

SERVICE TERMS

A3D Operations

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<p>1. INTRODUCTION</p> <p>1.1 Application of Terms</p> <p>A3D Operations Pty Ltd (ACN 628 730 343) (A3D) and its successors and assignees shall provide services subject to these terms and conditions (Terms).</p> <p>These Terms apply to and govern the ordering and provision of all Services by or on behalf of A3D to the Customer, to the exclusion of any other terms put forward by the Customer at any time, unless the parties expressly agree in writing.</p> <p>1.2 Formation of contract</p> <p>(a) Each Work Order that the Customer provides to A3D constitutes a request for A3D to perform the Services specified and/or referred to in that Work Order on and subject to these Terms.</p> <p>(b) A3D reserves the right to accept or reject a Work Order (in whole or in part) at its discretion for any reason.</p> <p>(c) A legally binding contract is formed between the parties (Services Contract) upon either:</p> <p style="margin-left: 20px;">(i) the Customer communicating to A3D acceptance of a Services Proposal in writing, including by electronic means; or</p> <p style="margin-left: 20px;">(ii) otherwise, A3D communicating to the Customer acceptance of a Work Order (or if applicable, a Specification Form), in writing, including by electronic means.</p> <p>(d) The Services Contract comprises the following documents which are to be interpreted in the following order of precedence such that the provisions of a document higher in precedence prevail to the extent of any conflict or inconsistency with the provisions of any other document lower in precedence:</p> <p style="margin-left: 20px;">(i) the Specification Form (if any);</p> <p style="margin-left: 20px;">(ii) the Services Proposal (if any);</p> <p style="margin-left: 20px;">(iii) these Terms; and</p> <p style="margin-left: 20px;">(iv) the Work Order.</p> <p>(e) Any offers, estimates or quotations given by A3D in the Services Proposal:</p> <p style="margin-left: 20px;">(i) will not bind A3D or form part of the contract unless given, or subsequently confirmed, in writing, and accepted by the Customer through placement of a Work Order; and</p> <p style="margin-left: 20px;">(ii) may be subject to alteration at any time prior to A3D accepting a Work Order from the Customer.</p> <p>(f) When a Customer places a Work Order to procure Services and that Work Order is accepted by A3D, the Customer agrees and acknowledges that these Terms will be binding on both A3D and the Customer for the purposes of the provision of Services.</p> <p>(g) The Services Contract constitutes the entire agreement between the parties, and supersedes all previous discussions, undertakings and agreements (written, oral or any combination thereof) in relation to the subject matter of the Services Contract.</p>	<p>1.3 No exclusivity</p> <p>The Services Contract does not confer upon either party any exclusivity in relation to the ordering or provision of the Services.</p> <p>1.4 Multiple Customers</p> <p>Where a Customer comprises more than one person, those persons are jointly and severally liable for all money payable under these Terms.</p> <p>1.5 Variation of Terms</p> <p>These Terms are irrevocable as between A3D and the Customer, unless rescinded, terminated or varied in accordance with these Terms or with the written consent of A3D.</p> <p>2. CUSTOMER'S GENERAL OBLIGATIONS</p> <p>2.1 Work Order</p> <p>The Customer must specify with reasonable detail in a Work Order:</p> <p style="margin-left: 20px;">(a) The quantity, quality and description of the Services to be provided to the Customer (including any Deliverables to be provided, the desired objectives/outcomes of the Services, the relevant Services Proposal document name, and date of its execution); and</p> <p style="margin-left: 20px;">(b) the required timeframe for the completion of the Services and provision of the relevant Deliverables (if any).</p> <p>2.2 Authorisations and legal compliance</p> <p style="margin-left: 20px;">(a) Unless stated otherwise in the Services Proposal, the Customer must ensure that it holds, and maintains during the term of the Services Contract, all authorisations necessary for it to request and receive the benefit of the Services.</p> <p style="margin-left: 20px;">(b) The Customer must comply with all applicable laws in relation to the Services Contract, including applicable export control laws.</p> <p style="margin-left: 20px;">(c) If the Customer licences or otherwise permits A3D to use or exploit any Intellectual Property Rights in the course of providing the Services, the Customer warrants to A3D that the Customer has the right to do so without infringing any third party's Intellectual Property Rights.</p> <p>3. SERVICES</p> <p>3.1 Description</p> <p>The Services are as described in the Services Proposal or, if there is no Services Proposal, the Work Order (as supplemented by the Specification Form, if any) pursuant to which those Services are ordered.</p> <p>3.2 Provision of Services</p> <p style="margin-left: 20px;">(a) A3D will perform the Services for the Customer subject to and in accordance with the Services Contract.</p> <p style="margin-left: 20px;">(b) A3D may make such reasonable variations to the specifications of the Services as is reasonably necessary, provided that such variations do not have a material adverse effect on the Deliverables or to the extent that those variations are necessary for safety, performance or engineering requirements.</p> <p style="margin-left: 20px;">(c) A3D must take reasonable steps to complete the Services within the timeframe notified by the Customer in the Work</p>
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Order, to the extent that the timing is reasonable in the circumstances.

- (d) A3D will have discretion as to the methods, processes and techniques in relation to how the Services are performed, provided that such performance complies with the Services Contract.

