

# Terms of use

Updated 5th April 2023

## Introduction

1.1 Corethix Pty Limited ACN 624 990 192 provides the Corethix Integrity Risk software platform (Corethix).

1.2 Corethix is an integrated integrity risk management software platform for use by employers and their Employees and Contractors, as more fully described in items C.1 of these Terms of Use.

## Terms of Use

### A. KEY DEFINITIONS

**A.1** The following terms are used regularly throughout these Terms of Use and have a particular meaning (additional definitions are found in the General Conditions):

- a. Agreement means these Terms of Use.
- b. Authorised Reseller means a Third Party that invoices and receives payment for Corethix services on the Company's behalf.
- c. Company means Corethix Pty Ltd ACN 624 990 192.
- d. Contractor means (without limitation) a person, organisation, business or entity that is assigned as a User of Corethix by the Employer.
- e. Corethix means the Web application accessible at [www.Corethixplatform.com](http://www.Corethixplatform.com)
- f. Employee means a person employed by the Employer and assigned as a User of Corethix by the Employer.
- g. Employer means (without limitation) a person, organisation, association, business or entity that is a User of Corethix;
- h. Fee means any fee payable by an Employer for access to, or for use of Corethix.
- i. Integrity Risk means the risk to an Employer of their Employees and Contractors being involved in actions which are in breach of current legislation or regulatory obligations, contrary to the Employer's stated values, policies, and objectives or at odds with accepted standards and practices for their industry and the broader community.
- j. Integrity Risk Data means the data recorded for each User within Corethix which the Employer can review and use to reduce Integrity Risk. This data includes, but is not limited to; policy download status, video viewing status, policy survey results, gift and incentive registers and declarations, incident reports and announcement viewing status.
- k. Privacy Policy means Corethix's privacy policy as updated from time-to-time, which can be found here [www.corethixplatform.com/privacy](http://www.corethixplatform.com/privacy)
- l. Third Party means any person that is not a User.
- m. User means an Employer, Employee or Contractor that uses Corethix.

### B AGREEMENT

**B.1** This Agreement governs the use of Corethix by any User and limits the liability of the Company to any User. This Agreement has specific terms of use (in addition to the General Conditions) that apply to:

- a. Employers (Item C)
- b. Employees and Contractors (Item D)

**B.2** In addition to any other express or implied consents, by using Corethix the User accepts and agrees to the terms of:

- a. This Agreement; and
- b. The Privacy Policy

### C EMPLOYER TERMS OF USE

**C.1** The Employer agrees and accepts that:

- a. Corethix may be hosted on servers located outside Australia and may also use email servers located outside of Australia. Such services may host or transmit a User's Integrity Risk Data.
- b. The Employer is solely responsible for ensuring that its use of Corethix is compliant with the local laws of the Employer and/or the Employer's Employees and Contractors;
- c. The Employer must ensure that its own privacy policy and other statements about how it handles the information of Individuals are accurate in respect of the Employer's use of Corethix.

**C.2** Corethix may enable an Employer to:

- a. Create and manage policies and procedure documentation;
- b. Create and manage records of downloading and attestation of policies by Users;
- c. Create and manage records of videos to support knowledge of policies;
- d. Create and manage records of User policy knowledge surveys;
- e. Create and manage records of User declarations of gifts and incentives received;
- f. Create and manage records of User incident reports;
- g. Review Integrity Risk Data for all Users via an integrated Dashboard.
- h. Upload document and picture files to records;
- i. Generate reports on:

1. User attestation of policies;
2. User register declarations;
3. User incident reports;

j. Create, manage and send notifications via:

1. Email; and
2. Corethix

k. Create Individual User accounts for Corethix and assign specific Users as administrators who are able to setup, manage and view the Integrity Risk Data.

**C.3** The Employer agrees and warrants that:

- a. It must pay the applicable Fee for each User that it creates a record for within Corethix and the terms of those Fees are set out in the General Conditions
- b. It shall ensure all personal information it has access to through its use of Corethix is kept and used in accordance with applicable privacy laws in the jurisdiction;
- c. It shall only use Corethix for its intended purpose as set out in this Agreement;
- d. It shall comply with all anti-SPAM legislation in its jurisdiction;
- e. Its license to use Corethix, as provided for in the General Conditions, is subject to the payment of all necessary Fees.

**C.4** Any person who registers to use Corethix warrants that he or she is an authorised representative of that Employer with the requisite authority to bind the Employer to this Agreement.

