

# **Attachment A**

## **Ardexa General Terms and Conditions**

### **1. AGREEMENT AND AMENDMENTS**

- 1.1 These Terms and Conditions form a part of, are subject to and incorporated into the Master Agreement between Ardexa and the Client, and govern the relationship between Ardexa and the Client in relation use of the Ardexa Platform and provision of associated Services.
- 1.2 By accepting this Agreement, issuing an Order or installing, accessing or using the Ardexa Platform, whichever occurs first, the Client agrees to be bound by this Agreement from that date (**Commencement Date**).
- 1.3 The most current version of Ardexa General Terms and Conditions can be viewed at any time by visiting Ardexa's website.
- 1.4 Ardexa may amend this Agreement from time to time upon written notice to Client either by emailing the notice to the email address of the contact person specified in the Master Agreement or by posting the notice on Ardexa's website.
- 1.5 The amendments become effective on the date specified in the notice, and if the Client continues to use the Ardexa Platform after that date, such use constitutes acceptance of the amended Agreement.

### **2. SERVICE OFFERINGS**

- 2.1 The Master Agreement specifies the details of the Service Package and the terms of this Agreement apply to that Service Package as specified below.

### **3. HOSTED AND ON-PREMISES SERVICES**

- 3.1 If the Service Package includes the provision of the Ardexa Platform as 'software-as-a-service':
  - (a) the Ardexa Platform will be hosted with a Hosting Provider selected by Ardexa in its sole discretion and Ardexa reserves the right to change its Hosting Provider without notice to or approval by the Client;
  - (b) unless otherwise specified in the Service Package, the Ardexa Platform may be hosted in a dedicated or shared environment at Ardexa's sole discretion; and
  - (c) the Client grants Ardexa the right to use, store, transmit and copy for back-up purposes (if included in the Service Package) the Client Data solely to the extent necessary to enable the provision of the Service Package and to provide services under this Agreement.
- 3.2 If the Client installs the Ardexa Platform On-Premises, the Client will provide Ardexa with access to the On-Premises installation at times reasonably requested by Ardexa to enable Ardexa to verify the use of the Ardexa Platform in accordance with this Agreement and for Ardexa to otherwise comply with its obligations under this Agreement. A refusal or unreasonable delay of the Client in providing such access will entitle Ardexa to terminate this Agreement.

#### **4. EQUIPMENT**

- 4.1 Where Ardexa provides information to the Client about Equipment for use with the Ardexa Platform, the Client acknowledges and agrees that:
- (a) such information is provided to the best of Ardexa's knowledge at the time based on the purpose, requirements and use as advised by the Client and compatibility with the Ardexa Platform; and
  - (b) the Client is responsible for making its own inquiries and determining whether the Equipment is consistent with and suitable for the purpose, requirements and use intended by the Client and selecting the Equipment accordingly.
- 4.2 If the Client requests Ardexa to facilitate and procure the supply of Equipment, Ardexa will order the Equipment on behalf of the Client in the quantity set out in the Order.
- 4.3 Equipment will be delivered to the Client at the delivery address specified in the Order. All risk of loss to the Equipment will pass to Client upon delivery by the supplier to the carrier.
- 4.4 While Ardexa may facilitate and source the Equipment, the Client acknowledges that Ardexa bears no responsibility for the Equipment and the only warranties given (if any) in respect of the Equipment are given by the manufacturer and not by Ardexa. The Client shall look solely to the manufacturer for any defect in or support of the Equipment.

#### **5. LICENCE AND SERVICES**

- 5.1 Subject to the terms and conditions of this Agreement:
- (a) Ardexa will Provision the Ardexa Platform to the Client with the functionality included in the Service Package; and
  - (b) Ardexa grants to the Client a limited, non-sublicensable, terminable, non-transferable, non-exclusive licence during the Term to use, and permit the Authorised Users to use, the Ardexa Platform on approved Devices and solely for the purposes of the Client's business, in accordance with this Agreement.
- 5.2 This Agreement does not grant the Client or any Authorised User any right to use the Ardexa Platform in excess of the scope of the Service Package and duration of the Term.
- 5.3 Ardexa will issue a private key and public certificate (incorporating a public key) to each Device on which the Ardexa Agent is downloaded. Client acknowledges that:
- (a) Ardexa will not store the private key on behalf of the Client, unless escrow services form part of the Service Package or it is otherwise agreed in writing with the Client;
  - (b) Ardexa will be unable to retrieve lost private keys; and
  - (c) if Client loses the private key for any Device, a new one will need to be issued and installed in the edge device to resume the data connection.

## **6. AUTHORISED USERS**

### **6.1 The Client will:**

- (a) only allow the Ardexa Platform to be used for the purpose of the Client's business and for no other purpose;
- (b) provide an up-to-date list of current Authorised Users to Ardexa upon 5 days of Ardexa's written request;
- (c) not exceed the maximum number of Authorised Users specified in the Service Package as set out in the Master Agreement;
- (d) take all reasonable precautions to ensure the security of access to the Ardexa Platform;
- (e) not, under any circumstances, allow any third party or any person other than an Authorised User to access or use the Ardexa Platform for any purpose without the prior written consent of Ardexa. Consent will not be unreasonably withheld, but it will be reasonable for Ardexa to refuse consent in circumstances where, in Ardexa's opinion, an Authorised User is a competitor of Ardexa or there is a business risk for Ardexa. Ardexa may withdraw a consent at any time on the same basis.

