

## 1. DICTIONARY

In this document, the words below have the following meanings:

**\$** means AUD, unless specifically otherwise specified.

**ACDC** means the Australian Commercial Dispute Centre Limited A.C.N. 003 042 840 of Level 6, 50 Park Street, Sydney, NSW, 2000, Australia.

**Anything of Value** includes cash or cash equivalents, gifts, services, employment offers, loans, travel expenses, entertainment, political contributions, charitable donations, subsidies, per diem payments, sponsorships, honoraria or provision of any other asset, even if nominal in value.

**AUD** means Australian dollars.

**Business Day** means any day except a Saturday, Sunday or public holiday in South Australia.

**Confidential Information** means all information disclosed by The Company which is stated to be, or is by its nature confidential, or can reasonably be considered to be so, and includes financial information and other trade secrets and confidential know-how and information regarding The Company's business, but excludes information that:

- (a) The Supplier creates or develops (whether alone or jointly with any person) independently of the Confidential Information;
- (b) is public knowledge (otherwise than as a result of a breach of confidentiality by The Supplier or any person to whom it has disclosed the information);
- (c) is rightfully known to, or in the possession or control of The Supplier or any of its personnel and not subject to an obligation of confidentiality in accordance with the terms of this document; or
- (d) becomes available to The Supplier from a source other than The Company, where that source has the right to use and disclose the information and is not bound by any obligation of confidentiality in respect of the same.

**Contract** has the meaning set out in clause 2.1.

**Deliverables** means the deliverables resulting from the provision of the Services (if applicable).

**Delivery Date** means the date by which Goods and/or Services (including any relevant Deliverables) must be delivered to The Company, on a free into store (FIS) delivery basis (or such other delivery basis as may be specified by The Company in an Order) at the delivery address specified in writing (and if no such address is specified, to The Company's premises at 2 Second Avenue, Mawson Lakes, South Australia 5095).

**Dispute** has the meaning set out in clause 20.1.

**Drawings** means any technical drawings or similar diagrams and specifications for the Goods, Services and/or Deliverables to be provided by The Supplier as set out in an Order.

**Duties** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed but excludes any income tax.

**Existing Arrangements** means any arrangements, Contracts and agreements between The Company and The Supplier in effect as at the date an Order is submitted.

**Facilitating Payment** means a payment to an individual to secure or expedite the performance of a routine government action by Government Officials.

**Force Majeure Event** means anything outside a party's reasonable control including, without limitation, shortages of materials, fire, storm, flood, earthquake, explosion, accident, enemy acts, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation.

**Goods** means the goods specified in an Order, if any.

**Government Agency** means any government or governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Government Official** means:

- (a) any officer or employee of a government or any department, agency or instrument of a government (including but not limited to any Government Agency);
- (b) any person acting in an official capacity for or on behalf of a government or any department, agency, or instrument of a government (including but not limited to any Government Agency);
- (c) any officer or employee of a company or business owned in whole or part by a government;
- (d) any officer or employee of a public international organisation such as the World Health Organisation or United Nations;
- (e) any officer or employee of a political party or any person acting in an official capacity on behalf of a political party; and/or
- (f) any candidate for political office.

**GST** has the meaning it does in section 195-1 of the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

**Insolvency Event**, in relation to The Supplier, means any of the following events:

- (a) The Supplier is unable to pay its creditors (or any class of them) in the ordinary course of business;
- (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to The Supplier or any of its assets;
- (c) The Supplier enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors;
- (d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of The Supplier; or
- (e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property Rights** means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, throughout the world for the full period of the rights and all renewals and extensions.

**Manufacturer's Warranty** means the warranty, if any, provided by the original manufacturer in respect of the relevant Goods or Deliverables provided by the Supplier to the Company.

**Modern Slavery Policy** means The Company's Modern Slavery Policy provided to The Supplier by The Company which may be amended by the Company from time to time.