**C.5** Where an Employer pays Fees to an Authorised Reseller, any claim or request for service pursuant to this agreement must be made to the Reseller in the first instance.

**C.6** Where a Fee is paid for a particular term of access to Corethix, the Employer shall not be entitled to a pro-rata refund of any Fees if it elects to stop using Corethix within that term.

## **D EMPLOYEE AND CONTRACTOR TERMS OF USE**

**D.1** Employees' and Contractor's access to Corethix may be created, limited and cancelled by their Employer at the Employers discretion. Such access may include such features as described in item C.2 (a) to (k) as the Employer enables for the Individual.

**D.2** The Employee or Contractor agree and accept that:

- a. Corethix may share Integrity Risk Data information of the Employee and Contractor with the Employer;

- b. Any information shared by Corethix with an Employer may be retained by the Employer for the purpose of updating their administrative records;
- c. Corethix may send the Employee or Contractor emails, text messages, push notifications and other alerts on behalf of the Employer;
- d. All information input into Corethix about an Employee or Contractor is provided with that Employees' or Contractor's consent.
- e. The Employer that is authorised by the Employees and Contractor to receive Integrity Risk Data may have its own policy governing access to this information and the use of Corethix.
- f. Corethix may be hosted on servers located outside Australia and may also use email servers located outside of Australia. Such services may host or transmit an Employees and Contractors personal information and Integrity Risk Data.

## **E LIMITATIONS**

### **E.1 Limitations on Use.**

The Company may limit or restrict access to Corethix from time-to- time as it sees fit.

## **F REGISTRATION**

### **F.1 Registration.**

- a. The User must register an account in Corethix to use Corethix.
- b. The Company may set any registration requirements in its absolute discretion.

## **G CONFIDENTIAL INFORMATION**

**G.1** The Company will keep confidential all information that it becomes aware of regarding the User's:

- a. Integrity Policies;
- b. Personal information;
- c. Business, employees and contractors;

## **H TERMINATION**

Deleting Corethix does not constitute termination of this Agreement, although the Company may terminate this Agreement in the event it determines in its reasonable discretion that Corethix has been deleted and the User's intention is to cancel or terminate their account and this agreement.

**H.1** The User agrees and accepts that deletion of Corethix may result in loss of data for which the Company is in no way liable.

## **I DISCLAIMER – THIRD PARTY INFORMATION & SERVICES**

**I.1** The User acknowledges that Corethix:

- a. Is dependent on third-party services, including but not limited to:
  - i. Banks, credit card providers, BPAY;
  - ii. Telecommunications services;
  - iii. Hosting services;
  - iv. Email services; and
  - v. Analytics services.
- b. May provide links to third party websites.

**I.2** The User agrees that the Company shall not be responsible or liable in any way for:

- a. Interruptions to the availability of Corethix due to third-party services; or
- b. Information contained on any linked third-party website.

## **J GENERAL**

**J.1** Governing Law. New South Wales, Australia

**J.2** Reference City. Sydney.

# GENERAL CONDITIONS

## 1 INTERPRETATION

1.1 The following definitions apply in this document:

a. ABN means Australian Business Number.  
b. ACN means Australian Company Number.  
c. Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the Reference City set out in item M of the Terms of Use.  
d. Confidential Information means all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business, operations or affairs of either party, including, without limitation:

1. All technical or non-technical data, formulae, patterns, programs, devices, methods, techniques, plans, drawings, models and processes, source and object code, software and computer records;
2. All business and marketing plans and projections, details of agreements and arrangements with third parties, and customer and supplier information and lists;
3. All financial information, pricing schedules and structures, product margins, remuneration details and investment outlays;
4. All information concerning any employee, customer, contractor, supplier or agent of the relevant party;
5. The party's policies and procedures;
6. All information contained in this document, but excludes information that the other party can establish;
7. Is known by or is in the other party's possession or control other than through a breach of this document and is not subject to any obligation of confidence; or
8. Is in the public domain other than by a breach of this document or any obligations of confidence.

e. Corporations Act means the Corporations Act 2001 (Cth).

f. Fees mean the fees and charges as set out in the Terms of Use.

g. Force Majeure means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:

1. Act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
2. Act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
3. The effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
4. Embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.

h. General Conditions means the terms and conditions set out in the section of this Agreement entitled "General Conditions".

i. GST has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

j. Intellectual Property means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;

k. Intellectual Property Rights means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any

Intellectual Property registrations.

l. Moral Rights means:

