

## TERMS AND CONDITIONS

The following standard terms (“**Terms and Conditions**”) apply where G8 Education Limited (ABN 95 123 828 553) (“**G8**”) purchases Goods or Services from a Supplier.

### 1. Terms and Conditions

- 1.1. Except as provided in clause 1.2, these Terms and Conditions:
  - (a) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the purchase of the Goods or Services; and
  - (b) override any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these Terms and Conditions.
- 1.2. If G8 and the Supplier have entered or enter into a signed Agreement for supply of the Goods or Services, that Agreement prevails over these Terms and Conditions.
- 1.3. Unless G8 otherwise agrees in writing, these Terms and Conditions are the only terms which shall apply to all Goods or Services supplied to G8 by the Supplier.
- 1.4. The Supplier agrees that these Terms and Conditions will in all circumstances prevail over the Supplier’s terms and conditions of supply (if any).

### 2. Purchase Orders

- 2.1. Each Purchase Order placed by G8 will constitute an offer by G8 to acquire the Goods or Services from the Supplier on and subject to these Terms and Conditions and to the exclusion of all other terms and conditions. Where the Supplier accepts a Purchase Order placed by G8, a Contract is formed.
- 2.2. The Supplier may not, without G8’s consent, cancel a Purchase Order after it has been accepted by G8. If G8 accepts the cancellation of a Purchase Order, the Supplier will be liable for any reasonable costs incurred by G8 up to the time of cancellation.
- 2.3. G8 may cancel an accepted Purchase Order at any time upon written notice to the Supplier. If G8 cancels an accepted Purchase Order, G8 will be liable to reimburse the Supplier for its reasonable direct costs arising from the cancellation.
- 2.4. G8 may, on written notice to the Supplier, request to vary any part of the Contract (**Variation Notice**). If G8 issues a Variation Notice, the parties must negotiate in good faith to agree any variation to the Contract. If agreement cannot be reached within 10 days following receipt of the Variation Notice, then G8 may withdraw the Variation Notice.

### 3. Supply

- 3.1. The Supplier agrees to commence the supply of the Goods and/or performance of the Services from the date of the Purchase Order in accordance with Good Industry Practice and otherwise:
  - (a) by the Delivery Date; and
  - (b) in accordance with the terms of the Contract and all reasonable directions of G8.
- 3.2. The Supplier must notify G8 as soon as possible of any delay that may result in the Delivery Date not being complied with and may request an extension to the Delivery Date. G8 may accept or reject any proposed extension of the Delivery Date.
- 3.3. The Supplier agrees to notify G8 if it finds any errors, omissions or inconsistencies in the information provided by

G8. Except where required by law, G8 gives no warranty of accuracy, sufficiency or otherwise in relation to information provided to the Supplier and disclaims all responsibility for such information.

- 3.4. If G8 makes a VMS available to Supplier, the Supplier agrees to use the VMS in connection with issuing, agreeing and electronically executing Purchase Orders.

### 4. Compliance Audits & Reporting

- 4.1. The Supplier must keep G8 fully informed of all aspects of the provision of the Goods and/or Services.
- 4.2. The Supplier must keep records of its performance of and receipt of payment for the Goods and/or Services in sufficient detail to enable G8 to examine the Supplier’s compliance with its obligations under the Contract. G8 or its Representatives may audit the Supplier for compliance with the Contract by giving the Supplier at least 14 calendar days’ prior notice. The Supplier must provide all reasonable assistance to G8, its Representatives, and any Regulatory Authority in connection with any such audit, including access to premises, documents and other information relating to the Contract. G8 may retain copies of records or information gathered during the audit to the extent they relate to the Contract.