**Ongoing Monitoring** means the monitoring of The Supplier by The Company on a periodic basis as determined by The Company for the purpose of assessing and reassessing the level of risk associated with transacting with The Supplier during the term of a Contract.

**Order** means the formal purchase order issued by The Company to The Supplier (in the form required by The Company from time to time) requesting the supply of the Goods and/or Services.

**Payment** refers to and includes any direct or indirect offer to pay, promise to pay, authorisation of payment of, or transfer of, Anything of Value.

**Price** means the amount stated in the Order, which must be consistent with The Supplier's standard pricing or such other pricing arrangement

as the parties may have discussed and agreed prior to submission of the Order.

**Services** means the services specified in an Order, if any.

**Special Conditions** means the terms and conditions designated as such in, attached to, or referenced in, an Order.

**Supplier Code of Conduct** means the Company's Supplier Code of Conduct which may be amended from time to time and can be located at <https://codan.com.au/who-is-codan/corporate-governance/>.

**Supply** has the same meaning it does in section 9-10 of the GST Act and excludes any "GST-free supplies" and "input taxed supplies" as those terms are defined in section 195-1 of the GST Act.

**Tax** or **Taxes** means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, GST, consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any Government Agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

**The Company** means the entity specified in any Order.

**The Supplier** means the entity from which The Company requests the supply of Goods and/or Services, as specified in an Order.

**Warranty Period** means a period of 3 years, commencing on the date on which the relevant Goods or Services (including Deliverables) are accepted by The Company under clause 3.5 of this document.

## 2. Orders and Contracts

- 2.1 A contract between The Company and The Supplier for the supply by The Supplier, and the purchase by The Company, of the Goods and/or Services specified in the Order will come into existence on the date the Order is submitted by The Company (**Contract**). The Contract will comprise the terms and conditions of this document and the Order to the exclusion of any other terms and conditions (including but not limited to the standard terms of supply of The Supplier, or any variation to this document purported to be made by The Supplier). For the avoidance of doubt, a separate Contract is entered into when The Company issues each Order.
- 2.2 The quantity, quality and description of Goods and/or Services to be supplied to The Company (including any Deliverables to be provided and any Drawings which Goods/Deliverables must conform with) will be as set out in the Order. The Company is not obliged to purchase a specific number or quantity of Goods or Services from The Supplier.
- 2.3 The Company can at any time advise The Supplier of any changes it requires to Goods and/or Deliverables by submitting Drawings for the relevant Goods and/or Deliverables that are revised to incorporate the necessary alterations, at the time of placing an Order for the Goods and/or Deliverables as revised. The Supplier must consider any revised Drawings submitted by The Company and request that The Company provide it with any further information necessary for The Supplier to supply Goods and/or Deliverables that conform with the revised Drawings. The Supplier must ensure that any Goods and/or Deliverables it provides to The Company comply with any revised Drawings for those items that are submitted by The Company from time to time.
- 2.4 The Company can at any time by notice in writing make changes to an Order, and if a change varies the Price payable or Delivery Date, The Company will specify the variations in writing and send this notice to The Supplier. The Supplier must acknowledge any notice issued by The Company by signing and returning a copy of the notice issued by The Company within 48 hours of receipt, and should it fail to do so, will be deemed to have acknowledged and accepted the modification.

2.5 The Supplier cannot vary any Order or work to be performed under any Contract without the written agreement of The Company, unless expressly permitted by this document.

2.6 An Order may include Special Conditions. In the event of an inconsistency between any term of this document and a Special Condition, the Special Condition will prevail to the extent necessary.

