

## Agreement for Services and Cooperation in Building a <Supplier 1> <Product> Consulting Practice in <State A>

### Intention and Purpose

Acme Business Services ("ABS") is an information technology ("IT") products and services company which has been operating primarily in the <State A> marketplace for some years, engaged in part in reselling, implementation and ongoing service for clients using solutions based on a number of software packages, including <Supplier 1>'s <Product> ("TLA"). ABS has made a strategic decision to exit the TLA market, and wishes to assist another organisation to undertake the TLA practice, and ensure continued and improved service to customers.

Implementations-R-Us ("IRU") is a similar IT company, specialised around the TLA product suite, has been operating primarily in <State B> and wishes to initiate a practice in <State A>, and to engage ABS to assist in building that practice, including transferring existing client and other relationships.

This agreement is intended to define the basis for an effective and cooperative relationship between the organisations to the intended benefit of both organisations and the TLA clients.

### Parties to this Agreement

This agreement is between:

- Mr Franz Kafka ("FK"), Principal, Authorised officer of Acme Business Services Pty Ltd ("ABS") of 999 Main Street, Anytown <State A>, 0000 Australia; and
- Mr John Locke ("JL"), Principal, Authorised officer of Implementations-R-Us ("IRU") of 998 High Street, Othertown <State B>, 1111 Australia.

### Definitions and Interpretations

- PMP <Product> Maintenance Plan
- Client or Customer <Product> Customer
- Service Revenue <Product>-Related Consulting Revenue

### Scope

It is agreed that the TLA practice to be built should include clients of ABS who are using the TLA software as of the date of signing, as well as those prospects ABS is currently pursuing for sale of the TLA software and/or directly associated services (such as software development interfaced to TLA), and any ongoing formal and informal relationships and contracts insofar as those may be transferred between the parties. A list of the relevant clients and pertinent information appears as Schedule A to this agreement.

The employment relationships with two staff currently employed by ABS (Mr Friedrich Wilhelm Nietzsche and Mr Ludwig Josef Johann Wittgenstein) are intended to form a part of the new practice. Neither ABS staff member has sat the TLA certification exam, although both have had specialised TLA training and over 3 years hands-on TLA experience.

ABS currently maintains a certified partner relationship with <Supplier 1>, specialising in SPS (<Supplier 1> <Product> <Specialisation>).

## Relationship of the Parties

No formal ongoing relationship will be created by this agreement, other than the specific actions, obligations and items defined in this agreement, and this document represents the whole agreement made between the parties at this time. It is, however, envisioned that the parties will continue to work together where their interests coincide, and where that cooperation may require or enable other commercial relationships, those will be defined and agreed in other appropriate documentation as required.

This agreement is not intended to give rise to a JV or other relationship entity, nor to an employment relationship (other than those with two staff as described elsewhere in this document), and both parties remain wholly responsible for their own statutory, taxation, and other obligations as independent companies.

Neither organisation will use the other organisation's name, logo, trademarks or other intellectual property (including in their marketing or other public releases and materials) without prior permission from the owner.

## Referrals and Commissions

It is expected that from time to time the opportunity may arise to refer clients to each other, entirely at the discretion of the referring party, with the sole exception that where a client listed in Schedule A approaches ABS for TLA-related products and/or services, they must be made aware of the existence of this agreement and referred to IRU. This obligation will continue for a period of 2 years from signing of this agreement.

If a referral (either discretionary or mandatory) is made by either party, and the other party is not already in communication with the potential client regarding that opportunity, and the opportunity results in a software sale, then 2% of total software value will be paid to the referring party as a sales commission. Payment will be made within 30 days of when the party selling the software to the customer receives payment.

It is specifically noted that either party may make referrals (and subsequently receive commissions) under this agreement, and those referrals may result in sales of a variety of different software, either resold by or owned by the selling party.

## Trading Limitations

This agreement specifically does not define sales or other territories for activities of either party. In order to facilitate cooperation and sharing of sensitive information, however, both parties undertake not to approach continuing clients of the other party for a period of 3 years from the signing of this agreement.

Where ABS has ongoing contact with clients listed in Schedule A, IRU will be notified, and any appropriate information will be shared, unless the client specifically requests that it not be. Such clients will be referred per the "Referrals" section of this agreement.

## Negotiations for Staff Transfer

It is expected that the two staff currently employed by ABS in this area will leave the employ of ABS and be re-employed by IRU, under mutually satisfactory employment contracts negotiated between the staff and IRU. It is envisioned that this transfer will occur on or about 1 October 1492. It is the responsibility of IRU to negotiate and implement these agreements. To facilitate reaching and implementing such agreement(s):

- ABS will make the relevant staff aware of the intention of this agreement, although the detailed information, particularly with respect to valuation and payments will remain confidential;
- IRU will be encouraged to make offer(s) of employment to staff, conditional on the implementation of this agreement;
- ABS will agree with staff to waive any required notice periods;
- ABS will undertake to pay outstanding annual and long service leave and other entitlements as appropriate and agreed with staff;
- ABS will ensure that superannuation, insurances and any other entitlements and conditions of employment are documented and paid as appropriate and agreed to their date of termination with ABS;
- ABS will continue to make available appropriate workspace for staff transferring, substantially similar to their current arrangements for a period of at least 3 months with subsequent arrangements to be negotiated (between ABS and IRU) if and as required;
- Staff will be made aware by both parties of the separate competitive nature of the parties, and reminded of their continuing obligations to both;
- Staff will be requested to undertake continuing responsibility for confidentiality of information to ABS and clients, as well as to IRU.