6.2 Access of Authorised Users to the Ardexa Platform may be granted, suspended or cancelled by the Client or, upon request by the Client in writing, by Ardexa. Ardexa may also suspend or cancel the access of an Authorised User where consent has not been given or has been subsequently withdrawn pursuant to clause 6.1(e).

## **7. USE OF SERVICE**

7.1 By signing the Master Agreement, any Order or any amendment to an Order, the Client agrees that it has performed all acceptance testing required by the Client on all Ardexa Products listed on the Order or amendment, the Client confirms that the Ardexa Products listed on the Order or amendment comply with the written specifications contained in any Service Package or otherwise supplied to Ardexa by or on behalf of the Client, and that the Ardexa Products are accepted by the Client.

7.2 The Client is responsible for obtaining and maintaining all equipment, devices, computer hardware, software and telecommunications services required by the Client to access and use the Ardexa Platform and will ensure that all such equipment and services comply with the technical specifications provided by Ardexa (if any).

### **7.3 The Client will:**

- (a) comply with all reasonable instructions and directions given by Ardexa from time to time with regard to the use of the Ardexa Platform, including in relation to any security measures or procedures imposed by Ardexa to prevent unauthorised access to the Ardexa Platform or its contents;
- (b) not access all or any part of the Ardexa Platform in order to build a product or service which competes with the Ardexa Platform;

- (c) take all steps reasonably necessary to prevent unauthorised access to, or use of, the Ardexa Platform and, in the event of any such unauthorised access or use, promptly notify Ardexa in writing;
- (d) not sell, rent, sub-licence, lease, assign, distribute, reproduce, display, disclose or in any other way transfer the Ardexa Platform or any part of it to any third party; and
- (e) permit Ardexa, or its nominated agent, at all reasonable times, to verify that the use of the Ardexa Platform by the Client and the Authorised Users is in accordance with the terms of this Agreement.

7.4 The Client will not, and will ensure that any person who accesses the Ardexa Platform does not, use or attempt to use the Ardexa Platform:

- (a) to infringe the Intellectual Property Rights of any person, including use, sale or transmission of software or other material which infringes copyright;
- (b) to publish, distribute or issue any information or material which is obscene, defamatory, threatening or abusive, or which vilifies any group of persons;
- (c) for any purpose or activity which is illegal, or to promote any such activity;
- (d) to interfere with or disrupt the Ardexa Platform, other Internet or Ardexa Platform users or other service providers, or their computers, software or hardware, including by the propagation of malware and viruses; or
- (e) to access without authorisation any other computer or device accessible via the Ardexa Platform; and
- (f) with any software that enables online anonymity, misleading IP identification, provides a hidden service or prevents Ardexa or its Hosting Provider from complying with legal obligations.

## **8. AVAILABILITY**

8.1 Ardexa will use its reasonable endeavours to maintain the availability of the Ardexa Platform subject to:

- (a) scheduled downtime for maintenance services; and
- (b) unscheduled interruptions to the availability of the Ardexa Platform due to factors beyond the control of Ardexa including any actions of the Client or third parties, including telecommunications, hosting or other service providers.

8.2 The Client acknowledges that the availability, performance and speed of response from the Ardexa Platform is dependent on and may be affected or interrupted by many external factors, including telecommunication services, speed of connection and

infrastructure bandwidth from the Client's equipment and the number of users on the connection.

- 8.3 The Client will communicate any difficulties encountered with the Ardexa Platform to Ardexa as soon as is reasonably practicable following detection through one of the means available under clause 11.
- 8.4 Ardexa takes no responsibility for any unavailability, delay, malfunction, non-performance or other degradation of the Ardexa Platform caused by or resulting from any factors referred to in clauses 8.1(a), 8.1(b) and 8.2 or any alteration, modification or amendment to the Ardexa Platform made or requested by the Client.

## **9. SUSPENSION**

- 9.1 Subject to clause 9.3, Ardexa may suspend access to the Ardexa Platform:
- (a) to carry out maintenance services;
  - (b) to carry out modifications or updates to the Ardexa Platform, including the uploading of Updates;
  - (c) to preserve data and integrity;
  - (d) in the event of a security breach; or
  - (e) if the hosting environment malfunctions.
- 9.2 Suspension of access to the Ardexa Platform will continue until the maintenance services, modification or update have been carried out, the problem is rectified, or until otherwise agreed in writing between the parties.
- 9.3 Ardexa also reserves the right to terminate or suspend access to the Ardexa Platform to the Client and/or any Authorised User without prior notice, indefinitely and without refund or compensation if, in Ardexa's reasonable opinion, the Ardexa Platform is being used by the Client or an Authorised User in a manner which breaches the terms of this Agreement or any applicable law or which threatens or compromises the security of the Ardexa Platform.
- 9.4 If access to the Ardexa Platform is suspended by Ardexa in accordance with clause 9.3 (including at the request of Ardexa's Hosting Provider(s)), the Client acknowledges and agrees that a reinstatement fee may be charged by Ardexa or the Hosting Provider(s), in which case the Client will reimburse Ardexa for any such fee.
- 9.5 Ardexa will not be liable to the Client, its officers, employees, contractors or agents or any third party whatsoever as a result of taking the actions referred to in this clause 9.