## 3. Performance of Contracts and Fulfilment of Orders

- 3.1 The Supplier will use its best endeavours to provide the Goods and/or Services requested in an Order on or before the Delivery Date.
- 3.2 If The Supplier is unable to supply the Goods and/or Services requested in an Order by the applicable Delivery Date, it must give notice to The Company of this fact within 48 hours of receipt of the Order submitted by The Company, and if The Company does not receive such a notice The Supplier will be deemed to have accepted the Order.
- 3.3 Delivery of Goods or Services requested in an Order will not be complete unless and until the relevant items are received by The Company at the relevant delivery address and accepted in accordance with clause 3.5.
- 3.4 The Supplier will provide the Goods and Services (including any Deliverables) with the level of skill and care which is appropriate in the circumstances, to professional standards using suitable equipment, resources and personnel (as applicable).
- 3.5 The Company will issue a written acceptance of all Goods and Services (including Deliverables) provided when it is satisfied that the provided items comply with all applicable laws, regulations and standards together with the terms of this document and any requirements notified by The Company to The Supplier. The Company reserves the right to conduct such testing as it considers necessary to determine compliance, at its own cost. If The Company in its discretion determines that any Goods or Services are non-compliant then it can refuse to accept such items, and if so, must issue The Supplier with a written rejection notice setting out the reasons for its rejection in reasonable detail. Such a notice may direct The Supplier to remove the non-compliant items at The Supplier's cost, and The Supplier agrees to comply with such a direction.
- 3.6 The Company's inspection, testing or acceptance at any time of some or all of the Goods or Services (including Deliverables) does not in any way:
  - (a) waive, change or affect The Supplier's obligations or warranties under this document; or
  - (b) affect The Company's right to claim for any damage or loss it may suffer because of The Supplier's breach, other failure to comply or actions generally, or The Company's rights and remedies under applicable laws.
- 3.7 If The Supplier fails to meet the Delivery Date, then The Company is entitled to cancel the corresponding Order and terminate the relevant Contract in its sole discretion. If this occurs, The Company is not obliged to purchase the relevant Goods or Services from The Supplier, or pay any amounts to The Supplier in respect of such items, and The Supplier must immediately reimburse to The Company in full all amounts paid in respect of the relevant Goods or Services.
4. **Title and Risk**
  - 4.1 Title and risk in the Goods and any Deliverables resulting from the Services will pass to The Company upon acceptance in accordance with clause 3.5, except as specified in clauses 4.2 and 4.3.
  - 4.2 Title to, and risk in, the Goods and any Deliverables resulting from the Services which are defective, faulty or otherwise contain errors will remain with The Supplier unless and until such items

are accepted by The Company (and regardless of whether or not a rejection notice is issued by The Company under clause 3.5), despite delivery to The Company in accordance with the requirements of this document.

- 4.3 If following acceptance a notification is issued by The Company to The Supplier under clause 7.3, then risk in respect of the Goods or Deliverables resulting from the Services which are the subject of the notification immediately reverts to The Supplier and will not again revert to The Company unless and until such items are again accepted by The Company.

### 5. Price and Payment

- 5.1 The Company will pay the Price to The Supplier for the Goods and/or Services set out in an Order.
- 5.2 The Supplier must provide The Company with a valid tax invoice for the Price payable:
- (a) in respect of each delivery of Goods, at the time of delivery or as soon as practicable thereafter; or
  - (b) in respect of the provision of the Services, upon successful completion of the Services and provision and acceptance of the relevant Deliverables to The Company (if any) in accordance with the requirements of this document, or as soon as practicable thereafter.
- 5.3 Each tax invoice of The Supplier must correspond with the Price and must include, at minimum the Order reference number, a description of the Goods and/or Services provided and/or the Deliverables to which the invoice relate, and any other information reasonably requested by The Company.
- 5.4 The Company must pay each tax invoice issued by The Supplier in accordance with clause 5.3 within 60 calendar days of the end of the month in which the invoiced Goods were received, unless agreed otherwise in writing by the Parties.
- 5.5 Payment of validly issued tax invoices will be subject to a pro-rata adjustment by The Company, as determined by The Company in its sole and absolute discretion, to account for any shortage in the number of Goods delivered or any non-complaint Goods or Deliverables rejected by The Company under this document.
- 5.6 Without limiting its rights under clause 5.5 in any way, if The Company disputes all or part of a tax invoice, it must notify The Supplier within 10 Business Days of receipt of that invoice by notifying The Supplier in accordance with clause 20. The Company must pay The Supplier an amount equal to the undisputed portion of the invoice in accordance with clause 5.4.