3.3 Performance obligations

- (a) A3D must perform the Services:
- (i) with a reasonable standard of care and diligence; and
 - (ii) in accordance with all applicable laws and Authorisations.
- (b) Unless stated otherwise in the Services Proposal, A3D must ensure that it holds, and maintains during the term of the Services Contract, all authorisations necessary for it to perform the Services.

3.4 Subcontracting

A3D may subcontract any part of the Services but will remain liable for the due performance of such contracted Services in accordance with the Services Contract.

3.5 Assistance

The Customer must, at the Customer's own cost, provide A3D with such assistance, materials and information as reasonably required by A3D to perform the Services in accordance with the Services Contract, promptly following receipt of a request for the same.

3.6 Title and Risk

- (a) A3D retains title in a Deliverable until A3D receives payment of the Service Fee in full and all sums owing on the Customer's accounts with A3D, following which title will transfer to the Customer.
- (b) Subject to clause 3.7(b)(ii), all risk in a Deliverable remains with A3D until that Deliverable is delivered-up into the Customer's possession or control, at which point all risk of Deliverable will transfer to the Customer.

3.7 Delivery and collection

- (a) In the case of supply of Deliverables, delivery shall either be:
- (i) in the case of export, Ex-works (EXW) (Incoterms 2020) at A3D's business premises in Canning Vale, Western Australia during ordinary business hours at that location or such other location specified in the Services Contract. A3D may provide collection of the Deliverables by instalments. A3D will notify the Customer when a Deliverable is ready for collection.
 - (ii) in the case of non-export, Delivered at Place (DAP) (Incoterms 2020) to the dispatch location nominated by the Customer, unless the parties agree in writing to alternative delivery arrangements. If the Customer fails or refuses or indicates to A3D that it will fail or refuse, to take or accept delivery, then the Deliverables shall be deemed to have been delivered on the date when A3D sought to deliver the Deliverables.

- (b) If the Deliverables are to be delivered in accordance with clause 3.7(a)(i), the Customer must arrange for collection of completed Deliverables promptly after being notified by A3D that the Deliverables are ready for collection. If the Customer is unable or otherwise fails to collect any completed Deliverables:

- (i) A3D is entitled to charge a reasonable fee (including its costs) for storage, insurance and rearranging collection (as applicable) of those Deliverables; and
- (ii) risk in those Deliverables transfers to the Customer if the Deliverables are not collected within 5 Business Days of A3D notifying the Customer that the Deliverables were available for collection.

- (c) If the Deliverables are to be delivered in accordance with clause 3.7(a)(ii), the Deliverable shall be delivered to the address of the Customer as shown on the Work Order or to such other address as directed by the Customer, in which case, A3D shall use its best endeavours to comply with the customer's requests.

4. CUSTOMER'S ACKNOWLEDGEMENTS

The Customer acknowledges and agrees that:

- (a) all quoted delivery times are estimates only and failure to deliver by those time will not constitute a breach of these Terms. A3D will not be bound by any completion or delivery dates specified. A3D will not be liable for any indirect or direct loss or damage howsoever arising as a result or consequence of any delay in delivery. The Customer will not be relieved of any obligation to accept or pay for Deliverables or services by reason of any delay in delivery; and
- (b) the Customer has conducted its own enquiries, investigation and analysis in relation to A3D and has determined to engage A3D to perform the Services on the basis of such enquiries, investigation and analysis, as well as the Customer's own knowledge and expertise, having regard to the Customer's requirements and circumstances; and
- (c) there cannot be any guarantee that the Services will achieve, attain or otherwise satisfy the desired objectives/outcomes of the Services and A3D does not make any warranty, representation or other stipulation in this regard; and
- (d) unless expressly made known to the Customer beforehand, there is no implied condition or warranty about the fitness for purpose for the Deliverables delivered to the Customer save that there shall be an implied condition that the Deliverables manufactured by A3D shall be of a satisfactory quality, taking into account the description of the Deliverables, price and all other relevant circumstances; and
- (e) A3D, nor any person acting or purporting to act on its behalf, has made representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Deliverables for any particular purpose or any other matter; and
- (f) if the Customer claims that the Deliverables were defective, not fit for purpose or are otherwise not the Deliverables specified in the Work Order, the Customer must notify A3D

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in writing (including sufficient particulars) within thirty (30) days of delivery. If the Customer fails to notify A3D within this time, the Deliverables will be treated as having been accepted by the Customer and A3D will be discharged from any liability in respect of the Deliverables being wrong, not fit for purpose or defective.

5. FEES AND PAYMENT

5.1 Obligation to pay

The Customer must pay A3D the Service Fee in consideration for A3D performing the Services.

5.2 Determination

- (a) The Service Fee is as described in the Services Proposal, or Specification Form or is otherwise A3D's then current publicly advertised fee for the Services at the date that those services are performed for the Customer.
- (b) The Service Fee or any part of it described in the Services Proposal as a quotation or binding offer by A3D is not binding unless accepted by the Customer within 30 days of the date of the Services Proposal.
- (c) Unless expressly stated otherwise in the Services Proposal, the Service Fee excludes:
 - (i) Australian GST or other Indirect Tax;
 - (ii) Stamp Duty;
 - (iii) the cost of third-party subcontractors, suppliers or Services Providers that A3D engages with the Customer's consent;
 - (iv) disbursements or out-of-pocket expenses reasonably incurred by A3D in providing the Services;
 - (v) shipping, transportation or storage costs; and
 - (vi) customs duty, excise or any other taxes or tariffs imposed, claimed, levied or assessed by, or payable to, any governmental agency in relation to the import or export of Deliverables.