### 5. Defective Goods and/or Services

- 5.1. If upon inspection during the Warranty Period, G8 identifies Defective Goods and/or Services, it may reject them by giving notice to the Supplier and, at its election:
  - (a) direct the Supplier to refund to G8 any payments made by G8 in respect of any Defective Goods and/or Services that G8 rejects;
  - (b) direct the Supplier to make good free of charge the Defective Goods and/or Services; or
  - (c) make good the Defective Goods and/or Services itself; and seek reimbursement from the Supplier for all costs and expenses incurred.
- 5.2. The remedies provided in this clause do not exclude any other remedies provided by law.
- 5.3. If the Supplier identifies Defective Goods and/or Services, or carries out any product or safety recall or equivalent process in respect of any Goods and/or Services, it must promptly notify G8 in writing.

### 6. Fees

- 6.1. In consideration for the supply of the Goods and/or Services, G8 will pay the Supplier the net amount payable for the Goods and/or Services set out in the Purchase Order.
- 6.2. The Supplier will pay all costs, taxes, expenses and liabilities incurred by the Supplier in the course of the supply of Goods and/or Services, or levied on, in respect of, or in relation to, the Goods and/or Services, and must provide documentary evidence of such payment to G8 upon request.

### 7. Invoicing

- 7.1. The Supplier must submit a Tax Invoice to G8 at the end of each calendar month for the Goods and/or Services supplied in that month and, subject to clause 7.2, G8 must pay each Tax Invoice within 30 days of receiving the Tax Invoice.
- 7.2. If G8 makes a VMS available to the Supplier, the Supplier agrees to use the VMS in connection with ordering and invoicing under the Contract.

7.3. Payment by G8 will not constitute acceptance by G8 that the Goods and/or Services have been supplied in accordance with the terms of the Contract.

#### 8. Taxes

8.1. Any reference to a term in this clause 8 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

8.2. To the extent that any supply made under or in connection with the Contract is a taxable supply, the recipient must pay, in addition to the consideration to be provided under the Contract for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that the supplier has first issued to the recipient a Tax Invoice in respect of that taxable supply.

#### 9. Personnel

9.1. The Supplier must engage at the Supplier's sole cost and responsibility all personnel necessary for the supply of the Goods and/or Services under the Contract.

9.2. The Supplier must employ or cause to be employed only personnel that are careful, skilled and experienced to the degree ordinarily expected of personnel engaged in the supply of goods and/or services similar to the Goods and/or Services acting in accordance with Good Industry Practice.

9.3. G8 may at any time in its absolute discretion, direct the Supplier to withdraw any of its personnel from providing any part of the Goods and/or Services and the Supplier must promptly arrange for the person to cease being involved in any way in the provision of the Goods and/or Services notwithstanding any provision in any other agreement. If so, directed by G8, the Supplier must replace the person with a person of suitable ability, experience and qualifications within a period of time specified by G8.

#### 10. Access

10.1. Subject to compliance with clause 10.2, G8 will provide the Supplier and its personnel with reasonable access to such of G8's premises and systems as are required for the purpose of allowing the Supplier to perform its obligations under the Contract, provided that the Supplier must (and must procure that its personnel) abide by the security and access procedures advised by G8 from time to time. G8 may revoke any personnel's access at any time.

10.2. The Supplier must, and must procure that its personnel:

(a) ensure that all personnel:

- (i) are provided with safe systems of work and/or work health and safety policies and procedures;
- (ii) receive appropriate training regarding health and safety matters; and
- (iii) are provided with, trained in the correct use of, and correctly use, appropriate health and safety equipment,

for the safe supply and performance of the Goods and/or Services under the Contract;

(b) promptly report to G8 any health and safety risks or hazards identified in relation to the supply or performance of Goods and/or Services under the Contract;

(c) promptly notify G8 of any incidents which are notifiable under applicable Legislation (including, without limitation, any injuries or near-misses);

(d) promptly notify G8 of any work health and safety investigations, notifications or inspections, issued by any work health and safety regulator or trade union; and

(e) ensure that all personnel who enter onto, or may be required to enter onto, any G8 premises:

(i) have a clear working with children check, and provide evidence to G8 of their working with children check upon request; and

(ii) are fully vaccinated for COVID-19, and provide evidence to G8 of their vaccination status upon request.