### 6. Taxes and Government Charges

- 6.1 Unless otherwise expressly indicated, the amounts payable by The Company to The Supplier for, or in connection with this document include all amounts on account of applicable Taxes and Duties. Unless otherwise agreed in writing or stated in this document, The Supplier will be solely liable for and shall pay, when due and payable, all Taxes and Duties which may be imposed in relation to the supply Products, or which is assessed or chargeable in respect of this document and any associated documents or transactions.
- 6.2 The Supplier agrees to indemnify The Company in respect of any liability for Taxes and Duties, and will pay any Taxes and Duties notified to it by The Company immediately upon request. The Supplier must provide The Company with all necessary tax invoices, receipts and other documentation as required by The Company in accordance with applicable laws, legislation and regulations.
- 6.3 In the case of GST payable in Australia, if applicable, The Company will pay to The Supplier an additional amount on account of GST are required by the GST Act. Notwithstanding anything to the contrary in this clause, The Company is not required to pay any additional GST amount until such time as The Supplier has

provided The Company with a tax invoice in a form which is approved for GST purposes.

### 7. Warranty

- 7.1 It is agreed by the parties that this clause applies if The Supplier is the original provider/manufacture of any Goods, Services and/or Deliverables supplied to The Company under this document.
- 7.2 The Supplier warrants that the Goods, Services and Deliverables will be free of faults, defects and errors for the duration of the Warranty Period.
- 7.3 If The Company advises The Supplier that any Goods, Services or Deliverables (as applicable) contain defects, errors or are otherwise faulty at any time during the Warranty Period, then The Supplier must (without limiting the remedies available to The Company under this document or applicable law) at its sole cost and expense and as directed by The Company:
- (a) in the case of Goods and Deliverables - replacement of the relevant item, the supply of equivalent goods, repair of the relevant item, payment of the cost of replacing the relevant item or acquiring equivalent goods, or payment of the costs of having the relevant item repaired;
  - (b) in the case of the Services - the supply of the services again or payment of the cost of having the services supplied again; or
  - (c) collect the non-conforming Goods or Deliverables from The Company's premises and refund or otherwise credit to The Company the total amount The Company has paid with respect to the non-conforming items, or not invoice The Company for such amounts (as appropriate).
- 7.4 If any replacement or substitute Goods, Services or Deliverables are supplied to The Company under clause 7.3, then the Warranty Period will re-commence in respect of such items as at the date of acceptance by The Company in writing of the replacement or substituted items.

### 8. Manufacturer's Warranty

- 8.1 It is agreed by the parties that this clause applies if The Supplier is a re-supplier (rather than the original manufacturer) of any Goods, Services and/or Deliverables supplied to The Company under this document.
- 8.2 The Supplier must notify The Company if any of the Goods and/or Deliverables it supplies to The Company are the subject of a Manufacturer's Warranty, and advise The Company of the terms and conditions of any such Manufacturer's Warranty.
- 8.3 The Company will advise The Supplier if it considers that any Goods or Deliverables the subject of a Manufacturer's Warranty (as applicable) contain defects, errors or are otherwise faulty at any time.
- 8.4 The Supplier will use its best endeavours to claim the benefit of any Manufacturer's Warranty applicable to any Goods and/or Deliverables notified by The Company under clause 8.3, and any other Goods and/or Deliverables supplied or intended to be supplied to The Company by The Supplier which The Supplier considers are faulty or defective, and pass the benefits received under any such Manufacturer's Warranty onto The Company in full.

### 9. Recall of Goods

- 9.1 The Supplier must immediately notify The Company if it becomes aware that it is necessary or desirable to withdraw the Goods or Deliverables from the marketplace, because of non-compliance with the requirements of this document or applicable laws and regulations, or if the items are (or are suspected to be) defective or otherwise faulty, or a competent authority has directed or is likely to direct that the relevant Goods or Deliverables be withdrawn, or any other reasonable grounds.

