

1 Definitions and Interpretation

1.1 In this Agreement the following expressions mean:

- (a) **Agreement** means this supply agreement (including any Schedules and Annexures).
- (b) **Act** means the Personal Property Securities Act 2009 (Cth).
- (c) **Business Day** means any day that is not a Saturday, Sunday or a Public Holiday either in the place where the Premises are located or in New South Wales.
- (d) **Change of Control** means any event as a result of which the person(s) who, at the Commencement Date or, in the case of a subsequent assignment of this Agreement, at the date of the last such assignment, beneficially hold or control more than fifty per centum (50%) of the voting rights in any company which beneficially hold or control more than fifty per centum (50%) of such rights cease or ceases to hold such rights.
- (e) **Confidential Information** includes, but is not limited to, any information that is:
 - (i) marked as confidential; or
 - (ii) received by Us during the Term, which relates to You in the course of Your business or to Your customers, contractors or suppliers, including but not limited to all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data, Intellectual Property and marketing information such as customer lists, financial information and business plans;

but does not include information which:

- (iii) is generally available in the public domain otherwise than as a result of a breach of this agreement by Us;
- (iv) was known by Us prior to You disclosing the information to Us; or

- (v) information that may be required of Us by law to disclose.
- (f) **Commencement Date** means the commencing date of this Agreement as set out in Item 4 of Schedule 1.
- (g) **Expiry Date** means the earlier of the date that this Agreement expires or is validly terminated.
- (h) **GST** means the tax payable under A New Tax System (Goods and Services Tax) Act 1999 (Cth) and associated regulations.
- (i) **Intellectual Property** includes (without limitation) registered and unregistered trademarks, business names, logos, symbols, service marks and brand names, patents, designs, trade secrets, copyrights, processes, know how whether or not registered, formulas, and all other industrial and intellectual property developed or used in or in conjunction with the performance of this Agreement.
- (j) **Interest Rate** means interest at a rate of 3% per annum.
- (k) **Item** means an item in Schedule 1 of this Agreement.
- (l) **Services** means the services set in Schedule 2.
- (m) **Party** means either You or Us.
- (n) **Parties** means, together, You and Us.
- (o) **Payment Terms** means the payment terms set out in Item 9 of Schedule 1.
- (p) **Premises** means the premises described in Item 1 of Schedule 1 at which the Services are provided (if applicable).
- (q) **You** means the person named in Item 2 of Schedule 1.
- (r) **Processes** includes technologies, products, devices, processes or techniques.
- (s) **Schedule** means a Schedule to this Agreement.
- (t) **Statement of Work** means any documents bearing that title which summarises the terms for the provision of Services by Us

and which incorporates these terms and conditions by reference.

- (u) **Us** means the person named as services provider in Item 2A of Schedule 1.
- (v) **Services Fee** means the service fee referred to in Item 6 of Schedule 1 that is payable to Us by You.
- (w) **Term** means the term of this Agreement as set out in Item 3 of Schedule 1.

- (h) Reference to a Statute includes all regulations subordinate legislation under and amendments to that Statute whether by subsequent Statute or otherwise and a Statute passed in substitution for the Statute referred to or incorporating any of its provisions.
- (i) In the interpretation of this Agreement, no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward this Agreement or any part of this Agreement.

1.2 Where the context permits:

- (a) Words importing the singular number includes the plural and vice versa; words importing a gender include every other gender; and words importing persons include bodies corporate and government and semi-government authorities and departments and vice versa.
- (b) All rights and conditions implied by law as they relate to the parties are excluded unless contained within this agreement. This applies unless the rights, terms and conditions cannot be excluded. If that is the case, they are taken to form part of this agreement.
- (c) Any covenant, indemnity or agreement on the part of two (2) or more persons shall be deemed to bind them jointly and each of them severally.
- (d) Reference to Us or You includes when an individual, the legal personal representatives of that individual and their assigns and successor and when a company or corporation, its successors, and assigns.
- (e) If any provision contained in this Agreement is prohibited by law, otherwise void or invalid at law, that provision is severed from this Agreement which otherwise continues to be valid and operative.
- (f) Headings are for convenience only and do not affect the interpretation.
- (g) If this Agreement prohibits the Services Provider from doing something, the Services Provider must not permit or suffer any other person to do the prohibited activity.

2 Purpose of this agreement

The parties wish to enter into this agreement on the terms and conditions set out in this agreement.

