



Reseller and Consultant Standard Terms and Conditions

1. Application

These Terms and Conditions apply to any Reseller, Consultant or Agency Agreement that incorporate these Terms and Conditions by reference.

2. Definitions

2.1 In this Document, unless the context otherwise requires, the following words have the following meanings:

- (a) **Agreement** means the reseller, agency, consultant or any other agreement between the Company and Codan or one of its wholly owned subsidiaries that incorporates this Document by reference and includes this Document.
- (b) **Anything of Value** includes cash or cash equivalents, gifts, services, employment offers, loans, travel expenses, entertainment, political contributions, charitable donations, subsidies, per diem payments, sponsorships, or provision of any other asset, even if nominal in value.
- (c) **Authorised Capacity** means the capacity indicated in the schedule of particulars in the Agreement.
- (d) **Authorised** refers to the Company acting in the Authorised Capacity.
- (e) **Change of Control** means, in relation to the Company, where the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect (including through one or more entities)):
 - (i) to control more than half of the voting power of the Company;
 - (ii) to control the composition of the board of directors of the Company; or
 - (iii) to control more than half of the issued share capital of the Company excluding any part thereof which carries no right to participate beyond a specified amount in the distribution of either profit or capital,resides with persons other than those holding that power on the date of the Agreement.
- (f) **Company** means the party defined as the "Company" in the Agreement.
- (g) **Confidential Information** means all information of a party (including information in machine readable form) concerning that party or its business, that comes into the possession or control of the other party as a result of the Agreement or otherwise and that:
 - (i) is by its nature confidential, or should reasonably be considered by the other party to be so;
 - (ii) is designated by the disclosing party as confidential; or
 - (iii) the receiving party knows or ought to know is confidential,
 - (iv) and in the case of Codan's Confidential Information includes:
 - (v) the Product Know-How; and
 - (vi) all copies, notes and records relating to the Product Know-How and all related information generated for or on behalf of the Company in the course of acting in the Authorised Capacity and marketing, sourcing orders for and selling the Products.
- (h) **Contract** means any contracts entered into by the Parties resulting from the submission of an Order Form to Codan by the Company.
- (i) **Document** means these terms and conditions including any annexures, schedules or documents incorporated by reference.
- (j) **Duties** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed but excludes any income tax.
- (k) **End Users** means the end user customers of the Products described in the Agreement, but excluding those end user customers specifically excluded in the Agreement and such other end users as may be determined by Codan from time to time during the Term in its absolute discretion.
- (l) **Force Majeure Event** means anything outside a party's reasonable control, including but not limited to acts or omissions of the other party, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, terrorism, insurrection, sabotage, transportation, public health crisis, embargo, failure or delay labour disputes or strikes, or acts or omissions of any third person (including subcontractors, customers, governments and government agencies).
- (m) **Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity. It includes any public authority constituted under a law of any country or political sub-division of any country. It also includes any person deriving power directly or indirectly from any other person or body referred to in this definition.
- (n) **Government Official** means:

- (i) any officer or employee of a government or any department, agency or instrument of a government (including but not limited to any Government Agency);
- (ii) any person acting in an official capacity for or on behalf of a government or any department, agency, or instrument of a government (including but not limited to any Government Agency);
- (iii) any officer or employee of a company or business owned in whole or part by a government;
- (iv) any officer or employee of a public international organisation such as the World Health Organisation or United Nations;
- (v) any officer or employee of a political party or any person acting in an official capacity on behalf of a political party; and/or
- (vi) any candidate for political office.
- (o) **GST** has the meaning it does in section 195-1 of the GST Act.
- (p) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.
- (q) **Holding Company** in relation to a body corporate, means a body corporate of which the first body corporate is a Subsidiary.
- (r) **Insolvency Event** means any insolvency-related event that is suffered by a party, including where:
 - (i) the party ceases to carry on business;
 - (ii) the party ceases to be able to pay its debts as they become due;
 - (iii) the party disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (iv) any step is taken by a mortgagee to take possession or dispose of the whole or part of the party's assets, operations or business;
 - (v) any step is taken to enter into any arrangement between the party and its creditors;
 - (vi) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator, or other like person of the whole or part of the party's assets, operation or business;
 - (vii) if the party is a partnership, any step is taken to dissolve that partnership;
 - (viii) if the party is a company, there is any change in the direct or indirect beneficial ownership or control of the party, without the other party's prior written consent (which consent must not be unreasonably withheld); or
 - (ix) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- (s) **Intellectual Property Rights** means all industrial and intellectual property rights anywhere in the world, including:
 - (i) know-how (including the Product Know-How), trade secrets, patents, copyright, rights in circuit lay-outs, registered and unregistered designs, registered and unregistered trade marks and any right to have Confidential Information kept confidential; and
 - (ii) any application or right to apply for registration of any of the rights referred to in clause 2.1(s)(i) (regardless of whether or not registered or registrable, and includes all renewals or extensions of any registrations).
- (t) **Law** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in any part of the world, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.
- (u) **Order** means an order for Products resulting from the submission of an Order Form to Codan by the Company.
- (v) **Order Form** means an order form in the form or otherwise meeting the requirements specified by Codan from time to time during the Term.
- (w) **Order Value** means the total Price charged by Codan to the Purchaser for any Order of Products.
- (x) **party** means a party to this Agreement, **parties** means both parties to this Agreement.
- (y) **Payment** refers to and includes any, direct or indirect, offer to pay, promise to pay, authorisation of or payment of or transfer of Anything of Value.
- (z) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made under it.
- (aa) **Price** means the prices of the Products contained in a Quotation