1. Moral rights pursuant to the Copyright Act 1968 (Cth);
2. Or any rights analogous to the rights set out in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended from time to time).

m. Terms of Use means this Agreement's details and variables set out in the section of this Agreement entitled "Terms of Use".

n. Pricing means the pricing as notified to the User in writing by the Company from time-to-time.

o. Privacy Act means the Privacy Act 1989 (Cth).

p. Solution means the solution called Corethix described in the Terms of Use.

q. Special Conditions means the terms and conditions set out in the section of this agreement entitled "Special Conditions".

r. Tax Invoice has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

s. User Content means data that is uploaded or input into Corethix by the User or that forms part of the User's Intellectual Property.

**1.2** Headings are only for convenience and do not affect interpretation.

The following rules apply unless the context requires otherwise:

- a. The singular includes the plural and the opposite also applies.
- b. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- c. A reference to a clause refers to clauses in this Agreement.
- d. A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- e. Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
- f. A reference to a party to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- g. A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- h. A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

## 2 APPLICATION OF THIS AGREEMENT

**2.1** This Agreement applies to use of and access to Corethix.

**2.2** Where the User does not accept the terms and conditions of this Agreement, the User must immediately cease using Corethix.

## 3 THE Corethix PRODUCT

**3.1** Corethix is the product described in the Terms of Use.

**3.2** Corethix is only accessible to the User for the term set out in the Terms of Use.

**3.3** The User agrees and accepts that Corethix is:

a. Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and

b. Managed and supported exclusively by the Company from the Company servers and that no 'server' access to Corethix is available to the User unless expressly agreed in writing.

**3.4** As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features and Exercises, redesign, improve or otherwise alter

Corethix. The Organisation will be notified of any major changes that impact known integrations 30 days beforehand.

**3.5** The Company shall not exercise its rights under clause 3.4 in a manner that would intentionally cause the User to lose access to User Content or fundamentally decrease the utility of Corethix to the User, other than in accordance with the terms of this Agreement.

## **4 LICENSE**

By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable license to access and use Corethix for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.

**4.1** The Company may issue the license to the User on the further terms or limitations (including the number of users or volume of use or transactions) as it sees fit.

**4.2** The Company may revoke or suspend the User's license(s) if they breach the terms and conditions in this contract. The Company will ordinarily advise the User of any suspension or revocation however it is under no obligation to do so.

## **5 USE**

**5.1** The User agrees that it shall only use Corethix for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.

## **6 AUTHORISED USERS**

**6.1** The Employer shall authorise Users to access Corethix in its absolute discretion. The Company accepts no liability for access to User Content by Users authorised by the User or using login details of users authorised by the Employer.

**6.2** The User is solely responsible for the security of its username and password for access to Corethix.

**6.3** The User shall notify the Company as soon as it becomes aware of any unauthorised access of its Corethix account.

## **7 CUSTOMER DATA**

**7.1** The Company obtains no right, title or interest in User Content including any Intellectual Property found within it. The Company accepts no liability for the content of User Content.

**7.2** The Employer is responsible for the accuracy, quality and legality of User Content and the User's acquisition of it, and the Users that create, access and/or use User Content.

**7.3** Despite clause 7.1 the Company shall be authorised to permanently delete User Content 30 days after this contract is terminated.

**7.4** The Company shall not access, use, modify or otherwise deal with User Content except where required by compulsion of law or upon the User's authority (such as to provide support for Corethix).

## **8 PRIVACY**

**8.1** The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other customers.

**8.2** The Privacy Policy does not apply to how an Organisation handles personal information. It is the Organisation's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.

**8.3** The Company makes no warranty as to the suitability of Corethix in regards to the Organisation's privacy obligations at law or contract, and it is the Organisation's responsibility to determine whether Corethix is appropriate for the Organisation's circumstances.

**8.4** The Corethix may use cookies (a small tracking code in your browser) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

## 9 FEES

**9.1** The Employer agrees to pay all Fees as and when they fall due and to the extent permissible by law. Fees are non-cancellable and/or non-refundable once ordered or paid.

**9.2** The Company may introduce new services with corresponding Fees by giving the Employer written notice of their availability and applicability.

**9.3** The Company may revoke or suspend the User's license to access Corethix for unpaid Fees without liability, unless in dispute.

**9.4** Where the Company:

a. Is required to perform any services for the User outside of what is set out in this Agreement or otherwise in writing; and

b. Is subject to delays caused by changes or complexities outside of its control (and not caused by its breach of this Agreement); then The User agrees that the Company shall be entitled to charge the User an additional amount that is reasonable for the service performed.

