

ICAM Australia Pty Ltd – General Terms and Conditions

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

In this Terms and Conditions, unless inconsistent with the context or subject matter, the following terms shall have the following meanings:

- (a) **“Access”** means a grant of access to the Customer for its use of the Software and Services on the terms of the Agreement between the parties.
- (b) **“Agreement”** means any agreement or arrangement entered into between the Supplier and the Customer for the delivery of the Services and is comprised of the Documents.
- (c) **“Authorised User”** means the individual employees, Customer Personnel, contractors, and agents of the Customer who the Customer has nominated to access and use the Software and Services, up to the maximum number of users specified in the Quotation for the Customer's subscription tier.
- (d) **“Background IP”** means a party's intellectual property rights in any materials developed independently of, or prior to, the provision of the Services and the Deliverables and includes any third party licensed intellectual property.
- (e) **“Business Day”** means a day that is not Saturday, Sunday or public holiday in the State of Queensland.
- (f) **“Claim”** means any claim, demand, action or proceeding of any kind for any cost, expense, damage, loss, liability, fine, penalty or other amount arising under, out of or in connection with this Agreement, whether arising in contract, tort, equity, under statute or any other legal basis.
- (g) **“Confidential Information”** means all information, documents, ideas, concepts, know how, knowledge, forms, specifications, processes, statements, correspondence, meeting minutes, formulae, trade secrets, drawings, specifications, data and any other information (and copies and extracts made of or from that information and data) supplied by the Supplier concerning:
 - (i) the operations and dealings of the Supplier (if applicable); or
 - (ii) the operations and transactions of the Supplier and the Services; or
 - (iii) relating to any party's products, services, systems, affairs, businesses, strategies, or employees whether owned by, licensed to, or otherwise in possession or control of that party, which are disclosed to the other party, its employees, agents or contractors under, in contemplation of, or in connection with this Agreement,

which is not in the public domain (except by failure of the Customer to perform and observe its covenants and obligations under this Agreement) and which has been obtained through or by delivering the Services.

- (h) **“Consequential Loss”** means:
 - (i) loss of revenue, profit, anticipated profit, goodwill, production, contracts or business opportunity; and
 - (ii) loss or downtime of facilities.
- (i) **“Customer”** means the person, firm, organisation, partnership, corporation or other entity (including a trust) requesting any Services from the Supplier as identified in the Quotation or any other document requesting any Services from the Supplier.
- (j) **“Customer Data”** means the data owned or supplied by the Customer including but not limited to employee personal information, medical information, employee information work health and safety information, uploaded to the Software or Services by the Customer

and which may be accessed by the Supplier (including its Related Bodies Corporate) or its employees or subcontractors in the course of performing the Services.

- (k) **“Customer Personnel”** means the directors, officers, employees, agents and contractors of the Customer and Authorised User.
- (l) **“Data Host”** means a third party provider of cloud-based data hosting that owns and maintains (either itself or through its providers) a remote, virtual network of connected hardware, services and data centres located worldwide and required for web application hosting.
- (m) **“Deliverables”** means anything that the Supplier delivers to the Customer in the course of providing the Services.
- (n) **“Documents”** means:
 - (i) the Quotation including its SLA Schedule;
 - (ii) these Terms and Conditions;
 - (iii) the Privacy Policy; and
 - (iv) any other document provided by the Supplier to the Customer with respect to the delivery of any Services.
- (o) **“Fees”** means the fees and charges determined in accordance with clause 7 or as otherwise specified in the Quotation.
- (p) **“Force Majeure Event”** includes (but is not limited to) any act of god, terrorism, war, political insurgence, insurrection, riot, civil unrest, act of civil or military authority uprising, earthquake, flood, pandemic, endemic or any other natural or man-made eventuality outside of the affected party's control which causes the delay of the delivery of any of the Services or the termination of this Agreement nor which could have been reasonably foreseen by the affected party.
- (q) **“Insolvency Event”** means any of the following events:
 - (i) an application is made to a court for an order or an order is made that the party be wound up or bankrupt;
 - (ii) the corporation is or becomes or states that it is insolvent or any of the events mentioned in sections 459A to 459E inclusive of Part 5.4 of the Corporations Act 2001 (Cth) occurs in respect of the corporation;
 - (iii) a party entering into any scheme of arrangement with its creditors; or
 - (iv) anything analogous or having a substantially similar effect to any of the events specified above has under the law of any applicable jurisdiction.
- (r) **“Intellectual Property Rights”** means all present and future rights conferred by law in or in relation to copyright, trademarks, designs, source code, patents, circuit layouts, moral rights, inventions, know-how, trade secrets, Confidential Information, the right to have trade secrets and confidential information kept confidential and all other results of intellectual activity whether or not registrable, registered or patentable.
- (s) **“Licence”** means the non-exclusive, non-transferable, license granted by the Supplier to the Customer to use the Software and Services including the ICAM Incident Cause Analysis Method investigation methodology as implemented within the platform for the Customer's internal workplace health and safety management purposes, on the terms of this Agreement and as specified in the Quotation.
- (t) **“Outputs”** means any source text, documents, information, reports or other content created or generated howsoever by the Supplier's Software or Services from the Customer Data.