For a period of 3 months following their transfer to the employment of IRU, one or both of the two staff may be required to perform ongoing tasks for ABS, and IRU will make those staff available to do so, and will be remunerated on a commercial basis to be agreed as required.

### **Services to be Provided**

As soon as practical following signature of this agreement, ABS will assist IRU as quickly as practical and agreed, to:

- Notify <Supplier 1> formally of the intent of this agreement;
- Negotiate suitable employment agreements with the staff in question;
- Draft and circulate a press release to publicise this agreement;
- Launch the practice publicly in the press and to the industry;
- Meet directly and jointly with each client and prospect to introduce, promote, and recommend transfer of business to the new practice;
- Obtain client signatures on the appropriate form to effect transfer in <Supplier 1>'s Partner Program Records; and
- Otherwise maximise the success of the new practice in <State A>.

ABS staff will undertake to assist as appropriate in helping IRU to transfer and retain as much of the client base as possible, and to bring as many clients as possible up to currency with PMP status, and in relationship aspects, as possible, including ensuring the transfer of appropriate historical information and documentation as possible (and as acceptable to the client).

It is anticipated that the transfer of clients will require significant time input from FK and potentially other ABS staff directly during a period of some 3 months from the time of signing of this agreement, and such time and effort as is reasonably required will be provided to IRU without charge. Should additional time commitment be required of FK beyond that time, normal commercial arrangements will be negotiated between the parties.

## Remuneration and Payments

It is agreed that the overall fees for assistance from ABS in implementing the practice (as defined in this agreement) will be charged at a fixed price of A\$999,999.99 plus applicable GST. Charges will be invoiced, and payments will be made according to the following schedule:

Amount	Being	Timing
A\$599,999	60% of A\$999,999+GST	On Signing this Agreement
A\$100,000	10% of A\$999,999+GST	3 months from signing
A\$100,000	10% of A\$999,999+GST	6 months from signing
A\$100,000	10% of A\$999,999+GST	9 months from signing
A\$100,000	10% of A\$999,999+GST	12 months from signing

It is envisioned that ABS may supply certain additional services outside the scope of this agreement, which will be supplied on a commercial basis to be agreed as required. The new practice may be asked to supply services to ABS, on a similar commercial basis to be agreed as required.

IRU will also be required to make significant time available to implement this relationship, and will bear its own expenses in this regard as well.

Where expenses are incurred which may also be construed as broader marketing work for either organisation, that organisation will bear the expense themselves.

## Contingency

Should the revenues billable by the new practice to those clients and/or prospects listed in Schedule A fall short of the agreed minimum revenue forecast in a quarter, the quarterly payment for that quarter, and for subsequent quarters will be adjusted to pro-rate the payments to the revenue as and when achieved. Hence quarterly payments for the quarter in which revenue fell short, and for all subsequent quarters will be calculated as:

$$QtrPayment = \left( A\$100,000 \times \frac{Total\ Revenue}{Forecast\ Min\ Revenue} \right) - Payments\ To\ Date$$

Where:

- QtrPayment = Amount of payment due from IRU to ABS in this payment;
- TotalRevenue = Total aggregate cumulative revenue achieved year-to-date;
- ForecastMinRevenue = Total minimum aggregate cumulative revenue as specified in Schedule B;
- PaymentToDate = Total of all previous quarterly payments made.

For clarity, it is the intention of this calculation that the full remaining 40% of the valuation will be paid as soon as the agreed minimum aggregate cumulative revenue target is reached. Should the full remaining 40% not become due at the end of the 12-month period, the total valuation will effectively be decreased by the outstanding amount.

**Execution**

Signed for and on behalf of **Acme Business Services** by **Mr Franz Kafka**, Principal:

[Signature] \_\_\_\_\_ [Date] \_\_\_\_\_

[Witness Signature] \_\_\_\_\_

[Witness Name & Title] \_\_\_\_\_

Signed for and on behalf of **Implementations-R-Us** by **Mr John Locke**, Principal:

[Signature] \_\_\_\_\_ [Date] \_\_\_\_\_

[Witness Signature] \_\_\_\_\_

[Witness Name & Title] \_\_\_\_\_

**Schedule A – Client List and Details**

<b>Account No</b>	<b>Name</b>	<b>Users</b>	<b>Version</b>	<b>Product</b>
<Redacted>	<Customer Name Redacted>	<Users>	<Version>	<Product>
<Redacted>	<Customer Name Redacted>	<Users>	<Version>	<Product>
<Redacted>	<Customer Name Redacted>	<Users>	<Version>	<Product>
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<Redacted>	<Customer Name Redacted>	<Users>	<Version>	<Product>

**Schedule B – Minimum Revenue Forecast**

For calculation of quarterly payments schedules, the contingency calculation will be employed if annual revenue is not achieved at a quarterly rate to achieve an annual revenue minimum of A\$999,999,999.00.