

## CREDIT APPLICATION & TERMS AND CONDITIONS OF SUPPLY - TOGETHER REFERRED TO AS THE "SECURITY AGREEMENT"

I/ we hereby apply for a credit account with the Australian Centre for Advanced Computing and Communication Pty Ltd ("AC3") and submit the following information in support of the application.

By completing the application below, I/we agree to AC3 collecting, using and disclosing certain personal information about me/us for the following purposes: i) completing credit checks and assessing credit worthiness; ii) supplying the products and services to me/us in accordance with the terms and conditions of supply set out below or in accordance with other terms as agreed between us, and iii) the management of my/our account, including communicating with me/us about the Goods and services which AC3 or its partners may provide to me/us. I / We also acknowledge AC3's privacy policy at <http://www.ac3.com.au/ac3-privacy-policy> which sets out AC3's privacy practices.

### 1. ENTITY DETAILS

**Full Name of Company and ACN**

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**Trading Name(s) / Business Name(s)**

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**A.B.N.**

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**Postal Address**

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**Street Address**

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**State**

---

**Postcode**

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**Phone**

( )

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**Fax**

( )

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**Website**

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**Legal Entity**

- Company     Partnership     Sole trader     Other

**Type of Business:**

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## 2. IDENTIFICATION DOCUMENTS

Please select the relevant identification document below and attach a certified photocopy of your identification document to this application:

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- Individuals and sole traders**

Current drivers licence issued by a State or Territory body;  
**or**  
 Proof of identity or proof of age card issued by a State or Territory body;  
**or**  
 Current Australian passport, current Visa or other current passport

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  - Body Corporate**

Certificate of incorporation of a company,  
 Written notification of ARSN or ARBN, or certified copy of constitution for any other incorporated body

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  - Partnership**

Written notification of Australian Business Number issued by the Australian Business Register

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  - Trustee**

Written notification of Australian Business Number issued by the Australian Business Register

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  - Body Politic**

Written notification of Australian Business Number issued by the Australian Business Register.

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## 3. DIRECTORS OF COMPANY

### Director One

Name:

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Address:

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Email

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Phone

( )

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### Director Two

Name:

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Address:

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Email

---

Phone

( )

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Premises:

Rented

Leased

Owned

## 4. BUSINESS CONTACTS

### Accounts Payable

Name:

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Email

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Phone

( )

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## Purchasing Officer

**Name:**

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**Email**

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**Phone**

( )

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## IT Manager

**Name:**

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**Email**

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**Phone**

( )

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## 5. BUSINESS REFERENCES

### Business Reference one

**Name:**

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**Email**

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**Phone**

( )

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### Business Reference two

**Name:**

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**Email**

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**Phone**

( )

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### Business Reference three

**Name:** \_\_\_\_\_

**Email** \_\_\_\_\_

**Phone** ( ) \_\_\_\_\_

**Credit Limit required \$** \_\_\_\_\_

**Expected Purchase/Month** \$ \_\_\_\_\_

**Bank** \_\_\_\_\_

**Branch** \_\_\_\_\_

**Phone** ( ) \_\_\_\_\_

I/ We, (as authorised representatives) hereby acknowledge, understand and agree with the terms and conditions of this Security Agreement. We understand that the Security Agreement consists of the credit application, the 'Terms and Conditions of Supply', other credit terms as communicated and agreed between us from time to time, and where expressly required by AC3 and executed by the guarantor, the Deed of Guarantee set out below. We agree that AC3 shall supply to us such Goods and/or services on the terms set out in this Security Agreement, in such quantities and at such prices as shall be agreed between the parties from time to time.

I / We warrant that all information provided in this Application is true and correct and there has been no material adverse change in my/our financial position as advised to AC3 including by the provision of information as set out herein. I/ We acknowledge that AC3 is relying on the information provided by me/us in this form and as otherwise communicated by us in determining whether to advance credit to me/us.

### IMPORTANT:

**I/We are buying Goods to on-sell to our customer [ ] Yes [ ] No**

If "Yes" then I/We agree to fully comply with my/our obligations with respect to Inventory as set out in the Terms (Customer's Obligations) below.