#### 11. Assignment and Subcontracting

11.1. The Supplier must not assign or subcontract any part or the whole of its obligations under the Contract except with the prior written consent of the G8, in G8's absolute discretion.

#### 12. Intellectual Property Rights

12.1. Except as provided in this clause 12, nothing in the Contract transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.

12.2. If G8 provides any material to the Supplier that contains G8 Material, then G8 grants to Supplier a non-transferable, non-exclusive, royalty-free, revocable licence during the Term to use the G8 Material solely for the purpose of the Supplier meeting its obligations to G8 under the Contract.

12.3. The parties acknowledge and agree that all Intellectual Property Rights in any New Material vests in G8, and the Supplier:

(a) assigns, and must procure that its personnel assign to G8 all of the Intellectual Property Rights in the New Material (including as a present assignment of future copyright), and will obtain (and provide to G8, upon request) any Moral Rights waivers and consents necessary to allow G8 to freely use, modify and exploit that New Material;

(b) will do all things necessary to effect the assignment of all Intellectual Property Rights and Moral Rights in the New Material to G8, including by executing and delivering documents; and

(c) must not and must procure that its personnel do not, make any claim against the G8 Group in respect of any Intellectual Property Rights (including Moral Rights) in the New Material.

12.4. The Supplier grants to G8 a perpetual, irrevocable, non-transferable, non-exclusive, royalty-free licence to use, reproduce, copy, modify, communicate to the public and sub-license such Intellectual Property Rights of the Supplier which are required or necessary to allow the G8 Group to receive the benefit of, and to use and exploit, the Services, including any Deliverables and the New Material.

12.5. In respect of each Purchase Order, G8 grants to the Supplier a non-transferable, non-exclusive, royalty-free licence during the Term to use the New Materials under that Purchase Order for the sole purpose of performing its obligations under that Purchase Order.

12.6. The Supplier must not use the names, logos, trademarks or other Intellectual Property Rights of the G8 Group or refer to the Contract whether for endorsement of

its products and services or otherwise, without the prior written consent of G8.

### 13. Warranties and Representations

- 13.1. The Supplier warrants and represents to G8 that:
- (a) it will, and will procure that its personnel:
    - (i) comply at all times with all applicable Legislation; and
    - (ii) perform their obligations under the Contract in a manner that does not, and is not likely to, give rise to any risks to the health and safety of themselves or any other person;
  - (b) the Goods and/or Services will:
    - (i) match the description and specification in the Contract;
    - (ii) be supplied in accordance with Good Industry Practice;
    - (iii) be fit for their intended purpose and for any purpose made known by G8 to the Supplier; and
    - (iv) comply with all applicable Legislation;
  - (c) the Goods will be:
    - (i) of merchantable quality;
    - (ii) manufactured strictly in accordance with the Purchase Order or descriptions supplied to the Supplier by G8;
    - (iii) free from any encumbrance, lien, mortgage, security or charge in favour of a third party or any other third party interest, from the time of delivery to G8; and
    - (iv) supplied for a price that is no less favourable than the price paid by other purchasers of similar goods in similar circumstances;
  - (d) there is no conflict of interest which may affect the provision of the Services under the Contract;
  - (e) in entering into and performing its obligations under the Contract it:
    - (i) has not breached and will not be in breach of, any applicable Legislation;
    - (ii) has not infringed and will not infringe any person's rights (including intellectual Property Rights and Moral Rights);
    - (iii) has not misused and will not misuse any person's confidential information; and
    - (iv) will not, and its Related Bodies Corporate will not, be in breach of any obligation that it or they owe to any person;
  - (f) it is able to grant all of the licences and assignments in the Contract;
  - (g) all Deliverables will be of acceptable quality and free from defects and omissions in material design or workmanship, will perform in accordance with the Contract and will comply with all applicable Legislation; and
  - (h) the representations and warranties given in this clause 13.1 are taken to be repeated on each day of the Term with respect to the facts and circumstances then subsisting.
- 13.2. If any of the representations and warranties given in clause 13.1 are not true and correct or are (or become) misleading or deceptive, the Supplier must immediately notify G8 and must, if requested to do so by G8 and in addition to any other rights or remedies G8 may have, replace the Goods and/or re-perform the Services (as the case may be) (or such Goods and/or Services that have

been materially affected as a result of the incorrect warranty or representation) at no additional cost to G8.