5.3 Invoicing and payment

- (a) A3D must provide the Customer with a tax invoice for all Services provided in each month.
- (b) The Customer must pay the amount specified in each tax invoice within 14 days of the date of that tax invoice unless A3D agrees otherwise in writing.
- (c) Time is of the essence in respect of the Customer's obligation to make payment for the Services.
- (d) If the Customer disputes any amount shown on a tax invoice, it must notify A3D within 7 days of receipt of the tax invoice and must otherwise pay any amounts not in dispute in accordance with clause 5.3(b).
- (e) The Customer must not deduct, withhold or set-off from any moneys due, or that become due, to A3D any amount that the Customer claims as being owed by A3D to the Customer.
- (f) Interest at the rate of 10% per annum (calculated daily and compounded monthly) accrues on any overdue portion of an amount invoiced by A3D under the Services Contract from the date when payment becomes due until the earlier

of payment or judgment. Overdue interest must be paid by the Customer to A3D on demand.

- (g) The Customer must pay all professional fees and other external costs reasonably incurred by A3D in collecting any overdue payment owed by the Customer to A3D under the Services Contract.

5.4 Currency

- (a) The Customer must pay all invoices for amounts owed to A3D under the Services Contract in Australian dollars, unless A3D agrees otherwise in writing.
- (b) If the Customer pays any amount to A3D in a currency other than Australian dollars with the consent of A3D under clause 5.4(a), the Customer must pay:
 - (i) an amount in that other currency that is equivalent to the Australian dollar amount of the invoice, applying the spot rate (based on the market rate prevailing at the time of conversion) for the purchase of Australian dollars with that other currency, as quoted by a reputable banking institution chosen by A3D; and
 - (ii) the Customer must pay an additional amount for the currency conversion costs so that A3D receives, after costs of conversion, the same number of Australian dollars as stated in the relevant invoice.

5.5 Out-of-scope work

A3D may charge the Customer for any variation to work or specifications in relation to the Services and such variation will be shown as a variation on A3D's invoice to the Customer.

6. AUSTRALIAN GST, INDIRECT TAXES AND DUTIES

6.1 Australian GST

- (a) This clause 6.1 applies if and to the extent that Australian GST is payable in relation to a taxable supply under the Services Contract.
- (b) A reference in this clause 6.1 to a term defined or used in the GST Law has the meaning given to that term in the GST Law.
- (c) Any amount referred to in the Services Contract which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any Australian GST unless stated otherwise.
- (d) Australian GST is payable in relation to any taxable supply made under the Services Contract.
- (e) In relation to any taxable supply made under the Services Contract, the recipient must pay to the supplier the amount equal to the Australian GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under the Services Contract.
- (f) The Australian GST liability for any taxable supply is the amount equal to the consideration attributable to the taxable supply made by the supplier to the recipient multiplied by the rate at which Australian GST is imposed in relation to that taxable supply.
- (g) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with the Services Contract, the amount of the reimbursement will

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be net of any input tax credits which may be claimed by the party being reimbursed in relation to that expense or outgoing.

- (h) The supplier must issue a tax invoice and any relevant adjustment note to the recipient for that taxable supply.
- (i) Any review or adjustment of any consideration payable for a taxable supply must take into account that this clause requires an adjustment of that consideration and must take account of any adjustment to that consideration which has already been or is required to be determined, under the provisions of this clause 6.1.

6.2 Other Indirect Taxes

If any transaction under the Services Contract is subject to, or gives rise to, a liability for an Indirect Tax other than Australian GST:

- (a) all amounts payable under the Services Contract and all references to amounts are exclusive that Indirect Tax unless expressly stated otherwise;
- (b) the recipient party of a supply or transaction to which the that Indirect Tax applies must pay to the supplier party an additional amount equal to the Indirect Tax liability on that supply or transaction;
- (c) unless otherwise agreed in writing, the Indirect Tax liability amount under clause 6.2(b) must be paid within 5 Business Days of the supplier party issuing to the recipient party a valid tax invoice for the supply or transaction giving rise to the liability; and
- (d) if there is an adjustment to any of the consideration payable for a supply or transaction which allows for or requires the Indirect Tax liability amount to be adjusted, the liability must be recalculated based on the adjusted consideration and where applicable, an appropriate payment on account of the adjusted liability is to be made between the relevant supplier and recipient parties.

6.3 Duties and other taxes

The Customer is responsible for payment of, or reimbursement of A3D on demand for:

- (a) all Stamp Duty, customs duty, excise or any other taxes or tariffs imposed, claimed, levied or assessed by, or payable to, any governmental agency in relation to the import or export of Deliverables under the Services Contract; and
- (b) any amounts payable on relation to any withholding and prescribed payment tax retention obligations imposed by law.

7. INTELLECTUAL PROPERTY RIGHTS

Despite any other provision of the Services Contract:

7.1 Background IP

- (a) All legal and beneficial right, title and interest in and to a party's Background IP remains vested in that party.
- (b) A3D must not use, or permit to be used, the Customer's Background IP for any purpose other than to fulfil its obligations under the Contract.
- (c) The Services Contract does not convey or transfer any right, title or interest of a party in its Background IP to the other party.