9.2 The Company will be responsible for carrying out any recall of Goods or Deliverables, at The Supplier's cost, unless it otherwise notifies The Supplier, and The Supplier must reimburse The Company for all costs it has incurred in respect of any recall (regardless of whether or not carried out by The Company).

## 10. Confidentiality

10.1 The Supplier:

- (a) must use Confidential Information of The Company solely for the purposes of performing its obligations under this document;
- (b) must keep confidential all Confidential Information of The Company; and
- (c) can disclose Confidential Information of The Company only to
  - (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by the other party, or (ii) as required by law or stock exchange regulation.

10.2 The Supplier must notify The Company immediately once it becomes aware of any actual or suspected breach of confidentiality and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information of The Company.

## 11. Government Approvals

11.1 The Supplier must, at its cost, obtain all necessary export or import licences, clearances and other consents and approvals from Government Agencies which are necessary for it to supply the Goods and Services to The Company, and agrees to complete and provide to The Company any documentation required by The Company to obtain any approvals and consents it may require to receive the Goods or Services.

11.2 The Company may at any time require that The Supplier supply it with copies of licences, permits, clearances and approvals issued by Government Agencies and obtained by The Supplier as required by clause 11.1, and The Supplier agrees to immediately comply with any such request. If at any time The Company becomes aware that The Supplier has failed to comply with its obligations under clause 11.1, it may immediately terminate this document or any Contract or Order by written notice, without penalty, and without limitation will not be required to pay to The Supplier any amounts accrued for Goods or Services but yet to be paid.

## 12. Intellectual Property

12.1 The Supplier acknowledges and agrees that nothing in this document gives The Supplier any right or entitlement to any of the Intellectual Property of The Company or its related entities, and that except to the extent strictly necessary for it to perform its obligations under this document, it must not access or use any of the Intellectual Property of The Company or any of its related entities. The Supplier will not have any legal or equitable claim or right to any part of the Intellectual Property of The Company or its related entities, except as provided for in this document.

12.2 The Company acknowledges and agrees that with the exception of the Deliverables, the Intellectual Property comprised in and associated with the Goods and/or Services is owned by The Supplier. The Company will not have any legal or equitable claim or right to any part of the Intellectual Property comprised in and associated with the Goods and/or Services, except as provided for in this document.

12.3 The parties agree that ownership of the Deliverables will vest in The Company immediately upon creation and will be the sole and absolute property of The Company. For the avoidance of doubt, The Supplier will not have any legal or equitable claim or right to

any part of the Intellectual Property comprised in and associated with the Deliverables, except as provided for in this document, and agrees to execute (and procure the execution of) any documentation required by The Company to confirm this.

## 13. Bribery and Corruption Requirements

13.1 It is a material term of this document that The Supplier must comply with the following:

- (a) The Supplier must comply fully at all times with all applicable laws and regulations, including but not limited to applicable anti-corruption laws of the territory in which The Supplier conducts business with The Company.
- (b) The Supplier must not, and covenants that it will not, in connection with the performance of this document, directly or indirectly promise, authorise, ratify, offer to make or make, or take any action, in furtherance of any Payment of Anything of Value to any individual, or to an intermediary for payment to any individual, including a Government Official, for the purpose of influencing or inducing or as a reward for any act, omission or decision to secure an improper advantage or to improperly assist The Supplier or The Company in obtaining or retaining business.
- (c) The Supplier must not, and covenants that it will not, in connection with the performance of this document, directly or indirectly promise, authorise, ratify or offer to make or make any Facilitating Payment to any individual, or to an intermediary for payment to any individual, including a Government Official.
- (d) The Supplier must not contact, or otherwise meet with any Government Official with respect to any transactions required under this document, without the prior written approval of The Company and, when requested by The Company, only in the presence of a The Company designated representative.
- (e) The Supplier represents that it has not been convicted of or pleaded guilty to a criminal offence, involving fraud or corruption; that it is not now, to the best of its knowledge, the subject of any government investigation for such offences, and that it is not now listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government procurement programs.
- (f) The Supplier represents and warrants that except as disclosed in writing:
  - (i) it does not have any interest which directly or indirectly conflicts with its proper and ethical performance of this document; and
  - (ii) it will maintain arms length relations with all third parties (including Government Officials) with which it deals for or on behalf of The Company or in the performance of this document.