- issued by Codan, or otherwise specified in the Agreement (as applicable).
- (bb) **Product Know-How** means all technical, commercial, promotional and other materials or information developed by or on behalf of Codan, which relates to or has any connection with any of the Products and includes all associated Intellectual Property Rights (including those associated with the Products).
 - (cc) **Products** means the products specified in Part A schedule 1 of the Agreement.
 - (dd) **Quotation or Quote** means a quote issued by Codan to the Company in respect of the supply of the Products from time to time during the Term.
 - (ee) **Related Body Corporate** means a body corporate that is: (a) a Holding Company of another body corporate; or (b) a Subsidiary of another body corporate; or (c) a Subsidiary of a Holding Company of another body corporate. Related Bodies Corporate has a corresponding meaning.
 - (ff) **Repairer** means providing after-sales support, repair and maintenance services to End Users in respect of the Products.
 - (gg) **Reseller** means acting as a reseller of the Products and selling them to End Users.
 - (hh) **Sales Agent** means marketing, promoting and advertising the Products, identifying sales opportunities and obtaining orders for Products to be transmitted to, and fulfilled by, Codan.
 - (ii) **Samples** means any Products provided by Codan to the Company at Codan's own cost to enable it to test or demonstrate the Products in the course of undertaking the Authorised activities.
 - (jj) **Schedule of Particulars** means the Schedule designated as such in the Agreement.
 - (kk) **Spare Parts** means spare parts for the Products.
 - (ll) **Special Conditions** means the special conditions agreed by Codan in writing, including but not limited to the Special Conditions set out in the Agreement and any special conditions designated as such and set out in any Quotation issued by Codan to the Company.
 - (mm) **Subsidiary** means a body corporate (First Body) where: (a) another body corporate: (i) controls the composition of the First Body's board; or (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the First Body; or (iii) holds more than one-half of the issued share capital of the First Body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or (b) the First Body is a Subsidiary of a Subsidiary of the other body.
 - (nn) **Tax or Taxes** means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, goods and services tax (including GST), consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any Government Agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.
 - (oo) **Term** has the meaning set out in the Agreement.
 - (pp) **Terms and Conditions of Sale** means the conditions for a Product as defined in the Schedule of Particulars.
 - (qq) **Trade Marks** means the trade marks (both registered and unregistered) authorised for use in relation to the Products, as set out in Schedule 6 of the Agreement.
 - (rr) **Trade Names** means each name authorised for use in relation to the manufacture, marketing, sale and distribution of the Products, as set out in Schedule 6 of the Agreement.

3. Interpretation

In the Agreement, unless the contrary intention appears:

- 3.1 words denoting the singular include the plural and vice versa;
- 3.2 a reference to any gender includes all genders;
- 3.3 a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- 3.4 headings are for convenience only and do not affect interpretation;
- 3.5 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 3.6 a reference to any document is a reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- 3.7 a reference to a party to the Agreement includes that party's executors, administrators, successors and permitted assigns;
- 3.8 a reference to a recital, clause, Schedule or Annexure is to a recital, clause (including sub-clause, paragraph, sub-paragraph or further

subdivision of a clause), schedule or annexure of or to the Agreement and a reference to a Part may be a reference to part or paragraph in a schedule (as the context indicates);

- 3.9 a reference to any books or records or writing includes a reference to such documents or writing in all formats including electronic, disk, magnetic or written format;
- 3.10 a reference to any legislation or legislative provision includes any regulations or other delegated legislation or instruments made or issued under it and any consolidations, amendments, re-enactments or replacements of it and them and any of them;
- 3.11 the word "including" is not to be treated as a word of limitation;
- 3.12 a reference to time is a reference to the time in Adelaide, South Australia;
- 3.13 if the time prescribed or allowed by the Agreement for doing any act or thing falls or expires on a day which is not a business day, such time is extended so as to fall or expire on the next succeeding business day after that day; and
- 3.14 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Agreement.