## **10. UPDATES**

- 10.1 Ardexa reserves the right to modify, amend, make enhancements, updates, new releases or discontinue the Ardexa Platform or any or any part of it, including any

functionality or feature (**Update**), as Ardexa determines necessary or appropriate in its sole discretion.

10.2 On certain occasions, the Client may opt not to apply an Update and continue to use a superseded version of the Ardexa Platform, and acknowledges that:

- (a) performance of a superseded version may not be the same as that of the Update;
- (b) Ardexa may, at any time and in its sole discretion, discontinue the provision of support in relation to any version of the Ardexa Platform which has been superseded by an Update.

10.3 If the Client opts to use or apply the Update, the use of an Update by the Client will be subject to the terms and conditions of this Agreement, and any superseded version of the Ardexa Platform must be uninstalled and discarded.

## 11. SUPPORT

11.1 If included in the Service Package, Ardexa will provide the Client with technical support for the Ardexa Platform during the Term (**Technical Support**) by:

- (a) telephone during Business Hours on the number Ardexa provides; and/or
- (b) online chat; and/or
- (c) enquiries through the Ardexa website located at [www.ardexa.com](http://www.ardexa.com); and/or
- (d) e-mail to [[support@ardexa.com](mailto:support@ardexa.com)] or other email as specified on Ardexa's website.
- (e) In app help function on the Ardexa Platform

11.2 When reporting a fault to Ardexa, the Client will provide an accurate description of the problem encountered with the Ardexa Platform in order to facilitate the identification of the cause and necessary corrective action by Ardexa.

11.3 Upon receipt of a fault report from the Client, Ardexa will use its reasonable endeavours to provide a response to the Client within the number of days specified in the Service Package (if applicable) or such other timeframe reasonable in the circumstances having regard to the nature of the fault and work effort required to address it.

11.4 If, upon investigation, a reported problem is determined not to be Ardexa's responsibility, Ardexa will notify the Client.

11.5 The Client acknowledges that it is solely responsible for the support and maintenance of any hardware, software, telecommunications and other infrastructure operated by the Client to access the Ardexa Platform, including any Device supplied by Ardexa under this Agreement.

11.6 By signing any Order or any amendment to an Order, the Client agrees that it has performed all acceptance testing required by the Client on all Ardexa Products listed on the Order or amendment, the Client confirms that the Ardexa Products listed on the Order or amendment comply with the written specifications contained in any Service

Package or otherwise supplied to Ardexa by or on behalf of the Client, and that the Ardexa Products are accepted by the Client.

## **12. PROFESSIONAL SERVICES**

- 12.1 Ardexa agrees to perform Professional Services when detailed in one or more mutually executed Statement(s) of Work. Ardexa will exercise reasonable efforts to perform the Professional Services according to any schedules that are expressly required by the applicable Statement of Work and will provide all Deliverables required to be provided by such Statement of Work.
- 12.2 Upon Client's request from time to time, the Parties may negotiate additional Statements of Work. Each Statement of Work shall become effective when it has been signed by authorized representatives of both Parties.
- 12.3 In the event of a conflict between the provisions of any Statement of Work and this Agreement, this Agreement shall govern unless the Statement of Work expressly identifies the relevant provision of this Agreement and expressly states the Parties' intent to override that provision for purposes of the Statement of Work.
- 12.4 As between the parties, Client shall retain title in Client Data, including title in all Intellectual Property Rights therein. Client hereby grants to Ardexa a limited, non-exclusive, non-sublicensable, non-transferable license to reproduce, modify, adapt, translate, distribute, perform, and display such Client Data solely for the purpose of performing the Professional Services.
- 12.5 As between the parties, Client agrees that Ardexa and its licensors are, and will remain, the sole and exclusive owners of any items, materials, or information provided by Ardexa pursuant to a Statement of Work ("Deliverables") and to any technology developed pursuant to this Agreement or any Statement of Work which is jointly created by the parties or created by Client as a direct result of Client activities relating to this Agreement or a Statement of Work hereunder, subject to Client's continuing ownership of its rights in any Client Data that are incorporated within any Deliverables, and subject to the applicable licenses or other rights granted herein. Ardexa grants to Client a limited, non-exclusive, royalty free, worldwide, non-transferable and fully paid license, without the right to sublicense, solely during the applicable Terms to use such Deliverables for Client's internal business purposes in connection with the Service Package solely as permitted by the Agreement.
- 12.6 For avoidance of doubt, any support and maintenance with regard to Deliverables (including, without limitation, computer code) must be mutually agreed in a separate Statement of Work or other written agreement between the parties. Except as expressly agreed in a separate Statement of Work or other written agreement, Client acknowledges that Ardexa has no obligation to provide any such support.
- 12.7 Client acknowledges that Ardexa's policy is to perform all Professional Services in a professional and workmanlike manner in accordance with generally applicable industry standards. Accordingly, all Deliverables will substantially conform to express specifications stated on the applicable Statement of Work for a period of thirty (30) days following delivery. In the event that any Deliverable fails to meet the foregoing



