

Terms of Sale – Professional Services, Outcome Based Work.

THESE TERMS AND CONDITIONS OF SALE FOR SERVICES (“Terms of Sale”) APPLY TO YOUR PURCHASE OF SERVICES PERFORMED BY ARKAHNA OR ITS SUBCONTRACTORS AND/OR AGENTS (COLLECTIVELY, “SERVICES”). By engaging Arkahna to perform Services under a Statement of Work (as defined below), you agree to be bound by and accept these Terms of Sale, unless you are purchasing such Services pursuant to a separate written agreement signed by both your company and Arkahna, in which case, the terms of that separate agreement shall govern. Arkahna may, from time to time and at its sole option, revise these Terms of Sale without notice by posting them on its website at arkahna.io (the “Website”). The Terms of Sale posted on the Website at the time Arkahna accepts your order governs that purchase.

Entire Agreement. The description of the scope of work and terms associated with the Services (“Statement of Work” or “SOW”) along with these Terms of Sale - Services and any attachments, schedules, addenda, and exhibits are together one agreement and forms the entire agreement between the parties relating to the Services to be performed by Arkahna (the “Agreement”). The Agreement supersedes any prior representations or agreements, oral or written, and all other communications between the parties relating to the relevant subject matter. Any conflicting, additional, or different terms contained in any other agreement, invoice, or SOW, as the case may be, are expressly rejected, unless the modified Terms of Sale is specifically referenced and mutually agreed upon in writing under the SOW. Such modification shall be applicable exclusively to that SOW.

Competition and Consumer Act (CCA). Notwithstanding the foregoing, these Terms of Sale must be read and construed subject to any statutory provisions, which cannot lawfully be excluded, restricted, or modified. If any such statutory provisions apply then, to the extent to which Arkahna is entitled to do so and at Arkahna's option, Arkahna limits its liability pursuant to such provisions to the re-performance or refund of the cost of Services.

Invoicing/Payment. Services will be invoiced in accordance with the SOW. Services will be deemed accepted (completed) 5 days from the date of the invoice, unless otherwise specified in writing under the SOW. You must pay all undisputed invoices in full within 14 days of the invoice date, unless otherwise specified under the SOW. You agree to pay the total purchase price for the Services, plus taxes (including any GST that is payable), and all payments must reference the invoice number. You may provide Arkahna with a tax exemption certificate at the time of purchase, which will be subject to review and acceptance by Arkahna. Unless otherwise specified, all invoices shall be paid in the currency of the invoice. Where invoices are paid in a currency other than that specified on the invoice, you agree to remit payment to Arkahna for any losses incurred upon conversion of any payments received that result in a short payment of such invoices.

Credit/Late Payment. Your order is subject to acceptance and credit approval by Arkahna. You must provide appropriate credit references upon request and authorise Arkahna to obtain credit history from such references. You agree to pay interest on all past-due amounts at the rate of one and one-half percent (1.5%) per month (18% per annum), or such lesser amount determined by Arkahna calculated monthly on the past due amount. You will be responsible for Arkahna's costs of collection for any payment default, including, but not limited to, court costs, filing fees and attorneys' fees. In addition, if payments are not received as described above, Arkahna reserves the right to suspend performance of Services until payment is received.

Term; Termination. The Agreement commences upon execution of the relevant SOW ("Effective Date"), which incorporates these Terms of Sale, and will continue until completion of the Services, unless earlier terminated in accordance with this Section. Either party may terminate the Agreement, in whole or in part, immediately if the other party materially breaches the Agreement and fails to remedy that breach within 30 days after receipt of written notice of such breach, except that a party will only have 10 days to remedy any default of its payment obligations.

Limited Services Warranty. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT ALWAYS TO THE CCA CLAUSE:

Services performed by Arkahna will: (i) be performed in a timely, competent, and professional manner; (ii) substantially conform to the written specifications under the SOW for 30 days from completion, or for such other warranty period as may be indicated under the relevant SOW; (iii) be in compliance with all laws, rules and regulations applicable to Arkahna's performance of the Services under the SOW. Notwithstanding the foregoing, Arkahna is not responsible for default or delays caused by your failure to provide accurate instructions, information, access to facilities or a suitable product or application environment.

Your sole remedy and Arkahna's sole obligation for breach of this Limited Services Warranty, except as set forth in any SOW that expressly amends this warranty, will be the re-performance of any deficient Services at Arkahna's expense. If Arkahna is unable to remedy any deficient Services within 30 days of notice or such additional time as may be mutually agreed upon, Arkahna will, at its option, provide a credit or refund of any fees paid for the specific non-conforming Services. No re-performance will extend any warranty period. Any credits issued to you by Arkahna for any reason must be applied by you within 1 year from the date the credit is issued. If not used within such period, credits will automatically expire.

Warranty Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT ALWAYS TO THE CCA CLAUSE, THE LIMITED WARRANTIES UNDER SECTION 4 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND YOUR SOLE AND EXCLUSIVE REMEDIES. ARKAHNA DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF SERVICES. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD.

Intellectual Property Rights. Arkahna retains all right, title and interest in any pre-existing intellectual property that is owned by Arkahna ("Arkahna IP"), and which may be used in carrying out Services, including any modifications or improvements made to Arkahna IP during or because of the Services to be performed under the Agreement. Except for Arkahna IP and upon payment in full of all amounts due Arkahna, all documents, drawings, specifications, information, patents, patent applications, inventions, developments or processes or any copyrightable material originated and developed by Arkahna specifically for you as part of the Services to be performed under the Agreement ("Work Product") shall be owned by you. Arkahna hereby grants you a worldwide, non-exclusive, royalty-free, perpetual, without the right of sublicense, license to use Arkahna IP in the course of your internal, business operations.