4. Inconsistencies

- 4.1 In the event of any inconsistency between the following documents, the following order of precedence shall apply: (1) Special Conditions; (2) Terms and Conditions of Sale; (3) the Agreement (excluding this Document); and (4) this Document. The provisions of a higher-priority document shall prevail over any conflicting provisions in a lower-priority document to the extent of the inconsistency.

5. Training and marketing materials

- 5.1 Codan may from time to time during the Term provide the appropriate personnel of the Company with the training, to assist the Company in performing its obligations under the Agreement. The costs of any training to be provided by Codan will be mutually agreed in writing on a case-by-case basis.
- 5.2 Upon reasonable request from the Company, Codan will, at its own cost, provide the Company with marketing and promotional materials relating to the Products as Codan deems necessary and appropriate for the Company to properly perform its Authorised functions, including:
 - (a) point-of-sale material, brochures, posters;
 - (b) Product CDs, manuals and software; and
 - (c) technical data sheets, specifications catalogue and technical reference manuals.

6. Samples

- 6.1 The Company acknowledges and agrees that it is a bailee in respect of all Samples provided or made available by Codan to the Company to enable it to act in the Authorised Capacity as permitted by the Agreement. For the avoidance of doubt, it is agreed that the bailor-bailee relationship which exists between the parties in respect of the Samples is fiduciary in nature.
- 6.2 The Company must:
 - (a) make and affix such markings to the Samples as Codan may direct;
 - (b) not change, modify or alter the Samples without the prior written consent of Codan;
 - (c) not use the Samples except in undertaking Authorised actions;
 - (d) store the Samples without charge to Codan in separate racks clearly marked "Property of Codan Ltd" or separate sections of the Company's premises or plant clearly marked "Property of Codan Ltd";
 - (e) maintain the Samples in good condition (ordinary wear and tear excepted);
 - (f) make the Samples available for inspection by Codan at such reasonable times as Codan may request;
 - (g) deal with the Samples in accordance with the directions issued by Codan; and
 - (h) deliver and return the Samples to Codan immediately upon request.

7. Effect of termination or expiry

- 7.1 The following clauses of this Document will survive termination or expiry of the Agreement: clauses 4, 6.1, 6.2, 7.2, 8, 9.2, 10, 11, 12, 13, 14, 17, 19.3, 22.2, 22.5, 22.6 and 22.10, together with any other clause which by its nature or effect is reasonably intended to survive termination or expiry of the Term.
- 7.2 Termination or expiry of the Agreement will not affect any accrued rights or remedies a party may have as at the date of termination or expiry of the Agreement, unless explicitly stated otherwise in the Agreement.

8. Set-off

Codan may at any time, without notice to the Company, set off any liability of the Company to Codan against any liability of Codan to the Company, whether any such liability is present or future, liquidated or unliquidated, under the Agreement, or any other arrangement, and irrespective of the

currency of its denomination. If the liabilities to be set off are expressed in different currencies, Codan may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Codan of its rights under this clause will be without prejudice to any other rights or remedies available to Codan under the Agreement or otherwise.

9. Trade Marks and Trade Names

9.1 Codan grants to the Company a limited, fee-free, royalty-free, non-exclusive and revocable licence to use the Trade Marks and Trade Names, and all Intellectual Property Rights associated with the Trade Marks and Trade Names, in accordance with this clause 9 for the duration of the Term.

9.2 The Company:

- (a) can only use the Trade Marks and Trade Names in relation to the Products, and its Authorised activities in relation to the Products, and must not use the Trade Marks or Trade Names in relation to any products or services other than the Products, or any activities other than those it undertakes in its Authorised Capacity;
- (b) must not use a trade mark or trade name other than the Trade Marks or the Trade Names in relation to the Products and the Authorised activities it undertakes in respect of the Products, except with the prior written approval of Codan;
- (c) must not use the Trade Marks, the Trade Names, the names of Codan or its Related Bodies Corporate or any similar names as part of any corporate name, business name or trading name of the Company, without the prior written approval of Codan (which may be withheld or granted by Codan in its sole and absolute discretion, and if granted, on such conditions as are considered necessary and appropriate);
- (d) will immediately comply with any reasonable direction issued by Codan from time to time relating to the use of the Trade Marks and Trade Names;
- (e) must not (either during the Term of the Agreement or after its expiry or termination) use, or apply for the registration as a trade mark, business name or company name of, any word or logo that is the same as, substantially identical to, or deceptively similar with, any of the Trade Marks or the Trade Names, or any other registered or unregistered brand or trade mark used by Codan or any of its Related Bodies Corporate; and
- (f) must immediately cease use of the Trade Marks and Trade Names, as set out in Schedule 6 of the Agreement, upon termination or expiry of the Agreement for any reason.