### For sole traders/ business partnerships – use the following execution clause

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**in the presence of:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Witness Name**

**For Companies/ Trusts – use the following execution clause**

**EXECUTED by** \_\_\_\_\_ in accordance with Section 127 of the Corporations Act 2001:

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**Director/Company Secretary**  
Signature

\_\_\_\_\_  
**Director**  
Signature

\_\_\_\_\_  
**Name of Director/Company Secretary**  
(BLOCK LETTERS)  
[please cross out as appropriate]

\_\_\_\_\_  
**Name of Director**  
(BLOCK LETTERS)

## TERMS AND CONDITIONS OF SUPPLY

### 1. Interpretation

- a) Amendment demand means a demand that a registration of a Security Interest be registered in accordance with the PPSA 2009
- b) Lease Agreement means each agreement between You as lessee and a leasing company as lessor for the lease of the Goods supplied by Us
- c) PPSA 2009 means the *Personal Property Securities Act 2009* (Cth)
- d) PPS Regulations means the *Personal Property Securities Regulations 2010* (Cth)
- e) Privacy Act means the *Privacy Act 1988* (Cth)
- f) "You"/"Your" refers to the person, persons or entity identified on page 1 of this credit application and Security Agreement or any person authorised to act on Your behalf in respect of Your entry into this Security Agreement
- g) "We", "Our", or "Us" refers to the Australian Centre for Advanced Computing and Communication Pty Ltd (ABN 27 095 046 923) or otherwise referred to as "AC3"
- h) The following terms have the same definitions as set out in the PPSA 2009:
 

<ul style="list-style-type: none"> <li>i. Accession</li> <li>ii. Account</li> <li>iii. Collateral</li> <li>iv. Commingled goods</li> </ul>	<ul style="list-style-type: none"> <li>v. Financing Change Statement</li> <li>vi. Financing Statement</li> <li>vii. Goods</li> <li>viii. Inventory and Control</li> </ul>	<ul style="list-style-type: none"> <li>ix. Proceeds</li> <li>x. Processed goods</li> <li>xi. Purchase Money Security Interest (PMSI)</li> <li>xii. Security Interest</li> </ul>
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### 2. Supply

Subject to Our receipt and acceptance of a purchase order, We agree to supply Goods and/or services to You on these terms and conditions of supply (hereinafter referred to as "**Terms**"), which Terms will apply to all supplies of Goods and/or services made to You. Where You have executed a master services agreement or other agreed terms with Us, then the terms of the master services agreement or other agreed terms will govern the supply of Goods and services to You however the Terms set out herein, specifically with respect to Our security interest, clause 1 (Interpretation), clause 2 (Supply), clause 3 (Purchase Orders), clause 4 (Payment to AC3), clause 5 (Leased Goods), clause 6 (Creation of Security Agreement under PPSA), clause 7 (Customer's Obligations), clause 8 (Contracting out of the PPSA), clause 9 (Warranty), clause 10 (Delivery), clause 11 (Returns), clause 12 (Risk and Insurance), clause 13 (Title), clause 14 (Confidentiality and Credit Assessments), clause 16 (Termination), clause 18 (No Implied terms), clause 19 (Limitation of Liability), clause 21 (General) and clause 22 (Taxes and GST) will continue to apply despite termination or expiry of this Security Agreement.

### 3. Purchase Orders

If You wish to acquire Goods and/or services from Us, a purchase order containing specifications of the Goods and/or services and any other applicable terms and conditions must be agreed in writing by both parties in respect of such acquisition. You agree that AC3 is not bound by the terms and conditions imprinted on or embedded or referenced in Your purchase order. All Goods and services acquired from Us will be subject to the terms and conditions of supply as set out herein or the overarching goods and services agreement executed by You and AC3.

#### 4. Payment to AC3

Payment terms are 14 days from the date of issue of Our invoice. We may invoice for the supply of Goods on delivery (i.e. when You take possession of the Goods). We may invoice You for the supply of services:

- a) Supplied to You on an ongoing basis, at the end of each week or month as agreed;
- b) Supplied to You other than on an ongoing basis upon completion,

Unless otherwise agreed by the parties in any relevant purchase order, in which case We may invoice You only in accordance with the terms of such purchase order. If you fail to pay (in full or in part) any invoice issued by Us in accordance with these Terms and/or any relevant purchase order, We may charge you an annual interest on the unpaid amount at the rate equal to the business overdraft rate charged by Westpac Banking Corporation plus 2%, in proportion to the length of time the outstanding amount or any part thereof remains due and payable to Us.

#### 5. Leased Goods

In the case of purchase orders for Goods subject to a lease agreement, You must have credit approval from a reputable leasing company that is acceptable to Us to the value of the Goods as identified in the purchase order and a lease agreement must be in place between You and the leasing company prior to Us supplying the Goods to You, the evidence of which must be provided by You to Us upon request. The invoice for the Goods will be sent by Us directly to the leasing company (not You) at the time of delivery of the Goods to You and You should arrange to have the leasing company confirm with You that You have received the Goods from Us.

#### 6. Creation of security agreement under PPSA 2009

Notwithstanding anything contained herein, the parties agree that for the purposes of PPSA 2009, in respect of the Goods supplied by Us to You, title to which has not passed to You as provided in clause 13 (and which represents Our Security Interest), this Security Agreement shall constitute a security agreement to secure payment of the purchase price to Us and all your outstanding debts and obligations to Us from time to time until all such debts and obligations are discharged.