warranty, Ardexa will correct the relevant Deliverable in a timely manner, at no additional charge to Client, provided that Client waives any claim under this warranty if it fails to provide written notice of the relevant warranty breach within the applicable warranty period, and provided that Ardexa's correction of the Deliverable that is the subject of the relevant warranty breach will constitute Client's sole and exclusive remedy for the same. Subject to Ardexa's duties under this paragraph, and further subject to any additional obligations imposed by a mutually executed Statement of Work; each Deliverable is considered accepted upon delivery.

- 12.8 Client shall make available in a timely manner at no charge to Ardexa all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources reasonably required by Ardexa for the performance of the Professional Services. Client will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer.
- 12.9 Each Statement of Work shall become effective and binding upon mutual execution and shall remain in effect until completion of the Professional Services to be provided thereunder, unless earlier terminated in accordance with this Attachment. All Statements of Work shall terminate automatically and simultaneously upon termination of the Agreement for any reason. In addition to any termination rights provided to the parties by the Agreement, either party may terminate a particular Statement of Work upon written notice if the other party has committed a material breach of its obligations arising under such Statement of Work and has failed to cure such breach within thirty (30) days after receipt of written notice from the non-breaching party, which notice specifies the breach in reasonable detail. Upon the termination or expiration of any Statement of Work, Ardexa shall cease providing the applicable Professional Services required by such Statement of Work and shall inform Client of the extent to which Ardexa has completed the Professional Services. Ardexa shall issue an invoice for all work performed and expenses incurred through the date of termination, and client shall pay such invoice as and when payable in accordance with the Agreement.

### **13. PAYMENT OF FEES**

- 13.1 The Client must pay any applicable Fee as invoiced to the Client by Ardexa from time to time in accordance with the Service Package and Master Agreement.
- 13.2 The Client acknowledges and agrees that, to the extent permitted by law:
- (a) Fees are payable in accordance with the terms of the Service Package and applicable Orders. Unless otherwise provided in the Service Package or applicable Master Agreement, Fees are due within 30 days following invoice date; and
  - (b) Fees payable pursuant to a Service Package, are non-cancellable and non-refundable and are due without setoff.
  - (c) Client will pay a late fee of 1.5% per month (not to exceed the maximum allowed under state law) on all balances not paid when due. Client shall be responsible for costs of collection, including legal fees, incurred by Ardexa for the collection of unpaid overdue invoices.



- 13.3 Ardexa reserves the right to vary its Fees from time to time. If Ardexa changes the Fee for the Service Package, Ardexa will provide the Client at least 30 days prior notice to the change taking effect. If the Client continues use of the Ardexa Platform after the increase takes effect, such use constitutes agreement to pay the changed Fee.
- 13.4 Fees are exclusive of Taxes, and where applicable, the Taxes will be added to the Fees and will be payable by the Client at the then prevailing rate.
- 13.5 If payment of any Fee is overdue, Ardexa may, without affecting the Client's obligation to pay outstanding Fees and without any liability towards the Client, disable any account used by the Client to access, use or monitor the usage of the Ardexa Platform and suspend or terminate access to all or part of the Ardexa Platform.
- 13.6 The Client is solely responsible for all costs outside the scope of the Service Package, including internet and other telecommunications and transmission services as well as any hardware and installation costs.

#### **14. CONFIDENTIAL INFORMATION**

14.1 All Confidential Information disclosed by one party to the other party is to be treated as confidential, and the recipient party must not, without the prior written consent of the disclosing party:

- (a) disclose or permit the disclosure to any third party (except to the extent required by law, a stock exchange or in connection with legal proceedings relating to this Agreement, but only after first notifying the other party to give it an opportunity to protect the Confidential Information) and agree to take all reasonable steps to maintain the confidentiality of the Confidential Information; or
- (b) use, or permit any third party to use, the Confidential Information for any purpose.

14.2 It is the responsibility of each party to ensure that:

- (a) Confidential Information is only disclosed to those of its officers, employees or contractors in their capacities as such on a strictly need to know basis and have such officers, employees and contractors comply with the obligations of confidentiality under this clause 14; and
- (b) the officers, employees or contractors referred to in paragraph (a) execute such documentation as required by the owner of the Confidential Information acknowledging their obligations of confidentiality, which shall provide that the obligations of confidentiality survive notwithstanding that any of the above-mentioned officers, employees or contractors cease to be employed or engaged by the respective parties.

14.3 The confidentiality obligations under this clause 14 shall survive the expiry or termination of this Agreement.

#### **15. INTELLECTUAL PROPERTY RIGHTS**

15.1 Ardexa acknowledges that the Client or its Customer (as the case may be) owns all rights, title and interest in and to all of the Client Data. The Client has sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data. The Client acknowledges and agrees that Ardexa may extract, compile and use

de-identified information from the Client Data for research, marketing or statistical purposes.