10. Intellectual Property Rights

10.1 The parties acknowledge that:

- (a) Codan owns all existing and future Intellectual Property Rights in relation to the Products, the Spare Parts, the Trade Marks and the Trade Names (including in all modifications and improvements to such items); and
- (b) the Agreement does not transfer ownership of any Intellectual Property Rights including in the Products, the Spare Parts, the Trade Marks or the Trade Names to the Company, or otherwise grant it any entitlement to deal with such Intellectual Property Rights except as expressly set out in the Agreement.

10.2 The Company must not:

- (a) copy, reverse engineer, improve, enhance, develop, refine, modify or otherwise alter any aspect of the Products or Spare Parts, or any Intellectual Property Rights associated with the Products or Spare Parts, or permit or assist a third party to undertake any of these actions, unless permitted to do so under clause 10.3 below;
- (b) represent that it has any interest (other than its rights to use the Trade Marks and Trade Names and associated Intellectual Property Rights under clause 9 above) in relation to any of Codan's Intellectual Property Rights, including its Intellectual Property Rights in the Products; or
- (c) contest, oppose, or make any application to challenge the validity of any of Codan's Intellectual Property Rights, or take any other action which is adverse to Codan's Intellectual Property Rights (as determined by Codan, acting reasonably).

10.3 Despite clause 10.2(a) above, if the Company is an integrator of Products then the Company can, with the prior written permission of Codan (which may be granted by Codan in its sole and absolute discretion following receipt of a request being made by the Company, on such terms and conditions as it considers appropriate in the circumstances), modify and alter the Products or Spare Parts to the extent strictly necessary for the Company to act in its capacity as integrator, if all actions are carried out by the Company in accordance with the terms and conditions attaching to the consent issued by Codan, if any.

10.4 The Company:

- (a) assigns to Codan all goodwill arising out of the Company's use of the Trade Marks and Trade Names and associated Intellectual Property

Rights;

- (b) acknowledges that no additional documentation is necessary to complete the assignments made under clause 10.4(a) above, and that by virtue of that clause, all future goodwill resulting from the Company's use of the Trade Marks or Trade Names and associated Intellectual Property Rights will upon its creation vest in Codan; and

- (c) must at its own cost, do all things reasonably requested by Codan to enable Codan to further assure its rights, title and interest in the goodwill assigned under paragraph clause 10.4(a) above, including by executing such additional documentation as Codan may require.

10.5 Notwithstanding anything to the contrary in the Agreement, the Company acknowledges and agrees that Codan will own all rights in any improvements, enhancements developments, modifications or refinements to the Products, Spare Parts or associated Intellectual Property Rights developed or created by the Company, and the Company will have no claim to such materials. The Company agrees that it will execute, procure and deliver to Codan all assignments required to give effect to this clause, and hereby waives any and all rights to any such improvements, developments, enhancements, modifications or refinements.

10.6 The Company must:

- (a) notify Codan immediately if it becomes aware of any suspected or actual infringement by any person of Codan's Intellectual Property Rights, including those in and associated with the Products, the Trade Marks and the Trade Names; and
- (b) provide all assistance and documents reasonably requested by Codan in relation to any proceedings Codan may take against any person for infringement of Codan's Intellectual Property Rights in the Product.

11. Taxes and Government Charges

11.1 Any amounts payable under or in connection with the Agreement do not include any amounts on account of Taxes and Duties.

11.2 Each party will be solely liable for and will pay, when due and payable, any Taxes and Duties of that party which may be imposed in relation to the Products or any payment associated with the Products, or which is assessed or chargeable in respect of the role of that party under the Agreement and any associated documents or transactions, subject to clause 11.3 below.

11.3 In the case of GST payable in Australia, if applicable, the Company must pay to Codan an additional amount on account of GST equal to the amounts payable by the Company for the Supply multiplied by the prevailing GST rate. Notwithstanding anything to the contrary in this clause, the Company is not required to pay any additional GST amount until such time as the Company has been provided with a tax invoice by Codan, which is in an approved form for GST purposes.

12. Exclusion and limitation of liability

12.1 Codan does not exclude or limit the application of any provision of any applicable statute, legislation or other regulation (including the UK *Consumer Rights Act 2015* and the *Competition and Consumer Act 2010* (Cth) and its Schedules and Regulations) where to do so would contravene that statute, legislation or regulation or cause any part of this clause or document to be void, and nothing in the Agreement is to be interpreted as doing so.

