIGNMENT

- 26.1 Neither ARKANCE or the Customer may assign, dispose of or otherwise transfer any rights or obligations under the Agreement without the prior written permission of ARKANCE.

27. GENERAL

- 27.1 If a party suffers Losses in connection with the Agreement for which the other party is liable (including under an indemnity), the party suffering the Losses must use reasonable endeavours to mitigate its loss.
- 27.2 Any provision of the Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions nor affect the validity or enforceability of that provision in any other jurisdiction.
- 27.3 The rights and obligations of the parties do not merge on completion of any transaction contemplated by the Agreement.
- 27.4 Each party must, at its own expense, do all things and execute all documents necessary to give full effect to the Agreement and the transactions contemplated by it.
- 27.5 Each party must pay its own costs of negotiating, preparing and entering into the Agreement.
- 27.6 Neither party has relied on any statement by any other party not expressly included in the Agreement.

28. AUTHORISED REPRESENTATIVE

- 28.1 Each party must nominate one or more officers or employees who shall be an Authorised Representative of such party, until otherwise advised in writing. Each party warrants that its Authorised Representatives are duly authorised to provide approvals, instructions, authorisations and consents in relation to the Agreement.
- 28.2 In any event, any person who holds themselves out as an officer of a party at any relevant time shall be deemed an Authorised Representative of that party for the purposes of the Agreement, unless the party shall notify the party in writing to the contrary.

29. DISPUTES

- 29.1 All Disputes must be resolved as set out in this clause 29.
- 29.2 Subject to clause 29.3, a party must not commence any court proceedings unless it has first complied with this clause 29.
- 29.3 Nothing in this clause 29:
- (a) prevents a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief; or
 - (b) affects a party's right to terminate the Agreement (including a licence or right of use).
- 29.4 A party claiming that a Dispute has arisen must notify the other party in writing giving details of the Dispute and stating that the notification is given pursuant to this clause 29.4 (Dispute Notice).
- 29.5 The parties must attempt to resolve all Disputes which are the subject of a Dispute Notice by negotiations using the following escalation procedure:
- (a) the Dispute must first be referred to the persons named in the Agreement for the purposes of this clause 29 who must attempt to resolve the Dispute within 20 Business Days; and
 - (b) if the Dispute is not resolved within 20 Business Days of an escalation under clause 29.5(a) then either party may refer the Dispute to the CEO (or equivalent senior management) of each of the parties.

- 29.6 If the parties cannot resolve a Dispute in accordance with the escalation procedure in clause 29.5 within 20 Business Days of the Dispute Notice being given under clause 29.4, then either party may commence legal proceedings to have the Dispute resolved in a court of competent jurisdiction.
- 29.7 The parties in writing may agree to the extension of any of the time periods set out in this clause 29 for the sending of any notice or the doing of any act, subject to the maximum extension permitted being equal to the original time period as set out in this clause 29 in respect of each such notice or act.
- 29.8 Each person involved in the escalation process described in clause 29 must use their reasonable endeavours to seek to resolve all issues escalated to them, in a way that attempts to preserve the relationship between the Customer and ARKANCE.
- 29.9 Nothing in this clause 29 requires a party to act contrary to its interests.
- 29.10 If, in relation to a Dispute, a party breaches any provision of this clause 29, the other party need not comply with this clause 29 in relation to that Dispute.
- 29.11 Unless expressly agreed in writing to the contrary, each party will continue to perform its obligations during the attempted resolution of any Dispute unless such obligations are terminated or cease to apply (as relevant).
- 29.12 Each party must bear its own costs of complying with this clause 29.

30. GOVERNING LAW

- 30.1 This Master Services Agreement, the Master Definitions + Interpretation Schedule, each Service Schedule and each SOW (including, for the avoidance of doubt, the Agreement) are governed by the laws of New South Wales, Australia.

31. DICTIONARY + INTERPRETATION

- 31.1 In this document, unless otherwise provided, capitalised terms shall have the meaning as specified in the Master Definitions + Interpretation Schedule.
- 31.2 The rules of interpretation in the Master Definitions + Interpretation Schedule shall apply.