3 Engagement

In consideration for the payment of the Services Fee by You, We agree to provide the Services on the terms and subject to the conditions referred to in this Agreement.

4 Term

- 4.1 This agreement will commence on the Commencement Date and end on the earlier of the Expiry Date or the date of termination.
- 4.2 Where the Services are on an ongoing basis in accordance with a Statement of Work, this Agreement and its terms and conditions will continue until terminated by a party in accordance with these terms. The continuation of the agreement pursuant to any Statement of Work shall be on the same terms and conditions as those contained in this Agreement so far as applicable.

5 Services

We shall provide the Services as required by You from time to time in the manner set out in this Agreement.

6 Payment and Charges

- 6.1 You must pay to Us without demand, counter-claim or set-off for the Services strictly in accordance with the Payment Terms.
- 6.2 All fees payable by You under this Agreement are exclusive of GST. If any such consideration is for

the whole or any part of a taxable supply by the supplier, the amount of the consideration will be increased by an additional amount equal to the applicable GST. GST party who has to pay the additional amount must be paid to Us at the same time as the consideration in respect of the taxable supply becomes due but only after We provide you with a Tax Invoice.. If an amount of consideration under this agreement is calculated as compensation or reimbursement for an expense, loss or liability of the supplier the consideration must be calculated after excluding any amount for which the supplier is entitled to an input tax credit as recipient of the item to which the expense loss or liability relates.

6.3 If You fail to pay any fees due to Us for a period of more than 7 days, you will be in default under this Agreement and we reserve the right to terminate it or to charge you interest for each day that any payment is late (including weekends) at the Interest Rate computed from the due date for payment until the applicable fee(s) are paid in full.

7 Your Obligations

You:

- (a) Shall ensure that, where We reasonably need access to property controlled by You, such access is provided promptly.
- (b) Shall provide Us with all information, which is reasonably required by Us to perform the Services, including Confidential Information, subject to the terms of this Agreement.

8 Obligations of Services Provider

8.1 We agree that we shall:

- (a) Operate in a proper and businesslike manner and in accordance with sound management practice.
- (b) Provide the Services in a diligent and professional manner according to applicable industry standards and codes.
- (c) Instruct, engage, or employ staff, agents and contractors as may be deemed by Us to be necessary to properly provide the Services:
- (d) Act in good faith in all dealings with You.
- (e) Provide our own tools, equipment, uniforms, and materials (including consumables) to provide the Services.

- (f) Ensure that our employees, contractors and agents are properly trained;
- (g) At all times exercise all necessary or precautions for the safety of all employees, customers, personnel and the public.
- (h) Comply with and observe all laws and requirements of any authority in relation to the provision of the Services.
- (i) Promptly repair and replace all damage caused or contributed by Us or our employees to the Premises,.
- (j) Observe the 'No Smoking' (other than in the designated area) policy within the Premises.

9 Intellectual Property

- 9.1 You are the owner of the Intellectual Property. Ownership of all Intellectual Property in respect of the Services or arising out of or in connection with the provision of the Services, and any documentation provided by You to Us, is vested in and will remain vested in You and nothing in this Agreement confers any intellectual property rights on Us.
- 9.2 Intellectual Property will not be used by Us for any purpose other than performing the Services.
- 9.3 We will not at any time during the Term of this Agreement disclose the Intellectual Property to any person or corporation without obtaining Your prior written consent.
- 9.4 If we discover:
 - (a) any infringement or threatened infringement of the Intellectual Property under this Agreement; or
 - (b) any common law passing-off which may cause deception or confusion to the public by a third party, We will promptly notify You in writing giving particulars of the infringement.
- 9.5 Copyright in all artistic and literary works created or owned by You and all trademarks and logos held or used by You is the property of You and



must not be used except with the written consent of You.

9.6 The obligations accepted by Us under this clause survive termination or expiry of this agreement.

9.7 You consent to Us reproducing your name and logo for promotional or advertising purposes only on Our website and social media and for such purposes you grant us a non-exclusive licence to do so. At any time, You can ask Us to remove and cease using your Intellectual Property from our website and/or social media and We will do so as soon as reasonably practicable.

10 Insurances

10.1 We will effect and keep on foot the following insurances:

- (a) All insurances required to be effected by law including workers compensation insurance in respect of our employees.
- (b) Public Liability insurance.
- (c) Insurances with respect to the liabilities to You, owed by Us, pursuant to the indemnity provisions of this Agreement.