ICAM Australia Pty Ltd – General Terms and Conditions

- (u) **"Project"** means an arrangement for the provision of additional Services by the Supplier with specified scope, timeframes and objectives defined as a Project in a relevant Quotation or Project Plan.
- (v) **"Project Plan"** means a document developed by the Supplier setting out additional Services or Deliverables to be provided by the Supplier in accordance with the terms of this Agreement and in conjunction with Services and Deliverables requested by a Customer under a relevant Quotation, at additional cost as set out in the relevant Project Plan and/or Quotation.
- (w) **"Privacy Policy"** means the Supplier's privacy policy and as varied from time to time.
- (x) **"Quotation"** means a quotation or any other document provided by the Supplier to the Customer with respect to the delivery of any Services and includes the ICAM Contract - Proposal.
- (y) **"Services"** has the meaning set out in clause 2 of these Terms and Conditions.
- (z) **"Software"** means machine readable computer programs that comprise a series of instructions rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer, or other machine, to perform a specific operation or series of operations;
- (aa) **"Supplier"** means ICAM Australia Pty Ltd ACN 151 945 498;
- (bb) **"Supplier's Personnel"** means the directors, officers, employees, agents and contractors of the Supplier.
- (cc) **"Special Conditions"** means the special conditions of the Agreement set out in the Quotation.
- (dd) **"Term"** has the meaning given to that term in the Quotation.
- (ee) **"Terms and Conditions"** means these terms and conditions and as varied from time to time.

2. SERVICES

Subject to these terms and conditions, the Supplier will perform the Services as set out in the Quotation including without limitation, implementation, maintenance and other professional support services to be supplied by the Supplier to the Customer, whether under a Quotation, Project Plan or as otherwise agreed between the Customer and Supplier.

3. QUOTATION

- (a) The Supplier will provide a Quotation to the Customer upon request.
- (b) Unless the Quotation specifies otherwise, each Quotation will be valid for 30 days from the date of the Quotation.
- (c) The Quotation will detail the Supplier's standard inclusions and exclusions or any other requirements that otherwise quantify the Supplier's offer to provide and deliver any requested Services.
- (d) Any quotes provided by the Supplier are subject to the Services and Projects being available at such time when the Customer places a Quotation or additional Project.
- (e) Unless otherwise indicated in writing, a Quotation or Project will not be considered binding on the Supplier or come into force until the Supplier has received from the Customer a fully executed Quotation, Project document or other security acceptable to the Supplier.

4. ACCEPTANCE

By authorising the Supplier to provide and deliver any Services the Customer acknowledges and accepts that these Terms and Conditions form part of the Agreement. In the event that the Customer provides verbal acceptance, acceptance shall be deemed on the date that the Supplier begins the Services.

5. GRANT OF LICENCE

Upon acceptance of the Agreement between the parties by the Customer, the Supplier grants the Customer a non-exclusive, non-transferrable, revocable, Licence to access and use the Services and Software in accordance with the Quotation, Special Conditions (if applicable) and these Terms and Conditions.

6. PERMITTED USE

- (a) The Customer may only use the Software and Services for its own internal workplace health and safety management purposes, including incident investigation, risk management, compliance tracking, and related functions as described in the Quotation.
- (b) The Customer must not:
 - (i) reverse engineer, decompile, or attempt to extract the source code of the Software;
 - (ii) resell, sublicense, or otherwise make the Software or Services available to any third party for commercial gain;
 - (iii) use the Software or Services to build or assist in building a product or service that competes with the Supplier; or
 - (iv) use the Software or Services to store or process data that is unrelated to the Customer's workplace health and safety obligations.
- (c) The Customer must:
 - (i) ensure that only Authorised Users access the Software and Services;
 - (ii) ensure that each Authorised User keeps their login credentials secure and does not share them with any other person;
 - (iii) notify the Supplier promptly upon becoming aware of any unauthorised access to or use of the Software and Services; and
 - (iv) ensure that each Authorised User complies with the terms of this Agreement, and the Customer accepts liability for any breach of this Agreement by an Authorised User as if it were the Customer's own breach.

7. DELIVERY RISK AND TITLE

- (a) Subject to clause 19, the Supplier will provide the Customer Access to the Software and Services on and from the Commencement Date.
- (b) Where the Supplier has granted the Customer a License to use the Software and Services, the Customer may grant access to the Software and Services to the Customer Personnel.
- (c) The Customer must procure that any Customer Personnel complies with the terms of this Agreement and is responsible for any breach thereof by a Customer Personnel, provided that the Customer has sole and exclusive control, except for the Supplier, over the Customer Personnel Access.
- (d) The Supplier reserves the right to refuse a Customer Personnel that has been nominated by the Customer where, at its sole discretion, the Supplier deems it necessary to protect its rights under this Agreement, its rights in the Software and Services, any third-party rights or where the Supplier otherwise considers it reasonable to do so.
- (e) Unless otherwise specified in the Documents, the Supplier is not obligated to download and install any software or applications required by the Customer to access the Software or Services, or to provide any services or support in respect of the Software or Services.
- (f) From time-to-time the Supplier may (but is not obligated to) update the Software or Services. Where practicable the Supplier will provide the Customer with notice of any such update. Once the Software or

ICAM Australia Pty Ltd – General Terms and Conditions

Services has been updated the License and provision of the updated software by Supplier to the Customer will be governed in accordance with the terms of this Agreement.