### 14. Liability and indemnity

- 14.1. Subject to clause 14.2:
- (a) the aggregate liability of one party to the other party for all Loss arising under or in connection with the Contract or its subject matter (other than the obligation to pay Fees) is limited to the greater of:
    - (i) three times the total Fees paid under the Contract; and
    - (ii) \$1 million; and
  - (b) neither party will, in any circumstances, be liable to the other party for Excluded Loss.
- 14.2. Nothing in the Contract operates to limit or exclude:
- (a) any rights, obligations or liabilities that cannot be modified, limited or excluded in accordance with Legislation;
  - (b) any liability that arises:
    - (i) as a result of fraud, wilful misconduct (including wilful default) or criminal conduct by a party or its Representatives;
    - (ii) as a result of a party's abandonment (whether wholly or substantially) of its obligations under the Contract;
    - (iii) as a result of any claim for infringement of the Intellectual Property Rights of any person, a breach of privacy or a breach of confidentiality; or
    - (iv) in respect of any of the indemnities in clause 14.3;
  - (c) any liability of the Supplier:
    - (i) in respect of any Employee Claims; or
    - (ii) for any Loss the Supplier cannot contract out of in accordance with Legislation, or Loss arising from an occurrence which should be covered by a policy of insurance in the name of the Supplier under the Contract.
- 14.3. Each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) against all Loss arising out of or in connection with:
- (a) any breach of the Contract by the Indemnifying Party or its Representatives;
  - (b) any fraud, wilful misconduct or unlawful act or omission by the Indemnifying Party or its Representatives; and
  - (c) any death or injury to persons, and any loss or damage to the real or personal property of the Indemnified Parties or a third party, caused by any act or omission of the Indemnifying Party or its Representatives.
- 14.4. The Indemnifying Party acknowledges that it is not necessary for the Indemnified Party to incur an expense or make a payment before enforcing a right of indemnity conferred by the Contract or to mitigate its Loss.
- 14.5. G8 holds the benefit of clauses 14.3 and 14.4 for itself and on behalf of the G8 Group and each of its Representatives.
- 14.6. Any amount claimed by the Indemnified Party pursuant to the indemnity in clause 14.3 will be reduced proportionately to the extent the Loss is directly caused by the Indemnified Party or its Representatives.
- ### 15. Title and risk
- 15.1. Title in any goods forming part of the Goods and/or Services passes to G8 on the earlier of the date that G8 pays for the relevant goods or when such goods are delivered to G8's nominated premises.

15.2. To the extent permitted by law, the Supplier enters onto G8's nominated premises and supplies the Goods and/or Services under the Contract at its own risk. Risk in any goods forming part of the Goods and/or Services remains with the Supplier until delivery to G8.

#### 16. Insurance

16.1. The Supplier must maintain, to the satisfaction of G8, and at the Supplier's own cost, comprehensive insurance policies in relation to any liability arising out of the Contract and ensure that its subcontractors (if any) have sufficient insurance for the services they will perform in relation to the Contract, including:

- (a) workers compensation insurance as required by law;
- (b) if requested by G8, professional indemnity insurance for no less than \$10 million per claim;
- (c) public and products liability insurance for no less than \$10 million per claim.

16.2. The Supplier must provide to G8 written evidence of such insurances (including certificates of currency of insurance from the insurer) within 10 business days of request.

#### 17. Termination

17.1. G8 may terminate a Contract:

- (a) at any time for convenience in its absolute discretion, by giving 7 calendar days' notice to the Supplier; or
- (b) immediately, if required to do so by a Regulatory Authority.