10.2 The insurances required by clause 10.1 must note You as the interested party.

10.3 The insurances must be taken out with a reputable insurer.

11 Statutory Obligations

11.1 We are solely responsible for paying Our employees all remuneration and benefits including salary, superannuation, annual leave, sick leave, long service leave and any other benefits to which they may be entitled as its employees, and for otherwise complying with the legislation and industrial awards which are applicable to its employees. Payment of all taxes and duties in respect of such remuneration and benefits, is Our responsibility.

11.2 We covenant to pay all taxes, rates, charges, levies, imposts, and assessments issued by any authority which at any time during the Term are charged to Us or in connection with the Services.

11.3 We indemnify You from and against all loss in respect of any breach of this clause 11 except to the extent that any claim or liability is caused or contributed to by You.

12 AMC Partners warranties

We warrant that We hold the required experience necessary to provide the Services.

13 Relationship between parties

13.1 Nothing in this agreement constitutes the relationship of, partnership, agency joint venture or employer and employee between You and Us.

13.2 Nothing in this agreement constitutes or deems any employees of We to be employees of You. AMC Partners employees are and will remain at all times employees of Us.

(a)

14 Confidential Information

14.1 Unless it has previous written consent from You, AMC Partners must:

(a) only use the Confidential Information for the purpose of performing the Services.

(b) not use or attempt to use any Confidential Information in any manner which may prejudice the confidentiality of the Confidential Information or may injure or cause loss to You.

14.2 We must at all times store all Confidential Information safely and securely.

14.3 We must immediately notify You in writing of any actual, threatened or suspected unauthorised disclosure of any Confidential Information.

14.4 We obligations regarding Confidential Information will continue for so long as this information is maintained on a confidential basis:

(a) by You, in the case of Confidential Information pertaining to Your business; or

(b) by Your customers, contractors, or suppliers, in the case of Confidential Information pertaining to Your customers, contractors or suppliers.

14.5 We agree that You may require our employees to sign a confidentiality agreement in a form that the You approve.

14.6 We will and will ensure that our employees comply with all privacy obligations under any law or regulation.

14.7 The obligations accepted by Us under this clause survive termination or expiry of this agreement.

15 Termination for Default

15.1 We may terminate this Agreement if you are in breach of any of Your obligations owed to Us in this Agreement and such breach is not remedied by you, at your cost, within 7 days of Us providing you with a breach notice.

15.2 Without affecting Our rights in clause 15.1, We may terminate this Agreement immediately and without the requirement to give you any form of notice if you fail to pay our Fee or any of our tax invoices within 7 days of the due date for payment and in the case of a termination under this clause, you unconditionally release Us from any claims you may have in respect to the Services, whether known or unascertained, past, present or future.

15.3 You may terminate this Agreement at any time without notice if the We engage in a serious or material breach of this Agreement or an essential term.

15.4 You may terminate this agreement at any time by notice in writing to Us if AMC Partners:

- (a) is guilty of any dishonesty, serious misconduct or serious neglect of duty in connection with the provision of the Services; or
- (b) engages in any act or omission that in the reasonable opinion of You has or will likely have the effect of causing material damage to You.

15.5 If a party breaches any term of this Agreement, the other party may give notice requiring that party to rectify the breach. If the notified party fails to rectify the breach to the satisfaction of the notifying party within 7 days of the notice, the notifying party may terminate this agreement by notice in writing.

15.6 Either party may terminate this agreement if:

- (a) the other party enters into a deed of arrangement or an order is made for it to be wound up;

- (b) an administrator, receiver or receiver/manager or a liquidator is appointed to the other party pursuant to the *Corporations Act 2001* (Cth); or
- (c) the other party would be presumed to be insolvent by a court in any of the circumstances referred to in the *Corporations Act 2001* (Cth).

15.7 At the end of the Term AMC Partners must return or, if requested by You, destroy, any of your Confidential Information, materials or documents in its possession or control.

15.8 The parties to this Agreement agree that the following subclauses are each an essential term of this Agreement:

- (a) The provisions contained in clause 9, 10, 11, 12, 14, 15, 16 and 22.

15.9 Other terms of this Agreement may still be essential terms.

16 Indemnity

AMC Partners agrees to provide the Services to You at its risk and releases You to the fullest extent permitted by the law You, your agents, officers, contractors and employees from all claims and demands of every kind and from all liability which may arise in respect of any accident or damage to or loss of property or death of or injury to any person of whatsoever nature or kind in connection with the Services except to the extent that any such damage, loss, injury or death are caused or contributed to by the negligence of You, your agents, contractors or employees.