- 15.2 The Client acknowledges and agrees that Ardexa and its licensors (if applicable) own all Intellectual Property Rights in the Ardexa Platform and Ardexa Templates. Except as otherwise expressly stated in this Agreement, this Agreement does not grant the Client or any Authorised User any rights, including Intellectual Property Rights, or licences to or in the Ardexa Platform or Ardexa Templates.
- 15.3 To the extent that any template or form resulting from the use of the Ardexa Platform is not an Ardexa Template, the Client grants Ardexa a non-exclusive, perpetual, irrevocable and royalty-free licence to use, modify, adapt, reproduce and exploit the templates and forms for any business purpose of Ardexa.
- 15.4 The Client further acknowledges and agrees that any Third Party Software that may be provided with the Ardexa Software is included for use at Client's option. If Client chooses to use such Third Party Software, then such use shall be governed by the license of its respective owner. Ardexa does not make, and expressly disclaims all warranties regarding Third Party Software. Ardexa is not responsible for any Third Party Software and shall have no liability for Client's use of Third Party Software.
- 15.5 The Client must not reverse compile, disassemble, remove, release, disclose, reveal, copy, extract, modify or otherwise reverse engineer all or any part of the Ardexa Platform in any form, way or media for itself or for others or permit such act to be done.
- 15.6 The Client warrants and agrees that it will:
- (a) not remove or modify any copyright notices embedded in the Ardexa Platform;
  - (b) follow all reasonable instructions given by Ardexa from time to time regarding Ardexa's Intellectual Property Rights; and
  - (c) not do anything to diminish the value of, or contest in any way, Ardexa's or its licensors' Intellectual Property Rights.
- 15.7 The Client agrees that it will inform Ardexa immediately if the Client becomes aware that any Intellectual Property Rights of Ardexa or its licensors are being infringed, or may be infringed, by any third party.
- 15.8 Ardexa may initiate action against and settle any dispute with infringers by any means it determines to be effective and in the best interests of Ardexa and where Ardexa, in its sole discretion, decides to initiate action against an infringer, the Client will cooperate with Ardexa as reasonably requested by Ardexa.

## **16. PRIVACY**

- 16.1 The Client agrees that it is not necessary to transmit Personal Data to the Ardexa Platform. The Client will not deliver Personal Data to Ardexa. In the event the Client does provide Personal Data to Ardexa, the Client must comply with the Privacy Laws (including in regard to notification and obtaining of consents with respect to the location of Personal Data outside the country where the Client and the Authorised

Users are located) relating to any Personal Data that it provides to Ardexa, including any Personal Data contained in Client Data.

**16.2 The Client:**

- (a) acknowledges and agrees that the Personal Data may be transferred or stored outside the country where the Client and the Authorised Users are located;
- (b) must ensure that the Client is entitled to disclose the relevant Personal Data to Ardexa and Ardexa's Hosting Providers, so that Ardexa and its Hosting Providers may lawfully collect, use, store, process and transfer the Personal Data as required for the performance of its obligations under this Agreement;
- (c) must ensure that the relevant third parties have been informed of, and have given their consent to, such collection, use, disclosure, storage, processing and transfer as required by all applicable data protection legislation, in particular the Privacy Laws; and
- (d) acknowledges and agrees that use of the Ardexa Platform will involve transmission of Client Data and other communications over the Internet and other networks, and that such transmissions could potentially be accessed by unauthorized parties when communicated across the Internet or other networks. Ardexa is not responsible for any Client Data which is delayed, lost, altered, intercepted or stored during transmission across networks not owned or operated by Ardexa, including but not limited to the Internet and Client's local network.

**17. DISCLAIMERS**

17.1 Except as expressly provided herein, Ardexa does not make any warranty of any kind, whether express, implied, statutory or otherwise, and Ardexa specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by law. Except as expressly provided herein, the Ardexa platform and the Ardexa templates are provided "as is". Ardexa does not warrant that the operation of the Ardexa platform will be uninterrupted, error free, free of viruses or malware, or that any third party components of the Ardexa platform, will be accurate or error free or that the Ardexa platform will be compatible with any particular application, program or software not specifically identified as compatible by Ardexa.

17.2 The Client remains at all times solely responsible for:

- (a) determining whether or not the Ardexa Platform and functionality available within the Service Package is appropriate for the Client's purpose and intended use;
- (b) ensuring that the design, facilities and functions of the Ardexa Platform meet the Client's requirements, including in relation to any interface, interplay or connection with or between components, and any legal requirements applicable to the Client's activities;
- (c) the security of and any use of the passwords, digital certificates and access details to the Ardexa Platform, as well as any unauthorized access or use of the Ardexa Platform;

- (d) compliance with, all applicable laws and regulations applicable to the Client and Client's activities;
- (e) its use and its Authorised User's use of the Ardexa Platform including:
  - (i) input of parameters, data or information into the Ardexa Platform;
  - (ii) unless and to the extent otherwise specified in the Service Package, back-up of all data and information, including Client Data, used in relation to or uploaded to the Ardexa Platform;
  - (iii) interpretation or use of, or reliance on, any data, information, reports or any other output of the Ardexa Platform;
- (f) the consequences of any use of the Ardexa Platform by the Client and its Authorised Users;
- (g) the security of the premises in which the Ardexa Platform is installed, as well as the security of the Device; and,
- (h) loss of or damage to any property as a result of wear or tear, gradual deterioration, electrical disturbance, electronic data corruption, failure or breakdown, moth or vermin.