8. VARIATIONS

- (a) The Supplier will notify the Customer of any changes to these Terms and Conditions. Notice is deemed to be given by the Supplier when the Supplier does any of the following:
 - (i) sends a notice of the amendment to the Customer at any address supplied by the Customer to the Supplier; or
 - (ii) publishes the amended Terms and Conditions on its website.
- (b) Without limiting clauses 8(a) and 1.1(e) of these Terms and Conditions, the Supplier may vary or withdraw any Quotation or Project at any time prior to the Customer's acceptance of the Quotation.
- (c) Other than in accordance with these Terms and Conditions, no variations to these Terms and Conditions or Services take effect unless expressed in the Quotation or agreed in writing by the Supplier.
- (d) Any Services requested by the Customer outside of the scope of the Services set out in the Quotation, will be charged by the Supplier to the Customer at the Supplier's standard rates (which will be set out in the Quotation) in addition to the amount set out in the Quotation.
- (e) The Customer may request any additional Services either verbally or in writing. However, in the event that the Supplier considers that the additional Services are material (being plus or minus 10% of the total amount of the Services set out in the Quotation), then the Supplier may require the Customer's written consent prior to delivering any additional Services.

9. CALCULATION OF FEES AND OTHER CHARGES

- (a) The fees for Services are as set out in the Quotation as varied from time to time in writing by the Supplier ("Fees").
- (b) Where the Quotation provides for the Fees to be calculated based on time and material spent providing the Services, then the Fees for the Services are calculated on the time and material spent by the Supplier's Personnel attending to the delivery of the Services multiplied by the relevant hourly rates and are outlined in the Quotation.

10. INVOICING ARRANGEMENTS

The Supplier will invoice the Customer a progressive invoice on or around the 1st day of each month for the subscription fees as detailed in the Quotation as of the date of the invoice;

11. SUBSCRIPTION SERVICES

You may purchase the Services from the Supplier on a subscription basis by:

- (a) paying a subscription fee in advance on a monthly basis or some other recurring interval disclosed to you in the Quotation prior to your purchase; or
- (b) pre-payment giving you access to the Services for a specific time period ("Pre-Paid Period").

12. PRICE CHANGES

The Supplier may from time to time change the price for the subscription Services, including recurring subscription fees or the Pre-Paid Period (for periods not yet paid), and will communicate any price changes to you in advance on reasonable notice, in any case not less than 30 days. Price changes will take effect at the start of the next subscription period following the date of the price change. Subject to applicable law, by continuing to use the Services after the price change takes effect, you will have accepted the new price. If

you do not agree to a price change, you can reject the change by cancelling your subscription prior to the price change going into effect.

13. BILLING AND CANCELLATION

- (a) Unless otherwise indicated (for example, if you have signed up for a pre-paid period) or as set out in the Quotation, subscriptions continue indefinitely until cancelled. You will be billed on a recurring basis on the first day of each billing period and you authorise the Supplier to charge your payment method the then-current subscription fee.
- (b) You may cancel your subscription at any time by contacting the Supplier in accordance with the cancellation procedures communicated to you. Unless otherwise indicated, cancellation will take effect from the end of the billing period in which you cancel. The Supplier does not provide refunds or credits for any partial subscription periods.
- (c) If you have purchased a subscription for a pre-paid period, your subscription will automatically terminate at the end of that period.

14. PAYMENT

- (a) Payment of invoices are due fourteen (14) days from the date of the invoice, unless an alternative arrangement has been made between the Supplier and the Customer prior to the commencement of the delivery of the Services (for example, clause 13).
- (b) If for any reason whatsoever the Customer does not pay an invoice by the due date, the Supplier will be entitled to:
 - (i) stop providing the Services to the Customer;
 - (ii) request that the Customer make payment in advance for any further Services;
 - (iii) charge interest at a rate of two and a half percent (2.5%) per calendar month on all overdue accounts, daily from the date that the payment became due until the date that the Supplier has received payment for that overdue account.
- (c) Where Services provided by the Supplier have been requested by an agent (or a person purporting to act as an agent) for and on behalf of the Customer, the agent and Customer shall be jointly and severally liable for payment of all accounts due to the Supplier with respect to those Services.
- (d) The Customer agrees to indemnify the Supplier in respect of the full reasonable amount of any fees, costs, disbursement or expenses incurred (including court fees and its reasonable legal costs) arising from any overdue payment by the Customer or any other breach by the Customer of the Agreement.