17 Recording Keeping

AMC Partners shall keep accurate and up to date records in relation to the Services as reasonably required by You from time to time including attending meetings with You monthly or as otherwise reasonably required by You.

18 General

Notices

18.1 Any notice or other communication to or by a party to this agreement:

- (a) may be given by personal service, post, facsimile or email;



- (b) must be in writing, legible, and in English;
- (c) addressed to the address specified in the Schedule for that party or as otherwise specified in writing to the other party from time to time;
- (d) in the case of a corporation, must be signed by an officer or authorised representative of the sender; and
- (e) is deemed to be given by the sender and received by the addressee:
 - (ii) if delivered in person (hard copy), when delivered to the addressee,
 - (iii) if posted (hard copy), two (2) Business Days (or 6 Business Days, if addressed or posted outside Australia) after the date of posting to the addressee whether delivered or not,
 - (iv) if sent by facsimile, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee, or
 - (v) if sent by email (soft copy), on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee);

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time), it is deemed to have been received at 9.00am on the next Business Day.

Other

- 18.2 The failure, delay or omission by a party to exercise any power or right conferred upon it by this agreement will not operate as a waiver of such power or right, nor will any single exercise of any such power or right preclude any other future exercise of the power, or the exercise of any other power or right under this agreement. A waiver of any provision of this agreement, or consent to any

departure by a party from any provision of this agreement, must be in writing and signed by all parties and is effective only to the extent for which it is given.

- 18.3 This agreement may not be changed or modified in any way except in writing signed by or on behalf of all the parties.
- 18.4 This agreement constitutes the entire agreement of the parties in respect of the matters dealt with in this agreement and supersedes all prior agreements, understandings, undertakings and negotiations in respect of the matters dealt with in this agreement.
- 18.5 This agreement is governed by and is to be construed and take effect in accordance with, the laws of New South Wales. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.
- 18.6 Whenever a party to this Agreement is obliged or required under this Agreement to do or effect any act, matter or thing then the doing of such act, matter or thing shall, unless the Agreement otherwise provides, be at the sole risk and expenses of that party.
- 18.7 None of the provisions of this Agreement nor any act, matter or thing done under or by virtue of or in connection with this Agreement or any other agreement between the parties to this Agreement shall operate as a merger of any of the rights and remedies of the parties in or under this Agreement or in or under any such other agreement all of which shall continue in full force and effect.
- 18.8 You may not set off, deduct, or withhold any moneys which may be or become liable to pay under this Agreement.
- 18.9 The remedies provided in this Agreement in favour of You arising pursuant to an event of default or after a repudiation of this Agreement by Us will not be deemed to be exclusive but will be cumulative and will be in addition to all other remedies in its favour existing at law, in equity or in bankruptcy. The election at any time to enforce any such remedies will in no way bar the later enforcement from time to time of any other such remedies.
- 18.10 In any case where, under or pursuant to this Agreement, the doing or execution of any act, matter or thing by Us is dependent upon the consent or approval of You, such consent or approval may be given conditionally or



unconditionally or may be withheld by You in its absolute uncontrolled discretion, unless this Agreement otherwise expressly provides.

18.11 Unless application is mandatory by law, no statute, ordinance, proclamation, order, regulation or moratorium present or future will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to You under this Agreement.

18.12 To the extent permissible at law, AMC Partners will forthwith upon demand pay to You an amount equivalent to any moneys paid by You in respect of any liability imposed on Us under or by virtue of this Agreement, notwithstanding that any statute, ordinance, proclamation, order, regulation or moratorium present or future directly or indirectly imposes such liability upon You.

18.13 If AMC Partners omits or neglects or fails to pay any money or to perform any of its obligations under this Agreement then on each occasion You may at your discretion pay such money or perform such obligation (but without prejudice to any other right or remedy available to You by reason of such neglect or failure) as if it were Us. Without prejudice to the rights, powers and remedies available to You otherwise under this Agreement, AMC Partners must on demand reimburse You all moneys, costs, charges and expenses paid or incurred by You in connection with the making of such payment or the performance of such obligation.

18.14 AMC Partners must at its expense do any further act and execute any further documents which You may reasonably request in order to protect Your rights, powers and remedies under this Agreement.