- (d) Each party (the **Background Licensor**) grants to each other, a non-exclusive, royalty-free, non-licensable, worldwide licence during the term of the Services Contract to make, use and import the Background Licensor's respective Background Technology solely to carry out the activities under the terms and conditions of the Services Contract.

- (e) All right, title and interest in the Intellectual Property relating to the Improvements and the Improvements vests in the party who owns the underlying Background IP.

- (f) All Intellectual Property Rights comprised in or otherwise related to Deliverables or equipment developed by A3D or any of A3D's Affiliates separately to the Services Contract, including any technology or systems used in such Deliverables, comprises part of A3D's Background IP.

- (g) All Equipment IP comprises part of A3D's Background IP.

7.2 Contract IP

- (a) All Contract IP vest in A3D (or its nominee) upon creation.
- (b) To the extent that the Customer holds any Intellectual Property Rights in Contract IP, the Customer assigns such rights to A3D (or its nominee).

7.3 Equitable relief

The parties agree that damages may not be an adequate remedy for breach of this clause 7 and that a party will be entitled to equitable relief, including temporary and permanent injunctive relief without the obligation of posting a bond (cash or otherwise), in the event of actual or threatened breach of this clause 7.

7.4 Benefit

To the extent that a party's Background IP is owned by an Affiliate of that party:

- (a) the Affiliate has the same rights under this clause 7 as that party in relation to such Background IP; and
- (b) either that party or the Affiliate may enforce this clause 7 for the benefit of the Affiliate.

7.5 Third Party Claims

A3D will not be liable for any claims arising from an actual or alleged infringement of a third party's intellectual property rights, including:

- (a) where such claim arises due to A3D agreeing to perform the Services requested by the Customer in accordance with the Services Contract;
- (b) where the actual or alleged infringement of the intellectual property rights is due to use of A3D's Deliverable in conjunction with another product not supplied by A3D; and
- (c) where the Deliverables produced by A3D are used in a way which could not have been foreseen by A3D.

7.6 Survival

The obligations under this clause 7 survive the termination of the Services Contract.

8. CONFIDENTIALITY

8.1 Obligations of confidentiality

Subject to clause 8.2, each party (**Recipient**) must at all times:

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- (a) hold in strict confidence all Confidential Information of the other party (**Discloser**);
- (b) take all reasonable and necessary precautions to maintain the confidentiality and prevent the disclosure of that Confidential Information;
- (c) other than as expressly permitted under the Services Contract, not disclose, permit the disclosure or cause the disclosure of that Confidential Information to any person;
- (d) only disclose Confidential Information to those of the Recipient's Personnel who reasonably require access to that Confidential Information for the purposes of the Services Contract; and
- (e) not make use of the Confidential Information of the Discloser (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from that Confidential Information) except and solely to the extent necessary for the performance of the Services Contract.

8.2 Exceptions

The obligations in clause 8.1 do not apply to the Recipient to the extent that:

- (a) at the time of disclosure, the relevant Confidential Information is in the public domain other than by breach of this clause 8;
- (b) the Discloser has provided its prior written consent to the use or disclosure of the Confidential Information in a manner that would, but for the consent, be contrary to clause 8.1;
- (c) disclosure of the relevant Confidential Information is required by law to be communicated to a person who is authorised by law to receive it;
- (d) disclosure of the relevant Confidential Information is to the minimum extent required by applicable law, court order or to comply with the rules of a regulated securities exchange (including the Australian Securities Exchange);
- (e) the relevant Confidential Information is required to be disclosed to any bank or other financial institution in relation to the organisation of the Recipient's financial affairs; or
- (f) disclosure of the relevant Confidential Information made to any legal counsel, accountant, insurance advisor or other professional adviser in relation to the Recipient's affairs provided that the professional adviser is bound by an obligation or confidentiality in relation to the information disclosed.

8.3 Prior confidentiality agreement

The parties acknowledge and agree that, if the parties or any of their Affiliates are party to a prior confidentiality agreement:

- (a) nothing in the Services Contract varies or otherwise derogates from a party's obligations under the Confidentiality Agreement; and
- (b) with the exception of clause 15.10, the provisions of the Confidentiality Agreement prevail to the extent of any conflict or inconsistency with the Services Contract.

8.4 Equitable relief

The parties agree that damages may not be an adequate remedy for breach of this clause 8 and that the Discloser will be entitled to equitable relief, including temporary and permanent injunctive relief without the obligation of posting a bond (cash or otherwise), in the event of actual or threatened unauthorised disclosure or use of Confidential Information in breach of this clause 8.

8.5 Benefit

To the extent that the Discloser discloses or provides Confidential Information of an Affiliate of the Discloser, or Confidential Information is owned by or confidential to an Affiliate of the Discloser, then:

- (a) the Affiliate has the same rights under this clause 8 as the Discloser in relation to such Confidential Information; and
- (b) either the Discloser or the Affiliate may enforce this clause 8 for the benefit of the Affiliate.

8.6 Survival

The obligations in this clause 8 survive the termination of the Services Contract.

9. LIABILITY

9.1 Liability limit

To the extent permitted by law, A3D's maximum aggregated Liability to the Customer in relation to the Services Contract is limited to the Service Fees paid or payable under the Services Contract.