12.2 The parties acknowledge and agree that:

- (a) certain legislation implies certain non-excludable guarantees, warranties and conditions into particular agreements for the supply of goods and services, which cannot be excluded, restricted or modified (**Non-Excludable Guarantees**); and
- (b) Codan does not exclude, restrict or modify any Non-Excludable Guarantees; and
- (c) nothing in the Agreement is intended or is to be construed as doing so, or affects any remedies available to the Company at law and which cannot be lawfully excluded by Codan, including in respect of any of the Non-Excludable Guarantees which may be applicable.

12.3 Subject to clause 12.2 above, to the maximum extent permitted by law, Codan excludes all warranties, terms, conditions and guarantees regarding the Products, Spare Parts and any other goods or services supplied or provided under the Agreement which are implied by law (including the general law), international convention or custom, and the Company will be solely responsible for the Products it sells to End Users (including any consequences resulting from the use of the Products by End Users). In no circumstances will Codan or any of its Related Bodies Corporate be liable to the Company or any other party for any loss, cost, expense or damage sustained by the Company or an End User, or any action, claim, proceeding or demand made by the Company or an End User customer in connection with the Products, except pursuant to clause 12.2 above (if applicable).

12.4 To the fullest extent permitted by law, Codan will not be liable for any special, indirect or consequential losses or damages that may be

suffered or incurred by the Company, regardless of the circumstances and even if Codan knew they were possible, or they were otherwise reasonably foreseeable (and including without limitation, loss of profits and damage suffered as a result of claims by any third person, such as an End User or other customer of the Company).

- 12.5 To the fullest extent permitted by law, Codan excludes all liability to the Company in negligence for acts or omissions of Codan, its employees, agents and contractors arising out of or in connection with the Agreement, and will not be liable or otherwise responsible for:
- (a) any consequences of any modification to the Products or Spare Parts (whether or not authorised) or for any loss, damage or claim arising from such actions; and
 - (b) any loss, accident, damage or injury arising in connection with the Products or Spare Parts, or any failure of the Products or Spare Parts to operate in the manner required by the Company, whether or not caused by a defect or fault in the Products or Spare Parts or due to Codan's negligence.
- 12.6 The Company unconditionally frees, releases and discharges Codan, its Related Bodies Corporate and each of their respective directors, officers, employees, agents and contractors from any claim or cause of action arising in connection with the use of the Products or Spare Parts by the Company, or any modification of the Products or Spare Parts (whether or not authorised) to the fullest extent permitted by applicable law.
- 12.7 To the fullest extent permitted by law, Codan's liability to the Company for breach of any Non-excludable Guarantee (if any) which is applicable (and other than those implied by sections 51, 52 or 53 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) if applicable) is limited to any one of, at Codan's option, repairing or replacing the Products or Spare Parts in respect of which the breach occurred, supplying equivalent products, payment of the cost of replacing the Products or Spare Parts, or acquiring equivalent products, or payment of the cost of having the Products or Spare Parts repaired.
- 12.8 Notwithstanding anything to the contrary in the Agreement, and to the extent permitted by law, Codan's maximum liability to the Company for any cause of action or claim in connection with the Products, Spare Parts or the Agreement shall be limited to a total aggregate amount equal to the Order Value of the Order in connection with which the cause of action or claim arose.

13. Indemnity

The Company indemnifies Codan, its Related Bodies Corporate and each of their respective directors, officers, employees, agents and contractors (**those indemnified**) against the full amount of all liabilities, claims (including third party claims), expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against those indemnified) that those indemnified may sustain or incur as a result, whether directly or indirectly, of any:

- 13.1 breach of the Agreement by the Company;
- 13.2 modification of the Products or Spare Parts;
- 13.3 claim by any person (including but not limited to End Users) arising out of the Company's advertising, promotion, marketing or sale of the Products;
- 13.4 negligent, unlawful, reckless or wilful act or omission of the Company or any of its officers, employees, contractors or agents; or
- 13.5 action or claim by any other third party arising from or related to clauses 13.1 - 13.4 above.