17.2. Either party may terminate a Contract immediately if:

- (a) the other party is in breach of the Contract and either fails to remedy that breach within 14 calendar days of receiving notice of the breach or the breach is incapable of being remedied; or
- (b) the other party is or becomes Insolvent (provided that the parties acknowledge that the enforcement of a right arising in certain circumstances under this clause may be restricted by law).

17.3. Upon termination or expiry of a Contract for any reason:

- (a) the Supplier at G8's election must either deliver to G8, or destroy, all G8 Data in the possession or control of the Supplier (except for any Confidential Information of the G8 that the Supplier is required by law to retain);
- (b) the Supplier will take such action as necessary or as G8 directs for the transfer, protection and preservation of any G8 Data in its possession or control and will use its best endeavours to mitigate and minimise the cost of termination to G8; and
- (c) the Supplier is entitled to payment only for Goods and/or Services completed and delivered prior to termination and must refund to G8 any amounts paid for Goods and/or Services not yet completed or provided in full.

17.4. Termination of a Contract for any reason does not extinguish or otherwise affect any rights or remedies of either party which arose prior to the termination, or the provisions of the Contract which by their nature are intended to survive termination.

#### 18. Confidentiality

18.1. Each party undertakes to keep the Confidential Information of the other party strictly confidential and to not use or disclose that Confidential Information except as permitted by the Contract.

18.2. Subject to clause 18.3, a party (**Recipient**) may only use the Confidential Information of the other party (**Discloser**) for the purposes of performing its obligations or exercising its rights under the Contract and must not disclose the Confidential Information of the Discloser to any person, except to its Representatives on a need-to-know basis, provided that such Representatives are made aware of the confidential nature of such Confidential Information and are bound by confidential obligations no less onerous than this clause 18.

18.3. The Recipient may disclose the Confidential Information of the Discloser:

- (a) with the prior written consent of the Discloser; and
- (b) if the Recipient is required to disclose the information by law, order of any court or tribunal of competent jurisdiction, or any government agency, securities exchange or other Regulatory Authority or administrative body that has the legal right to require disclosure, provided that to the extent reasonably practicable and permitted by law, prior to (or, where immediate disclosure is required, as soon as practicable after) such disclosure the Recipient:
  - (i) notifies the Discloser of any actual or anticipated disclosure requirement;
  - (ii) consults with the Discloser in relation to the disclosure; and
  - (iii) takes such steps as the Discloser may reasonably request to permit the Discloser to have a reasonable opportunity to restrict the disclosure by lawful means.

18.4. The Supplier must not make any public announcements relating to the Contract without the prior written consent of G8, unless required by law or any securities exchange.

#### 19. Privacy

19.1. For the purposes of this clause 19:

- (a) **Personal Information** has the meaning given in the Privacy Act;
- (b) **Privacy Act** means the *Privacy Act 1988* (Cth), and any supplementary or replacement legislation; and
- (c) **Privacy Requirements** means:
  - (i) all requirements under the Privacy Act (including the Australian Privacy Principles) and all other applicable privacy and data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information as if it were a person subject to and regulated by these laws;
  - (ii) any privacy code, policy or terms which have been adopted by or are binding on the G8 Group as if it were directly bound by them;
  - (iii) any reasonable directions of G8 which are consistent with (a) and (b) above.

19.2. Without limiting any obligation under this clause 19, the Supplier must:

- (a) comply, and assist G8 to comply with, the Privacy Requirements;
- (b) not disclose any Personal Information to any other person, or disclose, transfer any Personal Information obtained in connection with the Contract outside Australia, or allow anyone outside Australia to have access to such information, without the prior written consent of G8;



- (c) promptly notify G8 of any request made by an individual for access to or correction of any Personal Information and respond to such requests only in accordance with G8's reasonable directions;
- (d) take all reasonable steps to protect against unauthorised access to, or loss or alteration of, any Personal Information in the Supplier's possession or control; and
- (e) co-operate with G8 and comply with G8's reasonable directions in relation to all Privacy Requirements.