9.2 Excluded Loss

A3D will be under no liability to the Customer or any other person whomsoever, to the extent permitted by law, whether in:

- (a) contract or tort (including, without limitation, negligence);
- (b) breach of statute; or
- (c) any other legal or equitable obligation,

in respect of any direct or indirect special, incidental, consequential or direct loss, expenses or damage (including business interruptions and loss of profit or savings), howsoever caused.

9.3 Warranty and Indemnity

The Customer warrants that it has relied on its own skill and judgement or alternatively, on the skill and judgement of tradesmen and professional advisors retained by it to provide advice and assistance on the suitability of the Deliverable for specific purposes and in this respect, shall hold A3D harmless and indemnified from and against any claim, demand or compensation which but for these Terms the Customer may have against A3D.

9.4 Implied terms

- (a) All terms, conditions, guarantees and warranties which are implied into the Services Contract by law are excluded to the extent permitted by law, other than:
 - (i) as stated expressly in the Services Contract; or
 - (ii) those which by law cannot lawfully be excluded or modified by agreement, including under the applicable competition and consumer law.
- (b) Subject to consumer guarantees implied by law, A3D does not give any express or implied warranties and makes no representations in relation to its Deliverables or Services including quality, completeness, accuracy, suitability,

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acceptability or fitness for purpose in relation to its Deliverables or Services.

- (c) If A3D is liable for a breach of a mandatory implied term, condition, guarantee or warranty described in clause 9.4(a), A3D's Liability is, to the maximum extent permitted by law, limited to the repayment of the contract value of the Deliverable or Service (as applicable) as stipulated in the Services Contract.

10. SECURITY INTERESTS

10.1 Application

This clause 10 applies where the Services Contract, or any transaction pursuant to it, creates or gives rise to a Security Interest in any property of the Customer (**Collateral**) in favour of A3D.

10.2 Rights and obligations

- (a) A3D is entitled to file, lodge or otherwise register a Security Interest referred to in clause 10.1 with an applicable registry of Security Interests.
- (b) The Customer:
- (i) must promptly do anything A3D reasonably requires to ensure that any Security Interest referred to in clause 10.1 is registered, perfected and effective;
 - (ii) undertakes not to amend or seek to amend (including by way of removal) the registration for any Security Interest registered under clause 10.2(a);
 - (iii) agrees that A3D is only required to give a notice under any law governing the Security Interest referred to in clause 10.1 if the notice is mandatory and the giving of the notice cannot be excluded under that law; and
 - (iv) agrees to notify A3D in writing of any change to the Customer's contract details within 5 days from the date of such change.
- (c) If the Security Interest referred to in clause 10.1 arises under the PPS Act, the Customer:
- (i) agrees that the following provisions of the PPS Act will not apply: section 95 (to the extent that it requires A3D to give notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142 and section 143;
 - (ii) agrees to keep all information of the kind mentioned in section 275(1) of the PPS Act confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPS Act; and
 - (iii) waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement.

10.3 Security agreement

The parties agree that the Services Contract constitutes a 'security agreement' for the purposes of the PPS Act and, without prejudice to A3D's rights under law or otherwise under the Services Contract:

- (a) until the time when ownership of the Collateral passes from A3D to the Customer or any third party, A3D may give notice in writing to Customer to return the Collateral to A3D;
- (b) upon a notice under clause 10.3(a) being given, the rights of the Customer to obtain ownership or any other interest in the relevant Collateral will cease;
- (c) if the Customer fails to return the Collateral to A3D, then A3D or A3D's agent as the invitee of the Customer, may enter land and premises owned, occupied or used by the Customer, or any premises where the relevant Collateral is situated and take possession of the Collateral without being responsible for any reasonable damage caused by that entry;
- (d) the Customer is a bailee only of the Collateral; and
- (e) the Customer must not grant any Security Interest in the Collateral in any way nor grant or otherwise give any other interest in the Collateral while it remains the property of A3D.

11. DISPUTE RESOLUTION

11.1 Procedure

The parties must comply with this clause 11 in resolving any dispute which arises between the parties in relation to the Services Contract (**Dispute**).

11.2 Meeting of senior representatives

- (a) If a Dispute arises, a party may give the other party written notice of the Dispute and request that senior representatives meet to discuss the Dispute with a view to resolving the Dispute.
- (b) The senior representatives referred to in clause 11.2(a) must have the authority to settle the Dispute on behalf of the party that they represent and contractually bind such party to any settlement agreement.

11.3 Urgent relief

- (a) Nothing in this clause 11 prevents a party from seeking urgent injunctive or interlocutory relief.
- (b) Notwithstanding clauses 11 and 15.1:
 - (i) a party may apply to, or otherwise commence legal proceedings in, any court of competent jurisdiction (**Secondary Jurisdiction**) to seek an urgent injunction, freezing order or equivalent relief that is reasonably required:
 - A. to preserve or protect assets, property, rights or other things the subject of a dispute; or
 - B. to secure assets, property or other things against which that party may reasonably seek to enforce a judgment, order, determination or other award in relation to a Dispute; and
 - (ii) a party may enforce in a Secondary Jurisdiction any interim or final judgment, order, award or determination made by a court or arbitral tribunal under this Agreement, including by application to, or otherwise commencement of legal proceedings

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in, any court of competent jurisdiction in a Secondary Jurisdiction.