15. CANCELLATION / TERMINATION

- (a) The Supplier may terminate this Agreement or stop providing the delivery of the Services to the Customer if:
 - (i) the Customer does not comply with this Agreement (including without limitation any other conditions set out in the Quotation);
 - (ii) the Customer suffers and Insolvency Event;
 - (iii) the Supplier forms the opinion (in its absolute discretion and acting reasonably) that the relationship between the Customer and the Supplier is no longer tenable for the Supplier to deliver the Services due to material issues;
 - (iv) the Supplier is of the view (in its absolute discretion and acting reasonably) that by continuing to deliver the Services it may breach any applicable law in relation to the delivery of the Services; or
 - (v) for any other reason whatsoever provided that the Supplier first provides 14 days' notice to the Customer.

ICAM Australia Pty Ltd – General Terms and Conditions

- (b) For the avoidance of doubt, where the Supplier terminates this Agreement pursuant to clause 15(a):
 - (i) the Supplier will be entitled to be paid for all services completed and a reasonable proportion of the services commenced but not completed (as determined at the sole discretion of the Supplier); and
 - (ii) the Customer shall not be entitled to any damages or claims from the Supplier and releases the Supplier from all claims and damages relating to any termination pursuant to clause 15(a).
 - (iii) The termination of this Agreement will not prejudice any rights or remedies already accrued to the Supplier under, or in respect of any breach of, this Agreement.
- (c) Where the Agreement is terminated for any reason:
 - (i) data is retained for the active subscription term;
 - (ii) on termination, a 90-day post-termination export window applies during which the Customer can export all data;
 - (iii) after 90 days, ICAM Australia will securely delete or de-identify Customer Data;
 - (iv) the Customer is responsible for ensuring its own retention obligations are met during the subscription.

16. FORCE MAJEURE EVENT

- (a) Neither party shall be liable to the other for any failure to deliver the Services which is due to a Force Majeure Event that is beyond the control of that party.
- (b) Any party affected by such an event shall inform the other party of the Force Majeure Event as soon as reasonably practical and shall use all reasonable endeavours to comply with this Agreement. If the Supplier cannot continue to deliver the Services after a period of three (3) months from the occurrence of the Force Majeure Event then either party may terminate this Agreement in accordance with clause 15.

17. THE SUPPLIER'S OBLIGATIONS

The Supplier warrants that:

- (a) it holds all relevant qualifications required to deliver the Services;
- (b) The Supplier's Personnel are qualified, skilled and trained to deliver the Services;
 - (i) it will be responsible for the payment of all employee entitlements (including wages and superannuation contributions);
 - (ii) it has obtained and will maintain workers compensation insurance and public liability insurance throughout the delivery of the Services; and
 - (iii) it will procure that all of the Supplier's Personnel attend any Customer based site/safety induction training as and when required.

18. THE SUPPLIER'S WARRANTIES

- (a) Except to the extent that cannot be excluded at law, the Supplier makes no representations and gives no warranties other than those set out in this Agreement and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including Consequential Loss) in relation to the delivery of the Services.
- (b) The Supplier makes no warranty that the Software or Services will meet the Customer's requirements or will operate uninterrupted, integrate with other Customer Software or be secure or error free. The Supplier does not represent, warrant or guarantee that the Software or Services will be secure or free from vulnerabilities,

corruption, attach viruses, interference, hacking or other security intrusions or cyber threats and the Supplier will not be liable for any such events. Unless otherwise agreed in writing between the parties, the Customer agrees that by using the Software and Services it understands these limitations and agrees that it accesses and uses the Software and Services at its own risk and subject to the limitations set out in this clause.

- (c) The Supplier makes no representation or warranty that any investigation record, report, or other content created or stored on the Software and Services will attract legal professional privilege or any other form of evidentiary protection. The privilege status of any investigation record is determined by law and the circumstances in which the investigation was conducted, and the Customer should seek independent legal advice regarding the management of investigation records in the context of its regulatory and legal obligations.
- (d) Certain legislation, including the Australian Consumer Law, may imply warranties or conditions or impose guarantees or obligations upon the Supplier which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. Any Quotation or Project and these terms including this clause 18 must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which the Supplier is entitled to do so, the Supplier limits its liability in respect of any claim under the provisions to:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

19. CUSTOMER OBLIGATIONS

By acceptance of the Supplier delivering the Services, the Customer agrees that:

- (a) the Customer has obtained and will maintain public liability insurances which provides cover for all works carried out by the Customer, including against liability for work carried out by the Customer's employees, agents or contactors in conjunction with the Services provided by the Supplier;
- (b) in these circumstances, the Customer agrees that the Supplier will not be liable to the Customer in respect of any damage, loss or injury of whatsoever nature or kind, however caused, whether by the Supplier's negligence or the negligence of one of the Supplier's Personnel or otherwise which may be suffered or incurred whether directly or indirectly, in respect of the Services provided under this Agreement; and
- (c) during the term and for 12 months following termination of the Agreement, the Customer will not solicit the engagement of any of the Supplier's Personnel introduced directly or through any other means without the express permission of the Supplier and should this be requested, the Customer agrees to pay to the Supplier a permanent placement fee of 40% of that person's annual salary package;
- (d) the Customer must provide the Supplier's Personnel with such access to the Customer's premises (or third party's premises), as Supplier may reasonably request in order to provide the Services.
- (e) The Customer must ensure that the Customer's Personnel:
 - (i) comply with all applicable health and safety policies and laws, the Supplier's internal code of Conduct (if any) and all reasonable directions which the Supplier may reasonably give to the Customer in the course of providing the Services. For the avoidance of doubt this is a reciprocal obligation on all parties;
 - (ii) comply with these Terms and Conditions