13.2 The Supplier agrees that The Company may make full disclosure of information relating to a possible violation of the terms of this clause 13 at any time and for any reason to any competent government bodies and its agencies (including Government Agencies), and to whomsoever The Company determines in good faith has a legitimate need to know.

13.3 The Company will be entitled to terminate this document (without payment of compensation to The Supplier) immediately on written notice to The Supplier, if The Supplier fails to perform its obligations in accordance with the terms of this clause 13.

## 14. Insurance



- 14.1 The Supplier must take out and maintain at all times, with reputable insurers, valid and enforceable insurance policies in respect of the following:
- (a) product and public liability insurance, for an amount not less than \$10 million per incident or event;
  - (b) all necessary statutory workers compensation insurance; and
  - (c) such other risks that a reasonable, prudent person carrying on the business of The Supplier would be likely to insure against.
- 15. PPSA**
- 15.1 Terms used in this clause which are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the same meaning as in the PPSA.
- 15.2 The Supplier:
- (a) acknowledges that to the extent The Company grants The Supplier a security interest in connection with any Contract the collateral is limited to the Goods and Deliverables; and
  - (b) will not lodge any financing statement on the Personal Property Securities Register specifying the collateral subject to a security interest as 'all present and after acquired property' of The Company.
- 15.3 Nothing in sections 120, 126, 128 or Division 6 of Part 4.3 of the PPSA apply to any Contract.
- 16. Modern Slavery Policy Requirements**
- 16.1 In performing its obligations under this document and at all times during the term of any Contract or Order, The Supplier must:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force; and
  - (b) comply with the Company's Modern Slavery Policy or have and maintain its own policies and procedures to ensure its compliance; and
  - (c) not engage in any activity, practice or conduct that would constitute an offence if such activity, practice or conduct were carried out in Australia.
- 16.2 The Supplier must promptly notify The Company if it becomes aware of:
- (a) any breach, or potential breach, or the Modern Slavery Policy; or
  - (b) any actual or suspected slavery or human trafficking to a supply chain which has a connection with this document.
- 17. Supplier Code of Conduct**
- 17.1 In performing its obligations under this document and at all times during the term of any Contract or Order, The Supplier must comply with the Supplier Code of Conduct.
- 17.2 The Supplier must:
- (a) continuously self-assess its compliance with the Supplier Code of Conduct and take timely action to notify The Company if it becomes aware of any deficiency, breach or potential breach of the Supplier Code of Conduct; and
  - (b) promptly rectify any deficiency, breach or potential breach of the Supplier Code of Conduct.
- 18. Termination**
- 18.1 The Company may terminate this document, or any Contract or Order with immediate effect by written notice to The Supplier if:
- (a) The Supplier is the subject of an Insolvency Event;
  - (b) at the time of termination, a Force Majeure Event has persisted for greater than 30 Business Days;
  - (c) The Supplier breaches a term of this document and that breach is incapable of remedy;