## 20. Data Security

- 20.1. G8 Data remains the property of G8 at all times. The Supplier:
- (a) must keep G8 Data separate to data collected, stored or processed on behalf of any other third party; and
  - (b) must not, and must ensure that its Representatives do not, use G8 Data for any purpose other than as strictly necessary for the performance of its obligations under the Contract.
- 20.2. The Supplier must establish, maintain and enforce appropriate:
- (a) policies, procedures and standards; and
  - (b) access controls, technical and organisational measures and safeguards,
- to protect against unauthorised access to, or loss or alteration of, G8 Data in the Supplier's possession or control, which:
- (c) are consistent with those maintained by G8 to secure that G8 Data; and
  - (d) are no less rigorous than those implemented through generally accepted industry practice (including ISO27001 and PCI DSS compliance).

## 21. Dispute resolution

- 21.1. If an issue or dispute arises in connection with the Contract, the parties agree, prior to the initiation of any legal proceedings, to use their reasonable endeavours to reach a resolution of the dispute. If the dispute has not been resolved within 30 days after the parties first convene to resolve the dispute, either party may commence legal proceedings.
- 21.2. Despite the existence of a dispute, the Supplier must continue without delay to perform its obligations under the Contract.
- 21.3. Nothing in this clause prevents either party from applying to a court for urgent injunctive relief.

## 22. Anti-Bribery, Anti-Corruption and Anti-Slavery

- 22.1. The Supplier warrants and represents to G8 that:
- (a) in performing its obligations under the Contract, the Supplier and its Representatives will comply with all applicable Legislation relating to:
    - (i) bribery, corruption and prohibited business practices (including the *Criminal Code Act 1995* (Cth)); and
    - (ii) labour rights and Modern Slavery (including the *Modern Slavery Act 2018* (Cth)),
 (together, the **Applicable Laws**)
  - (b) neither the Supplier nor any of its Representatives:
    - (i) have been convicted of any offence in connection with the Applicable Laws; and
    - (ii) having made reasonable enquiries, to the best of its knowledge, have been or are the subject of any investigation, inquiry or enforcement proceeding in connection with the Applicable Laws.

22.2. The Supplier must:

- (a) take all reasonable steps to address any risks relating to Modern Slavery in the Supplier's or its Representatives' supply chains or in any part of their business, including by implementing appropriate due diligence procedures for its suppliers and Representatives; and
- (b) respond promptly to all due diligence questions and requests for information issued to it by G8 from time to time and ensure that its responses to all such questions and requests are complete and accurate.

- 22.3. Without limiting any other rights or remedies of G8, if the Supplier breaches any of the warranties in clause 22.1 or fails to comply with any of its obligations under clause 22.2, the Supplier must comply with any reasonable directions or instructions from G8 regarding the remediation of the breach, and G8 may:
- (a) require the Supplier to submit a remediation plan detailing how the Supplier will comply with such warranties and obligations and comply with that plan; or
  - (b) immediately terminate the Contract with immediate effect by notice to the Supplier.

## 23. Notices

- 23.1. Notices, demands, certificates, consents, approvals, waivers and other communications in connection with the Contract (**Notices**) must be in writing and must be delivered by hand or sent by post, VMS or email to the other party using the details set out in the Purchase Order.
- 23.2. All Notices delivered or sent under the Contract take effect from the time they are received or are deemed received:
- (a) at the time of delivery, if delivered by hand;
  - (b) 3 days after posting, if sent by post;
  - (c) if issued via the VMS, at the time the communication is issued; or
  - (d) if sent by email:
    - (i) when the sender receives an automated message confirming delivery; or
    - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed, whichever happens first.