20. DATA

ICAM Australia Pty Ltd – General Terms and Conditions

- (a) When using the Software and Services, the Customer is responsible for uploading the Customer Data.
 - (b) The Supplier has implemented, and will maintain throughout the Term, appropriate technical and organisational measures to protect Customer Data (such as encryption methods) against unauthorised or unlawful processing, accidental loss, destruction, or damage, consistent with industry standards for cloud-based enterprise software. Details of the Supplier's current security architecture are available on request and are updated from time to time to reflect advances in security practice."
 - (c) The Customer acknowledges and agrees that the Customer Data and Outputs:
 - (i) will be stored on third party servers which may be located outside of Australia, such as the United States; and
 - (ii) will be stored on infrastructure located within Australia where reasonably practicable; provided that certain platform features, including AI-assisted functionality, require transmission of data to overseas servers, which may include servers located in the United States or other jurisdictions. The Supplier will take reasonable steps to ensure that any such overseas transmission is subject to appropriate contractual protections consistent with the Supplier's obligations under the Australian Privacy Principles.
 - (d) Where the Customer has uploaded Customer Data to the Software and Services, the Supplier will implement reasonable measures to backup that Customer Data and any Outputs on a regular basis.
 - (e) The Customer acknowledges that in order to utilise the Software and Services the Customer Data must conform to any Data Specifications prescribed by Supplier.
 - (f) The Supplier's liability to the Customer for any failure to provide or make available the Software and Services in accordance with this Agreement is limited to a credit equal to 5% of the monthly subscription fee for each period of 24 hours (or part thereof) during which the failure continues, up to a maximum of 50% of the monthly subscription fee in any calendar month. The Customer agrees that such credits constitute the Customer's sole and exclusive remedy for any such failure.
 - (g) The Customer acknowledges and agrees that the Supplier may take such action as it considers necessary, including suspension or termination of the Customer's Access to the Software and Services, or the Access of a Customer Personnel, where the Customer or Customer Personnel uses the Software and Services in a manner that is inconsistent with the terms of the Agreement between the Supplier and the Customer. For the avoidance of doubt, the Supplier may only suspend or terminate the Access after 10 days' written notice is given to the Customer to remedy such inconsistency.
 - (h) The Supplier will not be liable and the Customer releases and holds the Supplier harmless from any Loss the Customer may suffer as a result of the Supplier exercising its rights in accordance with clause 20(g).
 - (i) The Customer, upon uploading the Customer Data, grants the Supplier a non-exclusive royalty free, transferable (and sub-licensable) license and right to store and transfer the Customer Data solely in accordance with this Agreement or otherwise process the Customer Data in accordance with the Customer's written instructions, provided the Supplier complies with all of its confidentiality obligations under clause 26.
 - (j) To the extent any Intellectual Property Rights created in Outputs vest in the Customer, the Customer grants the Supplier a non-exclusive royalty free, license and right during the course of the Agreement to use the Intellectual Property Rights in the Outputs, provided such use is solely in accordance with this Agreement and the Supplier complies with all of its confidentiality obligations under clause 26.
 - (k) The Supplier acknowledges and agrees that:
 - (i) it does not obtain ownership of any Intellectual Property Rights in the Customer Data; and
 - (ii) where the Customer Data is held or stored by the Supplier, it is held on the Customer's behalf.
- ## 21. SUBCONTRACTING
- (a) The Customer acknowledges and agrees that the Supplier may subcontract the whole or any part of the Services.
 - (b) The Supplier acknowledges and agrees that subcontracting does not relieve the Supplier from any of its obligations under this Agreement.
- ## 22. DISPUTES
- (a) If a dispute (**Dispute**) arises between the parties to this Agreement which they cannot resolve, then the party claiming that a Dispute has arisen must deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).
 - (b) During the period of 10 business days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Period**), the parties must meet in good faith in an attempt to resolve the Dispute.
 - (c) If the parties cannot resolve the Dispute within the Initial Period then unless they all agree otherwise, they must appoint a mediator to mediate the Dispute in accordance with the rules of the Resolution Institute. The parties must participate in the mediation in good faith.
 - (d) The mediator must be agreed on by the parties within 10 business days after the Dispute Notice is given to the parties and if they cannot agree within that time the mediator will be nominated by the president of the Resolution Institute.
 - (e) The mediation concludes when:
 - (i) all the parties agree in writing on a resolution of the Dispute; or
 - (ii) a party, not earlier than 20 business days after appointment of the mediator, has given 5 business days' notice to the other parties and to the mediator, terminating the mediation, and that 5 business days has expired without all the parties agreeing in writing on a resolution of the issue.
- ## 23. PPS LAW
- (a) This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of *Personal Property Securities Act 2009* (Cth) ("**PPSA**"). References to the PPSA in this Agreement includes references to amended, replacement and successor provisions, legislation or regulations ("**PPS Law**").
 - (b) The Supplier may, at any time, register a security interest and the Customer must do (or procure) anything (such as obtaining consents and signing documents), at the Customer's own costs, which the Supplier requires for the purposes of:
 - (i) ensuring that the Supplier's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (ii) enabling the Supplier to gain first priority (or any other priority agreed to by the Supplier in writing) for its security interest; and
 - (iii) enabling the Supplier to exercise its rights in connection with the security interest.
 - (c) The Customer agrees to comply with any of the requirements of the Supplier under this clause 22 within the time stipulated by the Supplier.
 - (d) The rights of the Supplier under this Agreement are in addition to and not in substitution for the Supplier's rights under this Agreement or