12. LIEN

A3D has the following rights where A3D has not received all payments under the Services Contract from the Customer, or the payment has been dishonoured, and such rights will continue despite the commencement of legal proceedings or judgment for the Service Fee having been obtained:

- (a) a lien on the Data, all External Materials and all items produced in the performance of the Services;
- (b) the right to retain the Data, all External Materials and all items produced in the performance of the Services for the outstanding payments;
- (c) a right to cease providing the Services; and/or
- (d) a right of resale.

13. DEFAULT AND TERMINATION

13.1 Termination for default or insolvency

A party (**Terminating Party**) may terminate the Services Contract immediately by giving written notice to that effect to the other party (**Other Party**) if any of the following events occurs:

- (a) the Other Party breaches a material term of the Services Contract and fails to remedy that breach within 14 days of written notice to do so from the Terminating Party, if such breach is capable of remedy;
- (b) the Other Party breaches a material term of the Services Contract and such breach is not capable of remedy;
- (c) the Other Party fails to make any payment to the Terminating Party when due and payable under the Services Contract, and fails to make such payment within 7 days of receiving a written demand to pay by the Terminating Party;
- (d) a warranty given by the Other Party under the Services Contract is untrue or incorrect in any material respect at the time when that warranty was given; or
- (e) the Other Party suffers an Insolvency Event.

13.2 A3D's rights of termination

A3D may terminate the Services Contract:

- (a) by giving the Customer at least 10 days' prior written notice if:
 - (i) a Competitor acquires Control of the Customer; or
 - (ii) the Customer or an Affiliate of the Customer enters into any transaction or arrangement with a Competitor which A3D considers on reasonable grounds may have a materially adverse effect on its business or operations; or
- (b) without cause and for any reason, by giving the Customer 60 days' prior written notice of its intention terminate the Services Contract.

13.3 Effect of termination

If the Services Contract is terminated (including by expiry):

- (a) the Customer must pay all amounts due to A3D under the Services Contract for Services or Deliverable Services provided prior to the date of termination;
- (b) each party must return all documents, materials or other information in the possession, power, custody or control of that party which contain or otherwise relate to any Confidential Information of the other party;
- (c) each party must destroy or erase all electronic or digital copies of documents, materials or other information retained by that party that contains or otherwise relate to any Confidential Information of the other party;
- (d) each party must deliver up and return all equipment or other property of the other party in the first-mentioned party's possession, custody or control; and
- (e) termination is without prejudice to any rights or claims of a party which have accrued before the date of termination.

14. FORCE MAJEURE

14.1 A3D is not liable for failure to perform any obligations under the Services Contract during the time and to the extent that such performance is prevented, wholly or substantially, by a Force Majeure Event.

14.2 A3D may terminate the Services Contract by giving the Customer written notice to that effect if a Force Majeure Event has continued for more than 60 days.

14.3 A3D is not liable to the Customer for any loss or damage suffered by the Customer as a result of a Force Majeure Event or A3D's exercise of the termination rights under this clause 14.

14.4 Upon termination of the Services Contract under this clause 14, the Customer must pay any amount owed in respect of the Services provided to the Customer prior to the date of termination.

15. MISCELLANEOUS PROVISIONS

15.1 (**Governing law**) The Services Contract is governed by the laws of the State of Western Australia and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the courts of those jurisdictions, sitting in Perth, Western Australia.

15.2 (**Variation of Services Contract**) The parties can vary the Services Contract only if the variation is in writing and signed by each of the parties.

15.3 (**Variation of Terms**) Without limiting clause 15.2, A3D reserves the right to review and amend these Terms at any time at its absolute discretion.

15.4 (**Severability**) If any provision of the Services Contract is invalid, void, illegal or unenforceable, then that provision is to be ignored in the interpretation of the Services Contract such that the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

15.5 (**Assignment**) The Customer must not transfer, assign, novate, licence or otherwise dispose of a right or obligation under the Services Contract unless A3D has provided its prior written consent. A3D may assign or novate the Services Contract to a third party purchaser of its business or to any of its Affiliates by giving the Customer written notice to that effect, and the Customer's consent is not required for such assignment or novation.

15.6 (**Relationship**) The relationship between the parties is that of principal and contractor. Nothing in the Services Contract constitutes, or will be deemed to constitute, a relationship of

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agency, employment or partnership between the parties.

15.7 **(Third Party Rights)** To the extent permitted by law, a person who is not a party to the Services Contract does not have any right to enforce any term of the Services Contract under any legislation in any jurisdiction, except where otherwise expressly set out in the Services Contract. Notwithstanding any rights of persons who are not parties to enforce the Services Contract, the Services Contract may be:

- (a) varied by the parties in accordance with clause 15.2 without the consent of any person who is not a party; and
- (b) terminated by consent of the parties, and in any other manner and circumstance in which termination is allowed, without the consent of any person who is not a party.

15.8 **(Communications)** Each communication (including each notice, consent, approval, request and demand) given by a party to another party in relation to the Services Contract:

- (a) must be in writing, be in the English language and be addressed to the recipient party using the contact details as provided by the recipient party (or as otherwise notified by the recipient party to the other party from time to time), or otherwise to the recipient party's registered office or principal place of business; and
- (b) is taken to be received by the recipient party:
 - (i) in the case of delivery by hand, upon delivery;
 - (ii) in the case of prepaid post, on the 3rd Business Day after the date of posting is sent to a recipient party in the same country as the sending party, or the 7th Business Day after the date of posting is sent to a recipient party in another country; or
 - (iii) in the case of email, at the time it is delivered to the recipient party's host server.