  - (d) The Supplier breaches a term of this document which is capable of remedy, but fails to rectify the breach within 48 hours of The Company issuing a written notice requesting it to do so; or
- (e) The Company forms the opinion that The Supplier will not be able to supply the Goods and/or Services in accordance with the requirements of this document and/or the corresponding Order.
- 18.2 Termination of this document will not affect any accrued rights or remedies a party may have as at the date of termination, unless explicitly stated otherwise in this document.
- 19. Inspections, Audits and Ongoing Monitoring of The Supplier**
- 19.1 The Supplier shall:
- (a) allow The Company and/or any authorised third party representatives (**Auditor**) to assess The Supplier's compliance with the Supplier Code of Conduct and Modern Slavery Policy through Ongoing Monitoring, and by inspecting The Supplier's facilities, interviewing The Suppliers personnel, and/or reviewing The Supplier's practices, policies and relevant records without notice (**Audit**); and
  - (b) afford the Auditor all reasonable assistance in its undertaking of any Audit; and
  - (c) promptly provide complete and accurate information and documentation in response to the Auditor's requests.
- 19.2 The Supplier acknowledges and accepts:
- (a) if The Company through Ongoing Monitoring or Audit identifies any potential or actual risks associated with engaging The Supplier, The Company is entitled to cancel any future Orders and terminate the relevant Contract in its sole discretion.
- 20. Dispute Resolution**
- 20.1 A party will not commence arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this document (**Dispute**) unless it has complied with this clause.
- 20.2 A party claiming that a Dispute has arisen will notify the other party of the Dispute in writing.
- 20.3 Each party to the Dispute will ensure that during the 30 calendar day period after a notice is given under clause 20.2 (or a longer period agreed between the parties) the chief executive officers (or equivalents) of the parties will use their best reasonable endeavours to resolve the dispute in good faith.
- 20.4 If after 14 calendar days the parties are unable to resolve the Dispute under clause 20.3, the parties will attempt to settle the dispute by mediation conducted in accordance with the Commercial Mediation Guidelines of the ACDC.
- 20.5 The parties shall attempt to agree on the appointment of a mediator for the purposes of mediation of the Dispute pursuant to clause 20.4, and if the parties cannot agree on the identity of a mediator within 7 calendar days, the mediator will be appointed by ACDC within 7 calendar days thereafter. Mediation will be held within 7 calendar days of the appointment of the mediator.
- 20.6 Each party will bear its own costs of resolving a Dispute under this clause 20, and will bear equally the costs of any mediator required to be engaged.
- 20.7 If mediation does not proceed within the timetable set out in clauses 20.4 and 20.5, or is not successful in resolving the Dispute, the parties will be entitled to terminate the Dispute resolution process by giving notice in writing to all other parties and commence arbitration or court proceedings in respect of the Dispute. Nothing in this clause 20 prevents a party from seeking urgent interlocutory relief.
- 21. Supplier Warranty and Indemnity**
- 21.1 The Supplier warrants and represents to The Company that:
- (a) it has the authority and ability to enter into this document and perform its obligations, and will do so;