17.3 The Client acknowledges and will ensure that its Authorised Users are advised that the Ardexa Platform is not designed, manufactured or intended for use in environments or applications that may lead to death, personal injury, physical property or environmental damage. Any such use is at the Client's own risk and cost.

17.4 Ardexa will not be liable for any failure of the Ardexa Platform which is attributable to:

- (a) any modification to the Ardexa Platform or a Device other than by Ardexa;
- (b) accident, abuse or misapplication of the Ardexa Platform or Equipment by the Client;
- (c) any software other than the Ardexa Software;
- (d) the Equipment;
- (e) use of other than the latest, unaltered current release of the Ardexa Platform as provided by Ardexa; or
- (f) use other than in accordance with this Agreement or applicable law.

17.5 To the maximum extent permitted by law, Ardexa does not warrant that:

- (a) the Client will have continuous access to, or usage of the Ardexa Platform;
- (b) data stored with the Hosting Providers will not be lost or corrupted;
- (c) malware or viruses will not be transmitted or carried through the Ardexa Platform;
- (d) it will be possible to restore Client Data from Ardexa's backups (if included in the Service Package); or
- (e) it will be able to prevent unauthorised persons obtaining access to Client Data.

17.6 The Client warrants that it has not relied on any representation made by Ardexa which has not been expressly stated in this Agreement.

## 18. LIMITATION OF LIABILITY

18.1 Except in relation to liability which cannot be excluded at law:

- (a) Ardexa is not liable whether in tort (including negligence) or breach of statutory duty, contract, misrepresentation, restitution or otherwise for any loss of profits or income, loss of business, business interruption (including loss of computer time or use), depletion of goodwill, loss or corruption of data or information, or pure economic loss, or for any other special, indirect or consequential loss of any nature, costs, damages, charges or expenses however arising under this Agreement; and
- (b) Ardexa's total aggregate liability, whether in contract, tort (including negligence), or breach of statutory duty or contract, misrepresentation, restitution or otherwise, is limited to the Fees paid in the 12-month period immediately preceding the month where the event giving rise to the claim occurred.
- (c) This Agreement is an agreement between Ardexa and the Client, and there are no intended third-party beneficiaries of this Agreement.

18.2 The Client will at all times fully and wholly indemnify and hold harmless Ardexa and its officers, directors, employees and agents in respect of any claim including third party claim for any injury, loss, damage or expense occasioned by or arising directly or indirectly from:

- (a) access to and use of, the Ardexa Platform or Equipment by the Client or any Authorized User;
- (b) any defect, malfunction, error, loss, delay or breakdown in the transmission, reception, use or storage of information or records obtained by the Client from the Ardexa Platform;
- (c) a breach by the Client of any agreement between the Client and its Authorized Users or any warranty made by the Client to its Authorized Users;
- (d) a breach by the Client or any of its Authorised Users of the obligations under this Agreement; or
- (e) any wilful, unlawful or negligent act or omission of the Client or any of its Authorised Users.

## 19. TERM

19.1 This Agreement commences on the Commencement Date and continues in full effect unless and until it is terminated in accordance with clause 19.2 or 20 below.

19.2 Each Service Package is offered on a periodic basis (**Licence Period**). The term of this Agreement continues for the initial Licence Period and automatically renews for subsequent Licence Periods unless and until either party notifies the other in writing of

its intention not to renew at least 30 days before the end of the then current Licence Period.

## **20. TERMINATION**

20.1 Either party may terminate this Agreement or an Order with immediate effect by giving notice to the other party if:

- (a) the other party breaches any of its obligations under this Agreement capable of remedy and fails to remedy that breach within 30 days after receiving notice requiring it to do so;
- (b) the other party ceases to carry on business;
- (c) the other party disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business; or
- (d) any step is taken to enter into any arrangement between the other party and its creditors or to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator of the whole or any part of the other party's assets or business.

20.2 If for a continuous period of 90 days there are no active Authorised Users of the Client using the Ardexa Platform, Ardexa may terminate this Agreement and delete any data associated with the Client, including Client Data.

20.3 If the Client fails to pay Fees for more than 30 days from the due date, Ardexa may terminate this Agreement upon notice to the Client.

## **21. CONSEQUENCES OF TERMINATION**

21.1 Upon the expiry or termination of this Agreement:

- (a) any licences granted under this Agreement will immediately terminate;
- (b) any Order pending completion will immediately terminate;
- (c) Ardexa will immediately disable the Client's and its Authorised Users' access to the Ardexa Platform and cease providing Services to the Client; and
- (d) the Client will immediately:
  - (i) cease to access and use the Ardexa Platform;
  - (ii) cease to use the Intellectual Property Rights of Ardexa; and
  - (iii) pay all sums owing to Ardexa pursuant to this Agreement.