15.9 **(Receipt)** Notwithstanding clause 15.8(b), if a communication given under clause 15.8 is taken to be received on a day that is not a Business Day or after 5.00pm on a Business Day, it will be taken to be received at 9.00am on the next Business Day.

15.10 **(Marketing Materials and Publications)** The Customer consents to A3D using photographs or images of the 3D printed part, specified in the Services Proposal, in marketing materials and publications. A3D reserves all copyright in such photographs or images. The Customer's details will be kept anonymous. The Customer should notify A3D immediately, in writing, if the Customer considers that the part is commercially sensitive, and the publication of photographs or images thereof would cause harm to the Customer.

15.11 **(Privacy Act)** The Customer agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) provided by the Customer may be used and retained by A3D for the following purposes and for other purposes as agreed between the Customer and A3D or required by Law from time to time:

- (a) provision of goods and services;
- (b) marketing of goods and services by A3D and its Affiliates;
- (c) analysing, verifying and checking the Customer's credit, payment and status in relation to provision of Testing Services;
- (d) processing of any payment instructions, direct debit facilities or credit facilities requested by the Customer; and

- (e) enabling the daily operation of the Customer's account and the collection of amounts outstanding in the Customer's account in relation to the Testing Services.

16. DEFINED TERMS

The following words have the meaning given to them below when used in these Terms unless expressly stated otherwise:

A3D means A3D Operations Pty Ltd (ACN 628 730 343), including its successors and assignees.

Affiliate in relation to a party, means a corporation or other legal entity that directly or indirectly controls, is Controlled by, or is under common Control with, that party,

Australian GST means goods and services tax levied under GST Law.

Background IP in relation to a party, means any and all Intellectual Property Rights of that party (or licensed to that party by a third party) in that party's Background Technology which:

- (a) are in existence before the date of the Services Contract; or
- (b) are acquired, developed or created by that party during the term of the Services Contract, independently of the activities carried out under the Services Contract;

including Improvements to those Intellectual Property Rights.

Background Technology means Technology existing at the commencement of this Services Contract or developed independently of this Services Contract and disclosed under this Services Contract for use under the Services Contract.

Business Day:

- (a) in clauses 15.8 and 15.9 means a day other than a Saturday, Sunday, public holiday or bank holiday in the jurisdiction that the recipient party is ordinarily located; and
- (b) otherwise means a day other than a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

Competitor means a person who carries on a business which is the same or substantially similar to A3D or any of A3D's Affiliates.

Confidential Information means all records, documents or other information, in whatever form:

- (a) relating to the Services Contract or any transaction contemplated under the Services Contract, including negotiation of the same;
- (b) relating a party (including its subsidiaries) or its business affairs, including methods, methodologies, patentable inventions, non-public Intellectual Property Rights, customer lists, products, prices, fees, costs, technology, inventions, trade secrets, know-how, terms of transactions, contracts, reports, research, prototypes, models, designs, drawings, blueprints, specifications, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialised information or proprietary matters;
- (c) that is disclosed by a party and is marked 'confidential' or is of a confidential, secret or proprietary nature,

but does not include information to the extent that such information:

- (d) is generally available to participants in the industry in which a party operates on the date of the Services Contract;

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- (e) becomes publicly available (except if it is in the public domain by reason of the failure of a party to perform and observe its covenants and obligations under the Services Contract);
- (f) is acquired from a third party entitled to disclose it on a non-confidential basis; or
- (g) is independently developed without use of material which otherwise constitutes 'Confidential Information' under this definition, as demonstrated by contemporaneous written evidence.

Contract IP means all Intellectual Property Rights created, discovered, developed, derived or that otherwise come into existence in relation to performance of the Services Contract between the parties or otherwise in relation to performance of the Services, excluding the Background IP of a party and Intellectual Property relating to an Improvement(s).

Control in relation to a corporation or other legal entity, means either:

- (a) holding 50% or more of common voting shares or equivalent rights of the corporation or other legal entity; or
- (b) the ability to directly or indirectly control the determination of financial and operating policies of the corporation or other legal entity.

Customer means a person who orders or otherwise requests Services from A3D and any other person acting on behalf of and with the authority of the first-mentioned person.

Data means data or other information, in whatever form, collected from or otherwise related to the results or outcome of the Services.

Deliverable in relation to the Services means the thing to be provided or output to be created from the proper performance of that Service, as specified in the Services Contract.

Equipment IP means any and all Intellectual Property Rights comprised in or otherwise related to products or equipment developed by A3D or any of A3D's Affiliates separately to the Services Contract, including any technology or systems used in such products.

External Materials means all raw materials, equipment, inputs or other resources to be provided by the Customer in relation to the performance of the Services, as specified in a Services Proposal or otherwise in a Work Order.

Force Majeure Event means an event beyond A3D's reasonable control which, by exercise of reasonable diligence and precautions, could not have been prevented or reasonably foreseen by A3D, including any:

- (a) act of God, unusually severe weather (including a cyclone/hurricane), earthquake, fire, subsidence, land slide, mud slide, wash-out, explosion, radioactive contamination or natural disaster;
- (b) terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;
- (c) industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbances;
- (d) any failure, delay or suspension by any third party supplier of the supply in whole or in part of fuel, electricity,

equipment, machinery, infrastructure (including telecommunications or internet infrastructure and systems) or materials to A3D provided that A3D has acted in a timely manner in endeavouring to secure the same (which does not require A3D, to secure the same if the alternative supply is only available to A3D at a materially increased or additional cost to it); or

- (e) adverse application of any law or enforcement actions of any court or Governmental Agency.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth of Australia).