14. Confidentiality

- 14.1 Each party agrees to keep confidential the other party's Confidential Information.
- 14.2 Each party agrees to use the other party's Confidential Information solely for the purposes of performing its obligations under the Agreement.
- 14.3 Each party may disclose the Confidential Information of the other party only to:
- (a) those of its Related Bodies Corporate, officers, employees, agents, contractors and advisers who:
 - (i) have a need to know for the purposes of the Agreement (and only to the extent that each has a need to know); and
 - (ii) have agreed in writing to keep the Confidential Information confidential; and
 - (b) those parties that have been specifically approved in writing by the other party.
- 14.4 The obligations of confidentiality under the Agreement do not extend to information that (whether before or after the date of the Agreement):
- (a) is rightfully known to or in the possession or control of the receiving party, and is not subject to an obligation of confidentiality on the receiving party;
 - (b) is public knowledge (otherwise than as a result of a breach of the

Agreement); or

- (c) subject to clause 14.5 below, is required by law to be disclosed.
- 14.5 If a party is required by law to disclose any Confidential Information of the other party to a third person (including any government, stock exchange or other authority), the party must:
- (a) before disclosing the Confidential Information, notify the other party; and
 - (b) not disclose the Confidential Information until the other party has had a reasonable opportunity to take any steps the party considers necessary to protect the confidentiality of that information.
- 14.6 Each party must at all times:
- (a) establish and maintain effective security measures to safeguard the other party's Confidential Information from access or use not authorised under the Agreement;
 - (b) keep the other party's Confidential Information under its control;
 - (c) maintain complete, accurate and up-to-date records of the party's use, copying and disclosure of the other party's Confidential Information, and immediately produce these records to the other party on request;
 - (d) notify the other party immediately once it becomes aware of any breach of confidentiality and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information; and
 - (e) provide all assistance reasonably required by the other party relating to any proceedings the other party may take against any person for unauthorised use or disclosure of its Confidential Information.
- 14.7 The obligations of confidentiality of the parties provided for in this clause 14 survive termination or expiration of the Agreement.

15. Force Majeure

- 15.1 A party will not be liable for any delay, hindrance or failure to perform its obligations under the Agreement (except any obligation to pay money) if such delay is due to a Force Majeure Event.
- 15.2 As soon as reasonably practicable after a Force Majeure Event arises, the affected party must notify the other party of:
- (a) the Force Majeure Event;
 - (b) the extent to which the Force Majeure Event precludes the affected party from performing its obligations under the Agreement; and
 - (c) the expected duration of the delay arising directly from the Force Majeure Event.
- 15.3 If a delay, hindrance or failure by the affected party to perform its obligations due to a Force Majeure Event exceeds 30 days, the other party may terminate the Agreement with immediate effect by providing notice in writing to the affected party.

16. Assignment and appointment of sub-resellers, sub-agents or sub-consultants

- 16.1 The Company must not:
- assign or attempt to assign any right arising out of the Agreement; or
 - appoint a sub-Reseller, sub-Consultant or otherwise subcontract any of its rights or obligations under the Agreement, except with the prior written approval of Codan.
- 16.2 If Codan approves any assignment of rights to a third person, or the appointment of a third person as a sub-Reseller or sub-Consultant or contractor under clause 16.1:
- (a) the Company will remain liable to Codan for all of its obligations under the Agreement, irrespective of the assignment or appointment of the third person; and
 - (b) the Company must ensure that the appointed party does not represent itself as a Codan appointed representative, reseller, distributor or agent.
- 16.3 A Change of Control of the Company will be deemed to be an assignment for the purposes of the Agreement.

17. Exclusion of Vienna Convention

The parties agree that the *United Nations Convention on Contracts for the International Sale of Goods* (adopted at Vienna, Austria on 10 April 1980) (including as incorporated into South Australian law by the *Sale of Goods (Vienna Convention) Act 1986* (SA)) will not apply to the Agreement.

18. Government Approvals

- 18.1 Codan agrees, at its cost, to use its reasonable endeavours to obtain all necessary export licences, clearances and other consents and approvals from Government Agencies which are necessary for the sale and supply/export of the Products to the Company. The Company agrees to complete and provide to Codan any documentation required by Codan to obtain any required approvals and consents.
- 18.2 The parties agree that Codan's obligations under the Agreement are conditional upon Codan being issued all necessary export licences, clearances and other consents and approvals by the relevant Government Agencies. In the event that Codan is unable to secure all necessary licences, clearances, permits, approvals and other

necessary consents from appropriate Government Agencies, Codan shall be entitled to immediately terminate the Agreement by written notice, and Codan shall not be required to supply the Products to the Company. In no circumstances shall Codan be liable to the Company or any other person for any loss or damage (including without limitation indirect or consequential loss or loss of profits) arising in connection with Codan's failure to obtain any necessary documentation from Government Agencies required for the sale and supply/export of the Products to the Company, or the termination of the Agreement pursuant to this clause, and the Company unconditionally frees, releases and discharges Codan and its officers, agents, contractors and employees from any claim or cause of action arising in connection with Codan's failure to obtain any export licence, clearances and other necessary consents and approvals from appropriate Government Agencies.