ICAM Australia Pty Ltd – General Terms and Conditions

any other law (including the PPS Law) and the Supplier may choose whether to exercise its rights under this Agreement and/or under such other law, as it sees fit. To avoid any doubt, the Suppliers security interest will attach to proceeds (if any).

- (e) To the extent that the PPS Law applies to any security interest under this Agreement, each party agrees that each of the provisions of the PPSA which section 115 of the PPSA permits parties to “contract out” of (other than sections 117, 128, 134 and 135) do not apply to the enforcement of any security interest provided pursuant to this Agreement.
- (f) The Customer (and any guarantor (if any)) agrees to waive its right to receive:
 - (i) notices which sections 157(3) of the PPSA permits it to be waived and to the extent capable of being waived and any notice under any other provision of the PPS Law; and
 - (ii) anything from the secured party under section 275 of the PPSA and agrees not to make any request of the secured party under that section.
- (g) For the purposes of section 275 of the PPSA, the parties agree that neither of them may disclose any information of the kind referred to in section 275(1) of the PPSA.
- (h) Each party acknowledges and agrees that the information set out in this Agreement is confidential in nature and that each party owes the other a duty of confidence in relation to that information.

24. INDEMNITY

- (a) The Customer acknowledges and agrees to indemnify the Supplier and the Supplier's Personnel from and against any and all claims, expenses, losses, damages and costs (including reasonable legal fees incurred on a solicitor/client basis) suffered or incurred by the Supplier that it cannot otherwise recover and which arise from a result of or in connection with any injury to or death to any person caused or contributed to by the Customer's negligence or willful misconduct (or the negligence or willful misconduct of any of the Customer's officers, employees, agents or contractors).
- (b) The Customer indemnifies the Supplier and its personnel from and against any and all claims, expenses, losses, damages and costs (including reasonable legal fees incurred on a solicitor/client basis) suffered or incurred by the Supplier which arise as a result of or in connection with the Customer's breach of this Agreement.

25. LIMITATION OF LIABILITY

- (a) The Supplier will not, under any circumstances, be liable to the Customer, whether directly or indirectly for any third-party claim arising out of the supply of the Software or Services or the performance or non-performance of any obligations under this Agreement.
- (b) The Supplier will not be liable to the Customer for any indirect or Consequential Loss, economic loss and/or loss of profit, income, business, production, reputation or goodwill.
- (c) Any liability of the Supplier which may arise under this Agreement is limited to the total fees paid by the Customer in the 12 months preceding the event giving rise to the claim.
- (d) The Supplier is not liable to the Customer for any Consequential Loss, whether or not the Supplier was advised of the possibility of such loss.
- (e) To the extent permitted by law, all express or implied warranties, conditions or representations relating to the Software and Services that are not contained in this Agreement are excluded. If any non-excludable condition or warranty is implied into this Agreement and such condition or warranty is breached, the liability of the Supplier in respect of such breach will be limited to (at the Supplier's option in its absolute discretion):

- (i) replacement of the defective Software or Services; or
- (ii) payment of the costs of replacing the defective Software or Services or of acquiring equivalent products or services,

this limitation shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.

26. CONFIDENTIALITY

- (a) Each party shall not, either during the delivery of the Services or after the termination of this Agreement divulge (whether directly or indirectly) to any person any trade secret or other information which the Customer knows or a person acting reasonably would know is proprietary and therefore Confidential Information concerning the past, existing or future business, operations, administration or strategic plans or affairs of the Supplier of which the Customer has become aware during the course of or incidental to this Agreement and the Customer will use its best endeavours to prevent publication or disclosure of any such proprietary or Confidential Information belonging to the Supplier.
- (b) Disclosure to directors and employees:
 - (i) each party may disclose the Confidential Information to such of its directors and employees as is necessary for the purposes of this Agreement; and
 - (ii) each party warrants that each person to whom the other party is permitted to disclose the Confidential Information, before such disclosure is made, is subject to contractual or other duties of confidentiality to the Customer at least to the extent imposed upon the Customer pursuant to this Agreement.
- (c) The Customer will immediately upon termination of this Agreement, or on written demand by the Supplier, deliver up to the Supplier, all material in whatever form, comprising or containing any of the Confidential Information (including all copies) and all other property of the Supplier which may be in possession of the Customer or any third party under the Customer's control.