- (b) it is the owner or authorised licensor of any Intellectual Property provided or made available to The Company under this document;
  - (c) the Deliverables (if any) will be free from encumbrances and will not infringe the Intellectual Property rights of any third party;
  - (d) all Goods and Deliverables provided to The Company will be of acceptable and merchantable quality, free of defects in design, workmanship or materials, fit for their intended purpose, comply with their descriptions, conform with all samples, be free of any encumbrances and other charges or securities and have available repair facilities and spare parts;
  - (e) the Services, if any, will be supplied with due care and skill, will be fit for any particular purpose made aware to The Supplier by The Company (whether expressly or implicitly), will be suitable (together with any relevant Deliverables) to achieve any particular result or outcome made aware to The Supplier by The Company (whether expressly or implicitly);
  - (f) it will comply with all applicable laws in relation to the performance of its obligations under this document, including any applicable occupational health and safety laws and any standard notified by The Company from time to time, and that the Goods, Deliverables and/or Services provided to The Company will also comply with such requirements; and
  - (g) it has all necessary permits, licences, government approvals and other necessary registrations or documentation to lawfully provide the Goods and/or Services.
- 21.2 To the fullest extent permitted by law, The Supplier will be solely responsible for the Goods, Deliverables and/or Services provided to The Company under this document (including any consequences resulting from the use of the Goods or Deliverables by end user customers), and in no circumstances will The Company or any of its related entities be liable to The Supplier or any other party for any loss or damage sustained by any party in connection with the Goods, Services or Deliverables, including death, physical damage, injury, illness, special, indirect or consequential loss or damage, loss of opportunity, lost revenue or lost profits to any party.
- 21.3 The Supplier agrees to indemnify, defend and hold harmless The Company, its related entities, and each of their officers, agents and employees, against any and all claims, demands, suits, causes of action, damages (including but not limited to special or consequential damages) and legal fees (on a solicitor-own client basis) or expenses or costs whatsoever arising, directly or indirectly, from any failure by The Supplier to comply with its obligations under this document, or any breach of the warranties set out in clause 21.1.
- 21.4 The indemnities provided by The Supplier to The Company under this document will be granted whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 22. Miscellaneous**
- 22.1 *Interpretation* - In this document:
- (a) the singular includes the plural and vice versa;
  - (b) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
  - (c) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns; and
- (d) headings are inserted for convenience and do not affect the interpretation of this document.
- 22.2 *Survival* - Clauses 6.1, 7, 8, 9, 10, 11, 12, 14, and 21 survive the expiry or termination of this document together with any other provision which is by its nature or effect reasonably intended to survive.
- 22.3 *Force Majeure* - If a Force Majeure Event precludes either party from partially or wholly complying with its obligations under this document then as soon as reasonably practicable after that Force Majeure Event arises, the affected party must notify the other of the Force Majeure Event, and that party's obligation to perform in accordance with this document will be suspended for the duration of the actual delay arising directly out of the Force Majeure Event or 40 Business Days, whichever is shorter, provided that the affected party does everything reasonably possible to mitigate the effects of the Force Majeure Event.
- 22.4 *Governing Law* - This document will be governed by and construed in accordance with the laws applicable in South Australia. The parties submit to the exclusive jurisdiction of the courts of South Australia in respect of matters arising out of or in connection with this document (including Disputes). The parties agree that the *United Nations Convention on Contracts for the International Sale of Goods* (adopted at Vienna, Austria on 10 April 1980) (including as incorporated into South Australian law by the *Sale of Goods (Vienna Convention) Act 1986* (SA)) will not apply to this document.
- 22.5 *No Assignment or Subcontracting* - The Supplier must not assign, appoint a subcontractor in respect of, or otherwise deal with its rights and obligations under this document without the prior written approval of The Company, to be provided by The Company in its sole discretion.
- 22.6 *Further Action* - Each party must (a) do all acts necessary or desirable to give full effect to this document, and (b) refrain from doing anything which might prevent full effect being given to this document.
- 22.7 *Variation* - A variation or modification of this document must be in writing and signed by an authorised representative of each party.
- 22.8 *Severability* - If any provision of this document is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this document and the remainder of the provision in question will not be affected.
- 22.9 *No Waiver* - No waiver by a party of any breach of this document by another party shall be considered as a waiver of any subsequent breach of the same or any other provisions.
- 22.10 *Entire agreement* - This document, and each Contract, constitutes the entire agreement between the parties about its subject matter, and subject to the remainder of this clause, supersedes all previous representations, understandings and agreements in connection with that subject matter. This document, and each Contract, overrides any terms for the sale and supply of Goods or Services tendered to The Company by The Supplier, irrespective of whether such terms are tendered before or subsequent to the date of the Order. However, the parties agree that the Existing Arrangements continue in full force and effect, and that nothing in this document supersedes, alters or otherwise affects the Existing Arrangements. In the event of an inconsistency between the obligations of the parties under this document or any Contract, and any Existing Arrangements, the Existing Arrangements prevail to the extent necessary.
- 22.11 *Relationship* - The relationship between the parties is and will remain that of independent contractors, and nothing in this document constitutes the parties as partners or joint venturers or



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constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

22.12 *Notices* – Notices by a party must be delivered by (i) prepaid post (ii) facsimile or (iii) hand, and sent to the address of the receiving party specified in the Order. Notices shall be deemed to have

been received by hand upon delivery, by post within two (2) Business Days of sending and by facsimile upon receipt of a successful transmission report.