**9.5** Applicable taxes to any Fees charged by the Company to Employers will be based on the requirements of the local jurisdiction. The Company will provide the Employer with a Tax Invoice for its payment.

**9.6** No refunds of Fees are offered other than as specified in this Agreement or as required by law.

**9.7** The terms of payment set out in the Fees shall apply.

**9.8** Should the Employer dispute a Tax Invoice, the User must notify the Company or Authorised Reseller that issued the invoice of the disputed item within 5 Business Days of the date of the Tax Invoice. The Employer must pay the amount of the Tax Invoice not in dispute within the prescribed payment period.

**9.9** Overdue Tax Invoices shall accrue interest at the rate of 1.5% per month, or in default, the maximum rate of penalty interest prescribed under law.

## 10 DATA

**10.1** Security. The Company takes the security of Corethix and the privacy of its users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.

**10.2** Storage. The Company may limit the amount of data that the Employer stores in Corethix and shall advise the Employer of such.

**10.3** Backup. The Company shall perform backups of Corethix in as reasonable manner at such times and intervals as are reasonable for its business purposes.

## 11 ACCESS

**11.1** By accepting the terms of this Agreement the User agrees that the Company shall provide access to Corethix to the best of its abilities, however;

a. Access to Corethix may be prevented by issues outside of its control; and

b. It accepts no responsibility for ongoing access to Corethix.

## 12 INTELLECTUAL PROPERTY

**12.1** Trademarks. The Company has moral & registered rights in its trademarks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.

**12.2** Proprietary Information. The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Corethix.

**12.3** The Corethix Application. The User agrees and accepts that Corethix is the Intellectual Property of the Company and the User further warrants that by using Corethix the User will not:

a. Copy Corethix or the services that it provides for

the User's own commercial purposes; and

b. Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Corethix or any documentation associated with it.

**12.4 Content.** All content (with the exception of User Content) remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, Exercises, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Corethix.

## 13 CONFIDENTIALITY

**13.1** The information and classes of information set out in the Terms of Use are Confidential Information for the purposes of this Agreement. In default, information relating to the business operations, personal information and other information that should be confidential is Confidential Information.

**13.2** Each party acknowledges and agrees that:

a. The Confidential Information is secret, confidential and valuable to the disclosing party (Discloser);

b. It owes an obligation of confidence to the Discloser concerning the Confidential Information;

c. It must not disclose the Confidential Information to a third party except as permitted in this Agreement;

d. All Intellectual Property rights remain vested in the Discloser but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and

e. Any breach or threatened breach by the receiving party of an obligation under this Agreement may cause the Discloser

immediate and irreparable harm for which damages alone may

not be an adequate remedy. Consequently, the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.

**13.3** A User must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:

a. Any actual, suspected, likely or threatened breach by it of clause 13.1;

b. Any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or

c. Any actual, suspected, likely or threatened theft, loss, damage, or unauthorised access, use or disclosure of

or to any Confidential Information.

**13.4** The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:

a. Any actual, suspected, likely or threatened breach of a term of this Agreement; or

b. Any theft, loss, damage or unauthorised access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

## 14 LIABILITY & INDEMNITY

**14.1** The User agrees that it uses Corethix at its own risk.

**14.2** The User acknowledges that Corethix does not provide integrity risk, or compliance advice.

**14.3** The User acknowledges that the Company is not responsible for the conduct or activities of any user and that the Company is not liable for such under any circumstances.

**14.4** The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with Corethix, including any breach by the User of these Terms.

**14.5** In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss

of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use Corethix or any content, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, to business interruption of any type, whether in tort, contract or otherwise.

**14.6** Certain rights and remedies may be available under the Competition and Consumer Act 2010 (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:

- a. The re-supply of services or payment of the cost of re-supply of services; or
- b. The replacement or repair of goods or payment of the cost of replacement or repair.

## 15 BREACH

**15.1** Where a party is in breach of this Agreement, the other party may issue a written notice (Breach Notice) requiring the party in breach that must set out:

- a. The nature of the breach;
- b. The provisions of the Agreement that are alleged to have been breached;
- c. A reasonable timeframe to remedy the breach in no less than 10 Business Days; and
- d. The action required to remedy the breach.