27. INTELLECTUAL PROPERTY RIGHTS

- (a) The Supplier owns all Intellectual Property Rights, platform IP, algorithms, models, and underlying technology created in anyway whatsoever with the Services.
- (b) Each party retains all title and ownership in its own Background IP.
- (c) Outputs (investigation reports, risk assessments generated by the platform) are owned by the Customer but the Supplier retains a license to use aggregated, anonymised Output data for platform improvement purposes.
- (d) Unless agreed otherwise in writing by both the Supplier and the Customer:
 - (i) any Intellectual Property Rights in the Deliverables or prepared or produced by the Supplier (or any the Supplier's Personnel) shall remain the exclusive property of the Supplier; and
 - (ii) the Customer shall not disclose any design, drawing, source code, specification or other document (in written or electronic form) prepared or produced by the Supplier (or any the Supplier's Personnel) to any third party.
- (e) The Supplier grants to the Customer a nonexclusive, non-transferable, non-sub licensable, royalty-free (excluding any payments due under clause 10 (9)) license for the Term (except for documentary Deliverables for which the license will be perpetual) to use worldwide the Intellectual Property Rights in the Deliverables, the Services and any other material created by the Supplier in delivering the Services for the sole and limited purpose of enjoying the benefit of the Services as set out in the Quotation.

ICAM Australia Pty Ltd – General Terms and Conditions

(f) The Customer agrees to indemnify the Supplier in respect to any claim for infringement of any Intellectual Property Rights arising from the design of any item to a specification provided by the Customer.

28. THIRD PARTY INTELLECTUAL PROPERTY

(a) In providing the Services, the Supplier may provide the Customer with software, Services or Deliverables that are, or include, software, services or other material which is owned by or is proprietary to a third party (**Third Party Material**). The Client agrees that:

- (i) all Third Party Material, including Services, is provided 'as is' by the Supplier as a reseller as facilitator;
- (ii) its use or acceptance of any Third Party Material is conditional on the Client's acceptance of the third party licensor's licence agreement or terms of use (**Third Party Licence**); and
- (iii) title in any Third Party Material remains at all times with the third party unless provided otherwise in a Third Party Licence.

29. PRIVACY POLICY

(a) The Customer acknowledges and agrees that the Privacy Policy is expressly incorporated into this Agreement and can be viewed from the Supplier's website.

(b) Each Party agrees to comply with its obligations under the Privacy Act in respect of Personal Information (as defined in the Privacy Policy) obtained by or disclosed to it pursuant to this Agreement.

(c) Where the Customer discloses Personal Information (Customer Personal Information) to the Supplier, or permits the Supplier to collect, access, or handle Customer Personal Information under this Agreement, the Customer represents and warrants that it has obtained (and will maintain) any authorisations or consents from relevant individuals required under all applicable Privacy Laws.

(d) Each Party must only collect, use and disclose Personal Information for the purpose of fulfilling its obligations under this Agreement unless otherwise permitted under this Agreement or the Australian Privacy Principles.

(e) The Customer acknowledges and agrees that the Supplier may have business processes, management structures and technical systems that cross borders both nationally and internationally. As such, Personal Information may be collected and stored on servers located in other countries including the United States and or the United Kingdom or Europe and in addition the Supplier may share information about the Customer or its Personnel within the organisation and may need to disclose such Personal Information to other countries in which the Supplier does business for the purposes or uses outlined in the Supplier's Privacy Policy provided that at all times the Supplier will comply with its obligations under the Australian Privacy Principles and the Privacy Law and its Privacy Policy.

30. GST

(a) Subject to as may otherwise be expressly stated, and subject to the provisions set out below, if any supply made under or in connection with this Agreement by one party ("**Supplier**") to the other party ("**Acquirer**"), is subject to GST, the payment for that supply will be increased by an amount equal to the GST payable.

(b) The Acquirer will not be obligated to make any payment for either the supply referred to in clause 28(a) or on account of the GST referred to in clause 28(a) until the Supplier has issued a tax invoice to the Acquirer for the supply to which the payment relates.

(c) If a payment made by one party to the other party is a reimbursement or indemnification of a cost, expense, loss or liability incurred by that other party, the payment shall be reduced by an amount for which that party is entitled to an input tax credit.

(d) Words or expressions used in this clause, which are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), have the same meaning.

31. RELATIONSHIP BETWEEN THE SUPPLIER AND THE CUSTOMER

(a) The parties acknowledge that the legal relationship between the Supplier and the Customer is that of a customer and independent contractor.