## 24. General

- 24.1. **Relationship between the parties** - Nothing contained or implied in the Contract makes a party the partner, agent, employee or legal representative of another party for any purpose or creates any partnership, joint venture, agency or trust. No party has any authority to bind another party in any way.
- 24.2. **Set off** - G8 may set off against any amount due for payment by G8 to the Supplier any amount owed by the Supplier to G8 under the Contract or any other agreement between the parties.
- 24.3. **Amendment** - These Terms and Conditions may not be varied or waived unless agreed upon by both parties and documented in writing.
- 24.4. **Time is of the essence** - If the Contract specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.
- 24.5. **Entire Agreement** - The Contract constitutes the entire agreement of the parties about its subject matter and

except where stated herein supersedes all previous agreements, representations, correspondence, understandings and negotiations on that subject matter.

24.6. **Severability** - If the whole or any part of a provision of these Terms and Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceability or unreasonable in a jurisdiction, it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable for that jurisdiction and the remaining provisions of these Terms and Conditions and the remainder of such provision shall continue in full force and effect. This clause has no effect if the severance alters the basic nature of these Terms and Conditions.

24.7. **Exclusion of Proportionate Liability Legislation** - To the extent permitted by Legislation, the operation of the Proportionate Liability Legislation is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Contract, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute, or otherwise at law.

24.8. **Governing Law** - The laws applicable in the State of Supply govern the Contract. The parties submit to the non-exclusive jurisdiction of the Courts in the State of Supply.

24.9. **Waiver** - Waiver of any right arising from a breach of the Contract must be in writing and executed by the party granting the waiver. Failure by G8 to exercise a right, remedy or power at any time will not be construed in any way to affect the enforceability of that right, remedy or power in any other instance, or the enforceability of the Contract as a whole.

24.10. **Survival** - Without limiting or affecting the continued operation of any clause which as a matter of construction is intended to survive the termination of the Contract, clauses 12, 14, 17.3, 18 and 24 survive the termination of the Contract.

## 25. Definitions

25.1. The following words have these meanings in these Terms and Conditions:

**Confidential Information** means the Contract, and in respect of a party, information which:

- (a) is by its nature confidential;
- (b) is learned or acquired by the other party in the performance of the Contract;
- (c) is designated by the disclosing party as confidential; or
- (d) the other party knows or ought to know is confidential.

but does not include information which:

- (e) enters the public domain other than through breach of the Contract or an obligation of confidence owed to the disclosing party;
- (f) the receiving party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality) or independently developed by the receiving party without reference to the Confidential Information of the disclosing party; or
- (g) the receiving party acquires from a source other than the disclosing party or any of its Representatives where

such source is entitled to disclose it on a non-confidential basis.

**Contract** means a contract of purchase of Goods or Services arising out of a Purchase Order placed by G8 and accepted by the Supplier.

**Defective Goods and/or Services** means Goods and/or Services which are not supplied in accordance with Good Industry Practice or otherwise do not conform with the Contract.

**Deliverable** means any deliverables described in a Purchase Order and all New Material.

**Delivery Date** means the date for delivery or completion of the Goods and/or Services, or, if no such date is specified, the date following a reasonable period of time from the date of the Purchase Order, having regard to the nature of the Goods and/or Services and the intended purpose of the Goods and/or Services as stated in the Contract.

**Employee Claim** means any claim in respect of any death, injury or occupational disease of any personnel of the Supplier which is caused or contributed to by the Supplier or arises out of or in connection with the Contract;

**Excluded Loss** means any Loss that does not arise naturally and according to the usual course of things as a result of a breach of the Contract, whether or not such Loss may reasonably be supposed to have been in the contemplation of both parties at the time they made the Contract as the probable result of the relevant breach or other event. Excluded Loss does not include:

- (a) additional fees paid or payable by G8 for alternative or replacement Goods and/or Services, or to address any breach by the Supplier;
- (b) costs "thrown away" or "wasted" such as procurement, start up and transition costs;
- (c) costs of remedial and mitigation measures such as engaging extra staff or purchasing additional equipment or services to address any breach by the Supplier; and
- (d) the cost of reconstruction, recovery or replacement of G8 Data which is lost, degraded or damaged.