21.2 Ardexa may, at any time after 30 days from termination, delete the Client Data, including Personal Data.

21.3 Expiry or termination of this Agreement for any reason will not affect the accrued rights or remedies of either party.

## **22. FORCE MAJEURE**

22.1 Except for obligations to pay money due hereunder, neither party will be liable to the other for delay or failure to perform its obligations under this Agreement if such delay or failure is caused by declaration of war, strikes, acts of God or the public enemy,



riots, compliance with Government laws and regulations, pandemic, inability to secure necessary governmental priorities or any fault beyond its reasonable control.

## **23. DISPUTE RESOLUTION**

- 23.1 In the event of a serious dispute arising between the parties out of or in connection with this Agreement (**Dispute**), either party may issue a 'Dispute Notice' to the other party and, if it does so then the parties must use their best endeavours to try to settle such dispute amicably by negotiation within 30 days of the issuance of the Dispute Notice or within any agreed extended period (**Negotiation Period**).
- 23.2 If the Dispute is not resolved during the Negotiation Period, then either party may proceed to litigate the matter.

## **24. GENERAL**

### **24.1 Publicity**

- (a) The Client acknowledges and agrees that Ardexa may use the Client's name and company logo as well as services used as a reference for marketing or promotional purposes on Ardexa's website or in its marketing and promotional materials, including in any communication with existing or potential Ardexa's clients. The Client may withdraw its consent for such use and publicity by written notice via email to [legal@ardexa.com].
- (b) The Client will not use Ardexa's name, marks or logo in any publications or promotional materials without Ardexa's prior written consent.

### **24.2 Assignment**

The Client may not sub-licence, transfer or assign any of its rights or obligations under this Agreement without the prior written consent of Ardexa.

### **24.3 Sub-contracting**

Ardexa may sub-contract the performance of any or all of its obligations under this Agreement.

### **24.4 Severance**

If any part of this Agreement is deemed unenforceable, then if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed or in any other case the provision is severed and the rest of this Agreement will continue to be legal and enforceable.

### **24.5 Waiver**

The failure of a party at any time to insist on performance of any obligation under this Agreement of the other party is not a waiver of its right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to insist on performance of that or any other obligation of the other party under this Agreement.

## 24.6 Notices

- (a) Each party notifying or giving notice under this Agreement will do so in writing via email addressed to the other party:
  - (i) in the case of Ardexa, to legal@ardexa.com; and
  - (ii) in the case of the Client, as specified in the Client's Ardexa Account.
- (b) A notice given via email in accordance with this clause is deemed received on the date which is the earlier of:
  - (i) the date on which the recipient acknowledges receipt of the email by reply to the sender's email; or
  - (ii) the date on which the sender receives an automated delivery or read receipt; or
  - (iii) if no such acknowledgement or receipt is received, the date when the email has entered the recipient's mail server.

## 24.7 Entire Agreement

This Agreement (including all schedules and attachments) is the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes any prior agreement, oral or written and any other communications between the parties in relation to the subject matter of this Agreement. This Agreement may be amended solely by a written amendment signed by both parties. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and shall be void unless specifically accepted in writing by the party against whom their enforcement is sought; mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.

## 24.8 Governing Law

This Agreement shall be governed by the laws of the State of New South Wales, Australia, and each party agrees to submit to the non-exclusive jurisdiction of the courts of New South Wales.

## 25. DEFINITIONS AND INTERPRETATION

### 25.1 Definitions

In this Agreement, including the Service Package and any Orders, the following definitions apply unless specified otherwise in the Service Package or Master Agreement:

**Actuator** means hardware, machine or controller that receives signal from Device and is driving a mechanical, electrical or similar action.

**Agreement** means these terms and conditions, the Master Agreement, the Service Package and all Orders, including all schedules, exhibits and attachments thereto.

**Ardexa** means Ardexa Pty Limited (ACN 166 479 063), registered in Australia.

**Ardexa Agent** means the downloadable Ardexa Software that is residing on the Device.

**Ardexa Platform** means the Ardexa Software together with the Ardexa Agent; and includes any Customisations or Updates.

**Ardexa Products** means the Ardexa Platform and Ardexa Templates, and any Services, Provisioning, and Equipment detailed in a Master Agreement or Order.

**Ardexa Software** means any software developed, owned by or licensed to Ardexa which is designated on a Master Agreement and is used in association with the Ardexa Agent, and any related APIs.

**Ardexa Templates** means any templates or code created by Ardexa in the performance of or in connection with this Agreement, whether independently or jointly with the Client, for use within the Ardexa Platform, including anything related to specific sensor connections, micro controller connections, PLC connections, machine connections, plugins, data mapping, account set-up forms and applications, data analytics templates, data display set-ups, machine learning algorithm or data processing algorithm.