- 18.3 The Company is solely responsible, at its sole cost and expense, for ensuring that the Products meet the requirements of any country into which they are imported, and must obtain and maintain any necessary import licences and permits, and all other clearances and consents from Government Agencies required for the acquisition and use of the Products by the Company (including but not limited to customs approvals and clearances). Codan will supply the Company with any documents reasonably requested by the Company for the purposes of complying with its obligations under this clause.
- 18.4 Codan may at any time require that the Company supply it with copies of licences, permits, clearances and approvals issued by Government Agencies and obtained by the Company as required by clause 18.3, and the Company agrees to immediately comply with any such request. If at any time Codan becomes aware that the Company has failed to comply with its obligations under clause 18.3, it may immediately terminate the Agreement by written notice, and all outstanding amounts shall become immediately due and payable by the Company. The Company agrees to indemnify, defend and hold harmless Codan against any and all claims, demands, suits, causes of action, damages and legal fees (on a solicitor-own client basis) or expenses or costs whatsoever arising, directly or indirectly, from any failure by the Company to comply with its obligations under this clause or clause 18.3.

19. Anti-bribery and corruption requirements

- 19.1 It is a material term of the Agreement that the Company must comply with the following:
- The Company must comply fully at all times with all applicable laws and regulations, including but not limited to applicable anti-corruption laws (**ABAC Laws**) of the country or jurisdiction in which the Company conducts business with Codan and which otherwise apply to the Company. The ABAC Laws shall specifically also include the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq., the Criminal Finances Act 2017 (UK) and, the Bribery Act 2010 (UK).
 - The Company must not, and warrants and represents that it will not, in connection with the performance of the obligations under the Agreement, directly or indirectly, promise, authorise, ratify, offer to make or make, receive or offer to accept any payment or benefit of any value to any person or to an intermediary for payment to any person, including a Government Official for the purpose of influencing or inducing or as a reward for any act, omission or decision to secure an improper advantage or to improperly assist the Company or Codan in obtaining or retaining business.
 - The Company must not, and warrants and represents that it will not, in connection with the performance of the obligations under the Agreement, directly or indirectly, promise, authorise, ratify or offer to make or make any payment or benefit of any value to any person, or to an intermediary for payment to any person, including a Government Official which is or may be a facilitation payment.
 - The Company must not contact, or otherwise meet with any Government Official with respect to any transactions required under the Agreement, without the prior written approval of Codan and, when requested by Codan, only in the presence of a Codan designated representative.
 - The Company represents that it has not been convicted of or pleaded guilty to a criminal offence, involving fraud or corruption; that it is not now, to the best of its knowledge, the subject of any government investigation for such offences, and that it is not now listed by any Government Agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government procurement programs.
 - The Company represents and warrants that except as disclosed in writing:
 - it does not have any interest which directly or indirectly conflicts

- with its proper and ethical performance of the Agreement; and
- it will maintain arms length relations with all third parties (including Government Officials) with which it deals for or on behalf of Codan or in the performance of the Agreement.

- 19.2 The Company agrees that Codan may make full disclosure of information relating to a possible violation of the terms of this clause 19 at any time for any reason to any competent government bodies and its agencies (including Government Agencies), and to whomever Codan determines in good faith has a legitimate need to know.
- 19.3 The Company will sign a certification, each year or as requested by Codan, to confirm that it has complied with and is continuing to comply with all applicable ABAC laws and Codan's Anti-Bribery and Anti-Corruption Policy, a copy of which has been provided to the Company prior to or at the signing of the Agreement.
- 19.4 The Company must immediately notify Codan (with adequate details of the conduct) if it becomes aware or suspects that any of the representations and warranties in this clause are false, or that it becomes aware of or suspects a breach of the warranties or representations or of any applicable ABAC Laws.
- 19.5 To the extent that Codan determines to investigate any possible breach referred to above in clause 19.4, the Company will provide full cooperation to Codan.
- 19.6 The Company agrees that if requested by Codan, an auditor may inspect the books and records of the Company, with notice or on a random basis without notice, to the extent determined by the auditor, as necessary to review and ensure compliance with the Company's obligations under the Agreement and under all applicable ABAC Laws.
- 19.7 Codan will be entitled to terminate the Agreement (without payment of compensation to the Company) immediately on written notice to the Company, if the Company fails to perform its obligations in accordance with the terms of this clause 19. Codan will not be responsible or liable for any loss or damages whatsoever arising from or in connection with its exercise of rights under this clause 19, whether sustained by the Company or any other party.