**Expiry Date** means the later of:

- (e) the date on which all of the Goods have been delivered and, if applicable, commissioned, and the Services have been provided; or
- (f) the date the Supplier has demobilised all of its Personnel and any equipment from G8 sites as required under the Contract (as applicable).

**Fees** means the fees payable by G8 to the Supplier as set out in a Purchase Order.

**G8 Data** means all data and information relating to any member of the G8 Group or the G8 Group as a whole and its operations, facilities, customers, clients, personnel, assets and programs in whatever form that information may exist and any other data and information assets relating to the Goods and/or Services, including Confidential Information of the G8 Group and (for clarification) Personal Information.

**G8 Group** means G8 and its Related Bodies Corporate.

**G8 Material** means any material developed independently of the Contract by a member of the G8 Group or their licensors and provided to or accessed by the Supplier in connection with its performance of the Contract.

**Good Industry Practice** means the standards (including any relevant Australian Standard), practices, methods and procedures generally followed or approved by relevant

industries and suppliers in Australia with respect to the Goods and/or Services and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced professional engaged in the supply of similar goods or services, or such higher standard as the Supplier has represented in writing to G8 in relation to the Goods and/or Services.

**Goods and/or Services** means all goods to be supplied and/or services to be performed by the Supplier in accordance with a Purchase Order and including any responsibilities or functions incidental to or otherwise necessary for the Supplier to provide the goods and/or services. The terms "**Goods**" and "**Services**" have a corresponding meaning.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

**Insolvent** means having an administrator appointed, being in receivership, in liquidation, in provisional liquidation, wound up, subject to any arrangement, assignment or composition, protected from creditors under any law dissolved (other than to carry out a restructure while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any relevant jurisdiction.

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Legislation** means legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions, standards and practice notes of the Commonwealth, a State or Territory or any government agency or Regulatory Authority, as amended or replaced from time to time. **Loss** means any loss, cost, damage, expense (including lawyer's fees and expenses on a full indemnity basis), claim, demand or liability.

**Modern Slavery** means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, forced or servile marriage, the sale and exploitation of children and other slavery-like exploitation as prohibited or defined as a modern slavery offence applicable Law from time to time in force.

**Moral Rights** means any moral rights including the rights described in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

**New Material** means all material created by the Supplier or its Representatives in the performance of the Contract.

**Proportionate Liability Legislation** means any applicable law in Australia which makes provision for proportionate liability of persons for apportionable claims;

**Purchase Order** means an order issued by G8 to the Supplier for the supply of Goods and/or Services, which for the avoidance of doubt may be in any form prescribed or used by G8

**Regulatory Authority** means any body, entity or public or regulatory authority with responsibility for the supervision or regulation of activities of an entity or industry.

**Related Body Corporate** has the meaning given it in the *Corporations Act 2001* (Cth).

**Representative** of a party includes an employee, agent, officer, director, auditor, adviser, partner, consultant, contractor or subcontractor of that party or any of its Related Bodies Corporate.

**Supplier** means the supplier of the Goods and/or Services as set out in the Purchase Order.

**State of Supply** means the State or Territory in which the Supplier supplies the Goods and/or Services;

**Tax Invoice** has the meaning set out in the GST Act.

**Term** means the period from the date of the Purchase Order until the Expiry Date (unless extended by the agreement of the parties);

**VMS** means any G8 vendor management system, as updated or changed from time to time.

**Warranty Period** means the period commencing on the first date of delivery of Goods and/or performance of Services under the Contract, ending:

- (a) 12 months after that date; or
- (b) on such other period as stated in the Purchase Order.

## 26. General interpretation

26.1. Unless the contrary intention appears, a reference in these Terms and Conditions to:

- (a) a document (including the Contract) includes any variation or replacement of it;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (d) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (e) an amount of money is a reference to the lawful currency of Australia;
- (f) the words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind.

26.2. Headings are inserted for convenience only and do not affect the interpretation of these Terms and Conditions.

26.3. No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, these Terms and Conditions or any part of it.

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