**Authorised Users** means employees, agents, contractors under written contract with Client, or Customers of the Client who are authorised by the Client to use the Ardexa Platform on Client's behalf.

**Business Hours** means the hours of 9:00am to 5:00pm Monday to Friday, excluding public holidays, in the following time zones:

- (a) For USA clients: EST;
- (b) For EU clients: CET;
- (c) For Australian/Asian clients: AEDT;

**Confidential Information** means information of a party that is proprietary or confidential and is disclosed by that party to the other party under and for the purposes of this Agreement.

**Client** means the individual, company or entity identified in the Master Agreement or Order.

**Client Data** means any content, materials, data and information, including personal information of Client or an Authorised User, that Client or an Authorised User enters into the Ardexa Platform, or specific data that is derived from Client's or an Authorised User's use of the Ardexa Platform, as long as such derivative work is not a standard component of the Ardexa Platform itself or provided by Ardexa under this Agreement without the use of the Client Data.

**Commencement Date** means the earliest date of either; signing a Master Agreement or, issuing an Order or, installing, accessing or using the Ardexa Platform.

**Customer** means the entities to which the Client provides services in the conduct of its business via, using or making available access to the Ardexa Platform.

**Customisation** means any modification, derivation or customisation developed or implemented by Ardexa pursuant to a Order, including as part of the Provisioning,

whether or not created jointly with the Client, at Client's request and/or pursuant to Client's specific requirements and at Client's expense.

**Device** means any equipment or computer that can run the Ardexa Agent.

**Device Volume Band** means a range of Device volumes for which unit price remains constant.

**Equipment** means any Device or other equipment used by the Client in connection with the Ardexa Platform.

**Fees** means the fees payable by the Client to Ardexa in consideration of the licence and all services provided by Ardexa under this Agreement.

**Hosting Provider** means a third party hosting provider used by Ardexa.

**Intellectual Property Rights** means any intellectual and industrial property rights or entitlements throughout the world including those in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks and designs, whether or not now existing and whether or not registered or registrable, as well as any right to apply for the registration, renewals and extensions of those rights, and any other Intellectual Property Rights as defined in Article 2 of the World Intellectual Property Organisation Convention of 1967.

**Master Agreement** means the agreed contract between Client and Ardexa which outlines the services definitions and pricing that will apply to all future Orders.

**On-premises** means Client's private data centre, or private or public cloud hosting environment used by the Client where the Ardexa Platform is installed.

**Order** means:

- (a) A Quotation signed by Client; or,
- (b) An official purchase order from the Client that references the Quotation number, or,
- (c) A written document in a form acceptable to Ardexa, in which Client either references the Quotation number, or includes the details of the Service Package, products, and Services offered by Ardexa, and which indicates Client's acceptance of the Quotation or terms.

**Personal Data** means any information which is personal information as defined in and for the purposes of the Privacy Laws.

**Privacy Laws** means:

- (d) For US clients: All applicable US Federal laws relating to privacy or data security laws;
- (e) For EU clients: GDPR privacy laws and regulations;
- (f) For Australian clients: The Privacy Act 1988 (Cth) and the Australian Privacy Principles;
- (g) any other equivalent state legislation; and

(h) associated regulations.

**Professional Services** means any services, including software development, configuration development, dashboard provisioning, project management, consulting, advisory, training or similar, which the Client requests to be provided by Ardexa.

**Provisioning** means set-up and configuration services to implement the settings for a Client within the Ardexa Platform.

**Quotation** means an Ardexa commercial offer for a specified set of services or products that Client may accept by issuing an Order.

**Service Package** means the specific set of specifications, functionality and applicable pricing for the use of the Ardexa Platform and provision of Services (other than Professional Services), which the Client selects when completing the Order.

**Services** means any services provided by Ardexa to the Client in accordance with a Master Agreement and the Service Package.

**Statement of Work** means a written document, executed by both parties, that outlines the specifications, deliverables, fees, timeline and other relevant information pursuant to which Ardexa may perform professional services on behalf of the Client. Each Statement of Work shall be incorporated in and subject to the Agreement.

**Taxes** means any local, state, federal and international sales, value added, excise and other taxes and duties of any kind or any other direct or indirect tax, charge, impost or duty payable in respect of this Agreement or the supply of any goods or services made under or in respect of this Agreement. The term Taxes does not include taxes on Ardexa's income.

**Term** is the term of this Agreement determined in accordance with clause 19.

**Third Party Software** is software, API's or plug-ins owned by third parties, whether commercial or free and open-source software and which may be provided to Client by Ardexa or others for use in connection with the Ardexa Platform.

**Updates** means the updates described in clause 10.1 of this Agreement.

## 25.2 Interpretation

In this Agreement, including a Master Agreement and Service Package, unless expressly stated otherwise:

- (a) clause headings have been inserted for convenience only and will not be taken into account in interpreting the Agreement;
- (b) words importing the singular will include the plural and vice versa;
- (c) a reference to a person includes an individual, a corporate or unincorporated body (whether or not having separate legal personality);
- (d) reference to a party to this Agreement includes reference to that party's legal representative, successors, and assigns

End of Terms and Conditions