Confidential Information. Both parties will maintain in confidence and safeguard all Confidential Information, as defined in this paragraph, of the other party, its affiliates, and its customers. "Confidential Information" means any information that is marked or otherwise identified as confidential or proprietary at the time of disclosure and includes, but is not limited to, trade secrets, know-how, inventions, techniques, data, customer lists, Arkahna IP, Personal Data (as defined herein), financial information, sales and marketing plans of the other party, its affiliates, or its customers. "Personal Data" means any non-public information relating to an identified or identifiable individual that may be subject to further obligations of confidentiality under applicable privacy laws. Both parties recognise and acknowledge the confidential and proprietary nature of any Confidential Information and acknowledge the irreparable harm that could result if such Confidential Information is disclosed to a third party or used for unauthorised purposes. Each party agrees to use any Confidential Information only for the purpose of conducting business with each other and their clients in the manner contemplated by the Agreement. Both parties will restrict disclosures of any Confidential Information to only those personnel who have a need to know and will bind such personnel to obligations of confidentiality to the same extent that each party is bound by the Agreement. Upon request of the owner of Confidential Information, the other party will promptly return all materials incorporating any Confidential Information and any copies. The obligations under this paragraph do not apply to information that: (i) is or becomes generally known or in the public domain through no act or omission of the other party; (ii) was lawfully in Arkahna's or your possession without restriction as to use or disclosure before its receipt from the other party; (iii) is received from, or was made available to, a third party without any obligation of confidentiality; (iv) was independently developed; (v) is otherwise permitted to be disclosed under the Agreement; (vi) is disclosed with the prior written consent of the disclosing party; or (vii) is required to be disclosed in any civil or criminal legal proceeding, regulatory proceeding or any similar process, however, the party required to make the disclosure under the law shall give prompt notice of this to the other party prior to such disclosure so that the other party may seek an appropriate protective order or give its written consent to such disclosure.

Indemnification. When Services are performed by Arkahna on your premises or at another location designated by you, each party and its respective officers, directors, employees, agents and affiliates (the "Indemnifying Party") will indemnify, defend and hold harmless the other party, its officers, directors, employees, agents and affiliates (the Indemnified Party") from and against any damages, costs, or expenses (including reasonable attorney's fees) incurred relating to bodily injury or death of any person or damage to tangible personal property occurring at such location in connection with the performance of the Services to the extent caused by the negligence or wilful acts or omissions of the Indemnifying Party. In the event that any such claim is made or suit is commenced, the Indemnified Party shall: (i) give prompt written notice of such demand, claim or suit to the Indemnifying Party; and (ii) provide reasonable assistance and cooperation in the defence and settlement of any claim or legal proceeding. Notwithstanding the foregoing, if the Indemnifying Party fails to assume its obligation to defend, the Indemnified Party may do so to protect its interests and seek reimbursement from the Indemnifying Party.

Limitation of Liability. No action, whether for indemnification or otherwise, regardless of form, arising out of the transaction under the Agreement, may be brought by either party more than 1 year after the damage, loss or expense occurred. In addition, to the maximum extent permitted by law:

NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF INCOME, PROFITS, DATA,

OPERATIONAL EFFICIENCY, USE, OR INFORMATION,) ARISING UNDER THE AGREEMENT REGARDLESS OF THE FORM OF ACTION OR THEORY OF RELIEF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL AMOUNT OF DIRECT DAMAGES RECOVERABLE FROM A PARTY UNDER THE AGREEMENT IS LIMITED TO THE TOTAL AMOUNT PAID OR TO BE PAID BY YOU FOR SERVICES PERFORMED UNDER THE RELEVANT SOW.

Governing Law and Venue. The Agreement will be governed by the substantive laws of Western Australia, Australia without giving effect to any conflict of law rules. You are responsible for compliance with local laws, if and to the extent local laws are applicable. Both parties specifically agree to submit to the exclusive jurisdiction of, and venue in, the courts of Western Australia, Australia in any dispute arising out of or relating to the Agreement.

General. Notices to be provided under the Agreement must be in writing and sent to the addresses as each party designates under the SOW and are deemed received upon the earlier of actual receipt or 3 days after mailing, if mailed postage prepaid by regular mail or airmail or 1 day after such notice is sent by courier or email transmission. Arkahna will not be liable for, nor shall any liability to Arkahna result from, any delays in the performance of the Agreement due to circumstances beyond its control, including but not limited to acts of nature, acts of government, national emergencies, acts of terrorism, transportation delays, labour disturbances, work stoppages, or material shortages. Any additions, deletions, or modifications to the Agreement subsequent to the Effective Date are not binding unless agreed upon in writing by authorised representatives of both parties. If any part of the Agreement is, for any reason, found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, all other parts will still remain in effect. A delay or failure by either party to exercise or partially exercise any right or remedy does not operate as a waiver by that party to thereafter enforce such rights. Arkahna may assign or subcontract any or all its rights or obligations under the Agreement without consent. You may not assign the Agreement or any SOW, or any of the rights or obligations therein, without Arkahna's prior written consent. The provisions of the Agreement, which by sense and content are intended to survive, including but not limited to the sections related to payment, warranties, remedies, confidentiality, indemnification, and limits of liability, will survive the expiration or termination of the Agreement. The relationship between Arkahna and you is that of independent contractors and not that of employer/employee, partnership, or joint venture. No personnel employed or engaged by Arkahna to perform Services for you will be considered your employees, agents, partners, joint venture partners, or franchisors. Arkahna has sole responsibility for the direction of its employees and has the right to fire, hire, suspend, layoff, transfer or reassign employees at will without your consent. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.