**15.2** Where a party issues a compliant Breach Notice in accordance with clause 16.1, the receiving party shall be required to respond and/or remedy the breach as so set out in the Breach Notice. Failure to respond in writing setting out:

- a. The steps taken to remedy the breach; or
- b. Why the party believes it is not in breach as put forward in the Breach Notice,
- c. Shall not in itself confirm the alleged breach but shall be in itself a breach of this Agreement.

**15.3** Failure to remedy a breach set out in a Breach Notice shall be a material breach of this Agreement (Material Breach).

## 16 TERMINATION

**16.1** Breach. Where a party is in Material Breach of this Agreement, the other party may terminate this Agreement by giving written notice of termination, which shall become effective 5 Business Days after the date of the notice.

**16.2** Insolvency. Either party may terminate this agreement immediately by notice, if either party:

- a. Stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- b. Is insolvent within the meaning of section 95A of the Corporations Act;
- c. Fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless:

1. The debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure; or
2. The party demonstrates to the satisfaction of the other party (acting reasonably) that it is able to pay all its debts as and when they become due and payable;

d. Has an administrator appointed in respect of it;

e. Has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to the whole or a substantial part of its assets or undertaking and that controller or similar officer is not removed within 15 Business Days of the appointment;

f. Has an order made or a resolution passed for its winding up or dissolution or it enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;

- g. Has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking; or
- h. Is subject to any event, which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

16.3 Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiry or termination.

16.4 The rights and obligations under the relevant provisions of clauses 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20 and 20.6 survive termination of this Agreement.

## 17 DISPUTES

**17.1** All disputes shall be handled in accordance with the Company's dispute resolution policy.

**17.2** Where the Company does not have a relevant dispute resolution policy for a type of dispute, the following process shall apply:

- a. Negotiation. If there is a dispute between the parties relating to or arising out of this Agreement, then within 5 Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet (or discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
- b. Mediation. If the dispute between the parties relating to or arising out of this Agreement is not resolved within five Business Days of notification of the dispute under Clause 18.1, the parties must agree to submit the dispute to mediation, administered by lawyers engaged in alternative dispute resolution;
- c. Arbitration. If the dispute between the parties relating to or arising out of this Agreement is not settled by mediation under Clause (b), either party may by written notice to the other refer the dispute to arbitration administered by the Institute of Arbitrators Australia. The arbitrator will be agreed between the parties from a panel suggested by the President of the Institute of Arbitrators Australia or failing Agreement, an arbitrator will be appointed by the President of the Institute of Arbitrators Australia; and
- d. Court proceedings. A party may not commence court proceedings in relation to a dispute relating to or arising out of this Agreement until it has exhausted the procedures in this clause (d) unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

## 18 FORCE MAJEURE

**18.1** If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:

- a. Specify the obligations and the extent to which it cannot perform those obligations;
- b. Fully describe the event of Force Majeure;
- c. Estimate the time during which the Force Majeure will continue; and
- d. Specify the measures proposed to be adopted to remedy or abate the Force Majeure.

**18.2** Following a notice of Force Majeure in accordance with clause 19.1 and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money that is due and payable.

**18.3** The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

**18.4** The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under this Agreement.

**18.5** The term of this Agreement will not be extended by the period of Force Majeure.

## **19 ELECTRONIC COMMUNICATION, AMENDMENT AND ASSIGNMENT**

**19.1** The words in this clause that are defined in the Electronic Transactions Act 1999 (Cth) have the same meaning.

**19.2** The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.

**19.3** The Company will send the User notices and other correspondence to the details that the Employer submits to the Company, or that the Employer notifies the Company of from time-to-time. It is the Employer's responsibility to update its contact details as they change.

**19.4** A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.

**19.5** Notices must be sent to the parties' most recent known contact details.

**19.6** The Employer may not assign or otherwise create an interest in this Agreement.

**19.7** The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

## **20 GENERAL**

**20.1** Special Conditions. The parties may agree to any Special Conditions to this Agreement in writing.

**20.2** Prevalence. To the extent that the Terms of Use are inconsistent with the General Conditions, the terms of the Terms of Use will prevail. To the extent that the Special Conditions are inconsistent with the Terms of Use, the Special Conditions will prevail.

**20.3** Disclaimer. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

**20.4** Relationship. The relationship of the parties to this Agreement does not form a joint venture or partnership.

**20.5** Waiver. No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

**20.6** Further Assurances. Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.

**20.7** Governing Law. This Agreement is governed by the laws of the state set out in item M of the Terms of Use. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.

**20.8** Severability. Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

## **END GENERAL CONDITIONS**