20. Data Protection

20.1 Definitions

In this clause 20 the following terms have the defined meaning:

- Codan Data** means data and information relating to Codan's business, operations, facilities, plans, customers, personal information, clients, employees, programs, assets, products, sales and transactions, in whatever form the information exists, and includes any database in which data is contained, documentation or records related to data, products resulting from the use or manipulation of data or information, and copies of the above.
- Personal Information** means: (1) 'personal information' as defined in the Privacy Act; and (2) any other information that is regulated by, or under, any applicable Privacy Law.
- Privacy Act** means the Privacy Act 1988 (Cth) and the 'Australian Privacy Principles' in that Act
- Privacy Laws** means:
 - The Privacy Act, the UK The Data Protection Act 2018, the UK GDPR, the General Data Protection Regulation (EU) 2016/679 (GDPR); or
 - any other Law, codes of conduct, guidelines or directions made by a Government Agency or other authorised body under any Law relating to privacy, data protection, surveillance, direct marketing or the handling of personal information or data by which either party is contractually or legally bound to comply with.

20.2 Ownership

The Company acknowledges and agrees that Codan owns the rights, title and interests in the Codan Data. To the extent that any Intellectual Property Rights in the Codan Data vest in the Company or any of its employees, agents or contractors, the Company assigns, and must procure that any applicable employees, agents or contractors assign, those Intellectual Property Rights to Codan on and from the date of their creation.

20.3 Security Objectives

The Company must:

- keep all Codan Data, Codan Personal Information, and other information technology (including software and hardware) of the Company and Codan (**Information Assets**) secure;
- protect and prevent loss of, damage to, and unauthorised access to or use or disclosure of the Information Assets;
- ensure that at all times all the Information Assets are securely stored; and
- ensure the continuity of Codan's access to, and use of, the Information Assets and in a manner that achieves any applicable service standards. This includes continuity of access and use during any



disruption, scheduled or unscheduled maintenance or similar events.

21. Modern Slavery Policy

21.1 In performing its obligations under the Agreement, the Company must, in any in which it or Codan operates:

- i) comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force; and
- ii) not engage in any activity, practice or conduct that would constitute an offence if such activity, practice or conduct were carried out in Australia.

21.2 The Company shall notify Codan as soon as it becomes aware of any actual or suspected slavery or human trafficking incident or issue that has a connection with the Agreement.

22. Miscellaneous

22.1 Each party must do or cause to be done all things necessary or desirable to give effect to, and refrain from doing things that would hinder performance of, the Agreement.

22.2 Without limiting clause 22.1 above, each party will promptly do all things required by law or reasonably requested by any other party to give effect to the Agreement. For the avoidance of doubt, the Company agrees to make such amendments to the Agreement and do all other things as Codan may require from time to time to ensure that any security interest that Codan has arising out of or in connection with the Agreement is perfected under the PPSA or legislation equivalent to the PPSA which applies outside Australia, and to otherwise protect Codan's position under such PPSA equivalents.

22.3 Nothing in the Agreement constitutes a relationship of employer and employee, partnership or joint venture between the parties. The relationship between the parties is that of independent contractors and the Company is not permitted to bind or represent Codan in any way.

22.4 The whole or any part of any clause of the Agreement that is illegal or unenforceable will be severed from the Agreement and will not affect the continued operation of the remaining provisions of the Agreement.

22.5 The failure of a party at any time to insist on performance of any obligation under the Agreement of the other party is not a waiver of its right:

- (a) to insist on performance of that obligation or to claim damages unless that party acknowledges in writing that the failure is a waiver; and
 - (b) at any other time to insist on performance of that or any other obligation under the Agreement of the other party.
- 22.6 A variation or modification of the Agreement must be in writing and signed by an authorised representative of each party.
- 22.7 Other than as provided in the Agreement the rights and remedies provided under the Agreement are cumulative and not exclusive of any rights or remedies provided by law or of any other such right or remedy. Any single or partial exercise of any power or right does not preclude any other or further exercise of it or the exercise of any other power or right under the Agreement.
- 22.8 Unless otherwise expressly stated in the Agreement, each party notifying or giving notice under the Agreement must do so:
- (a) in writing;
 - (b) addressed to the postal address, of the recipient specified in the Schedule of Particulars, for the attention of the person listed therein, or such other postal address, or contact person as may be notified in writing from time to time and hand delivered or sent by prepaid post to that address; or.
 - (c) addressed to the email address of the recipient specified in the Schedule of Particulars, for the attention of the person listed therein, or such other email address or contact person as may be notified in writing from time to time.
- 22.9 A notice given in accordance with clause 22.8 is received:
- (a) if hand delivered, on the date of delivery;
 - (b) if sent by prepaid post, 7 calendar days after the date of posting; and
 - (c) if sent by email, at the time of sending provided that the sender receives personalised confirmation the email has been successfully delivered to an email system accessible to the addressee.
- 22.10 This Document and the Agreement is governed by the law applicable in the Australia and each party submits to the exclusive jurisdiction of the courts of that jurisdiction.