Improvement means Technology created pursuant to the performance of the Services Contract as a result of a modification, enhancement, adaptation or improvement of Background Technology and which

- (a) cannot be lawfully exploited separately from, or without infringing, the Intellectual Property Rights in the underlying Background IP (but does not include the Background Technology).

Indirect Tax means goods and services tax, value added tax, sales tax or any other similar indirect tax levied on the supply of goods and services, other than Australian GST.

Insolvency Event in relation to a person (**Relevant Person**), means any of the following occurring:

- (a) a receiver, receiver and manager, mortgagee in possession, administrator, trustee in bankruptcy, liquidator, provisional liquidator, or similar officer is appointed to the Relevant Person or any of its assets, or an application is made to a court for an order to appoint such a person and that application is not permanently stayed, withdrawn or dismissed within 30 days;
- (b) the Relevant Person enters into, or resolves to enter into, a deed of company arrangement, scheme of arrangement, compromise or composition with any class of creditors, other than for a solvent corporate restructure;
- (c) a resolution is passed or an application to a court is taken or an order is made for the winding up, dissolution, official management or administration of the Relevant Person;
- (d) the Relevant Person ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention not to pay its creditors;
- (e) the Relevant Person is (or states that it is) insolvent or is deemed to be insolvent under the applicable bankruptcy or insolvency law;
- (f) the Relevant Person commits an act of bankruptcy or is declared bankrupt under applicable bankruptcy or insolvency law; or
- (g) anything having a substantially similar effect to any of the events specified in this definition above happens under the law of any applicable jurisdiction.

Intellectual Property Rights means all rights and interests throughout the world vesting or otherwise in relation to industrial or intellectual property protectable under law, whether registered, unregistered or registrable, and whether now existing or that come into existence in the future, including:

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- (a) any patent, trademark, copyright (including future copyright), moral right, design, plant breeder's rights, circuit layout rights or any other corresponding property or right under the laws of any jurisdiction;
- (b) rights in respect of an invention, discovery, trade secret, know-how, concept, idea, methodology, information (including, where applicable, Confidential Information), data, algorithm or formula; any right to apply for grant or registration of intellectual property or intellectual property rights;
- (c) all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of July 1967 as amended from time to time; and
- (d) all renewals and extensions and all similar or equivalent rights or forms of protection in relation to intellectual property or intellectual property rights.

Liability means any liability, loss, damage (of any nature, including aggravated and punitive damage), compensation, cost (including all legal costs on a full indemnity basis), charge or expense, whether present or future, actual, contingent or prospective and whether known or unknown, howsoever arising (including under any law or pursuant to an Authorisation).

Personnel in relation to a party means any directors, officers, partners, employees, contractors or agents of that party.

PPS Act means the Personal Property Securities Act 2009 (Commonwealth of Australia).

Services means the production and or printing of a Deliverable under the Services Contract using A3D's additive manufacturing systems and technology, as specified in the Services Contract.

Security Interest means:

- (a) a security interest for the purposes of the PPS Act; or
- (b) a security for payment of money, performance of an obligation or protection against default, including a bill of sale, mortgage, charge, lien, pledge, trust, power, title retention arrangement, right of set-off, assignment of income, garnishee order, monetary claim or flawed deposit arrangement.

Service Fee means the fee, payment or other consideration payable by the Customer to A3D for the Services or Deliverable Services, in accordance with clause 5.

Services Contract has the meaning given to that term in clause 1.2(c).

Services Proposal means a quote for, proposal or similar scoping document in relation to the proposed provision of Services.

Special Condition means a special condition to the Services Contract, as specified in a Services Proposal or otherwise in a Work Order.

Specification Form means the applicable form, agreed to by both Parties, setting forth the specification for the Service, as amended by mutual written agreement of the Parties from time to time.

Technology means any information, knowledge, discoveries, materials, designs, methods, processes and technology used in respect of the Services Contract.

Terms means these terms and conditions.

Work Order means any order or other request, whether in writing or otherwise, from a Customer for the provision of Services.

INTERPRETATION

Headings in the Services Contract are for convenience only and do not affect the interpretation of the contract, and unless the context otherwise requires:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to:
 - (i) a gender includes any gender and an inanimate thing includes a living thing;
 - (ii) a document includes a variation or replacement of that document;
 - (iii) a statute includes its subordinate legislation, proclamations, ordinances and a modification, replacement or re-enactment of the same;
 - (iv) person, includes a reference to an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity, and the person's personal representatives, successors and assigns (as applicable);
 - (v) currency is to Australian currency;
 - (vi) time is to Australian Western Standard Time; and
 - (vii) "writing" or "written" includes any electronic transmission;
- (d) the words "include", "includes" and "including" are not words of limitation and do not restrict the interpretation of a word or phrase in the Services Contract;
- (e) if the date on which an act, matter or thing must be done or take place is not a Business Day, then that act, matter or thing must be done or take place on the next Business Day;
- (f) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event; and
- (g) a provision of the Services Contract must not be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of the Services Contract or that provision.