(b) Nothing in this Agreement renders the Supplier an officer, agent, partner or joint venturer of the Customer and the Customer must not hold itself out as such (and likewise).

(c) Nothing contained in this Agreement will constitute or deem the Supplier or any its personnel to be employees, agents or servants of the Customer (and likewise).

(d) As an independent contractor, the Supplier must, unless otherwise provided in this Agreement, exercise independent control, management and supervision over the performance of its personnel.

32. SERVICE OF NOTICES

(a) A notice, consent, information or request that must or may be given or made to a party under this Agreement is only given or made if it is:

- (i) delivered or posted to that party at the address specified in the Quotation, or
- (ii) faxed or emailed to that party at the fax number or email address (if any) stated in the Quotation,

however, if a party gives to the other party 2 Business Days written notice of a change of that, or a subsequent, address or fax number or email address, a notice, consent, information or request is only given or made by that other party if it is delivered, posted or faxed or emailed to the latest address or to the latest fax number or email address.

(b) A notice, consent, information or request is to be treated as given or made in accordance with the following rules:

- (iii) if it is delivered, when it is left at the relevant address;
- (iv) if it is sent by post, 4 Business Days after being posted;
- (v) if it is sent by fax or email, as soon as the sender receives from the sender's fax machine or email system a report of an error free transmission to the correct fax number or email address.

(c) If a notice is delivered or sent by facsimile or email after 5:00pm ACST on any day or on a day that is not a Business Day, the notice will be deemed to have been received on the next Business Day.

33. GENERAL

(a) Unless amended in the Quotation or agreed in writing by the Supplier, these Terms of Conditions apply to all Services provided by the Supplier to the Customer.

(b) No prior statements made by the Supplier or the Customer, nor any correspondence between the Supplier and the Customer are incorporated into any Agreement unless included in the Quotation or separately agreed in writing by the Supplier.

(c) No representation made by or on behalf of the Supplier by any of the Supplier's Personnel (including without limitation to any advice or recommendations as to the quality or suitability for specific purposes of the Services) takes effect unless expressed in the Quotation or separately confirmed in writing by the Supplier and the Customer agrees that it does not enter into any agreement in reliance on such representations unless so confirmed in the Quotation.

(d) In the event of any conflict or inconsistency between any of the Documents or Services, then the descending order of precedence

ICAM Australia Pty Ltd – General Terms and Conditions

applies as set out in the definition of Documents in clause 1(j) to the extent of the conflict or inconsistency.

- (e) The Customer acknowledges and agrees that the Supplier may:
 - (i) make such changes to the specification of any Services as are required to comply with any applicable safety, Australian Standard or statutory requirements; and
 - (ii) increase its prices set out in the Quotation after the acceptance of the Agreement by the Customer to reflect any increases in the price the Supplier is charged by its suppliers for any goods or materials.
- (f) No waiver by the Supplier of any of these Terms and Conditions or this Agreement or forbearance to enforce any remedy it is entitled to shall prejudice of the Supplier's other rights and remedies or operate as a waiver of any other breach by the Customer under this Agreement or delivery of the Services provided by the Supplier to the Customer.
- (g) Where any provision of this Agreement is rendered void, unenforceable, or otherwise ineffective by operation of law, that provision will be considered to be severed from this Agreement and such severance shall not affect the validity, enforceability or effectiveness of any other provision in this Agreement.
- (h) If any provision of this Agreement is found by a court or tribunal to be void, unenforceable, or an unfair contract term within the meaning of the *Competition and Consumer Act 2010* (Cth) or any equivalent state or territory legislation, that provision will be:
 - (iii) read down to the minimum extent necessary to make it valid and enforceable; and
 - (iv) if it cannot be read down, severed from this Agreement, and in either case, the validity and enforceability of all remaining provisions of this Agreement will not be affected or impaired.
- (i) This Agreement constitutes the entire agreement between the parties concerning the subject matter of the Agreement and any previous agreement, understanding and negotiations on the subject matter are excluded.
- (j) This Agreement is governed by and are to be construed in accordance with the laws of the Australian Capital Territory and the

parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute arising in respect of it.

34. INTERPRETATION

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) and unless the context indicates a contrary intention:
 - (i) a reference to any person includes that person's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
 - (ii) a reference to this Agreement or to any other agreement, deed or document includes, respectively, this Agreement or that other agreement, deed or document as amended, novated, supplemented, varied or replaced from time to time;
 - (iii) words importing the singular include the plural (and vice versa), words denoting a given gender include the other gender and words denoting individuals include corporations (and vice versa);
 - (iv) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement and a reference to this Agreement includes any schedule, exhibit and annexure;
 - (v) if more than one person is under an obligation to act or not to act under this Agreement, the liability of those persons so identified binds each of them severally and not jointly;
 - (vi) where any word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;
 - (vii) the word "includes" in any form is not a word of limitation;
 - (viii) references to "\$" or "dollars" are to Australian dollars unless otherwise indicated; and
 - (ix) if more than one person receives the same benefit under this Agreement the benefit is to be enjoyed by each of them severally.