#### 7. Customer's obligations

- a) You certify that the information supplied to Us in support of your credit application is true and correct.
- b) You acknowledge that:
  - i. We have a security interest and will be registering a PMSI in the Goods that are supplied by Us to You under this Security Agreement from time to time, title to which has not passed to You as provided in clause 13, and our Security Interest extends to the Proceeds (including any Accounts) and Accessions;
  - ii. If you commingle the Goods, title to which has not passed to You as provided in clause 13, with other property, we retain a Security Interest in any Commingled or Processed Goods;
  - iii. If the Goods purchased by You is deemed 'Inventory' for the purposes of the PPSA, then You agree that You will:
    - (a) specifically identify and appropriate the Inventory that We are taking a Security Interest in; and
    - (b) not physically transfer or remove the specifically appropriated Inventory without previously obtaining the specific and express authority of Us to do so; and
    - (c) at all times comply with the requirements at (a) and (b) above.
  - iv. If any amounts that are due and payable under this Security Agreement remain unpaid for a period of ninety (90) days, We will notify You of same and ask that You pay such amounts to Us in full within two (2) weeks of the date of the notice, failing which, You authorise Us or our agent to enter Your premises as invitee to recover the Goods or any Processed or Commingled Goods including the Goods supplied by Us, to which clause 6 applies,



- v. If You become insolvent, bankrupt or a liquidator or an administrator is appointed in respect of Your business, you authorise Us or our agent to enter Your premises as invitee to recover the Goods or any Processed or Commingled Goods including the Goods supplied by Us, to which clause 6 applies.
- c) You agree:
- i. That the Goods supplied under this Security Agreement are not intended, and will not be used, for personal, household or domestic use;
  - ii. To execute and deliver any documents and to provide all relevant information to Us to ensure that we have a Security Interest in Your personal property and/or any documentation required to ensure that We have a first ranking priority in the Collateral under the PPSA 2009 to the extent that such priority is required by Us to enforce our rights under clauses 7(b)(iii), 7(b)(iv) and 7(b)(v);
  - iii. That if You breach this Security Agreement, We may take whatever action necessary to ensure that We have a first ranking priority in the Collateral to the extent that such priority is required by Us to enforce our rights under clauses 7(b)(iii), 7(b)(iv) and 7(b)(v), and You agree to indemnify us for any costs we incur in doing this.
  - iv. That any rights conferred by these Terms that are in addition to those provided by Chapter 4 of the PPSA continue to apply.
  - v. Not to remove the Goods that may be subject to Our Security Interest from Australia without Our prior written consent.
- d) You must:
- i. Obtain and provide to Us, within two (2) weeks of our written request, copies of all documents granting Security Interest(s) over the Goods subject to same that have been registered, perfected or under the control of a third party.
  - ii. Pay any costs incurred by Us in the amendment or discharge of any Financing Statement or Financing Change Statement.
  - iii. Obtain our written consent prior to filing, lodging or serving a Financing Change Statement or an Amendment Demand.

## 8. Contracting out of the PPSA

You agree to waive your right to do any of the following in respect of any Security Interest held by Us under this Security Agreement and in respect of the Goods, title to which has not passed to You as provided in clause 13:

- a) Request a statement of account if there is no disposal of the Goods (s132(4));
- b) Give notice objecting to our proposal to retain any of the Goods (s137);
- c) Receive notice of removal of an Accession or remove an Accession until adequate security has been given to Us for the reimbursement for any damage caused by the removal (s95);
- d) Object to, or seek redress for, any damage or inconvenience caused by the removal of an Accession;
- e) Apply for an order postponing the removal of an Accession or determining the amount payable for Us for the retention of an Accession (s97);
- f) Receive a verification statement or notice (s157(3)(b));
- g) Receive a notice from Us under ss 118(1)(b)(i), 121(4), 123 (2) 129(2) (b), 134,s135 of the PPSA 2009; and
- h) Object to our proposal to seize or purchase the Goods (ss125 (1) and 129(2)(b)).

## 9. Warranty

Subject to the terms of any applicable purchase order We warrant:

- a) in relation to Goods supplied to You, that the Goods will:
  - i. be new;
  - ii. be fit for the purposes as set out in Your specifications;
  - iii. comply with the specifications contained in any agreed purchase order;

- iv. comply with all applicable laws and industry standards; and

You will acquire Goods and unfettered title to all Goods supplied to You subject to clause 13.

- b) In relation to services supplied to You, that the services will:
  - i. be fit for the purposes as set out in Your specifications,
  - ii. comply with the specifications contained in any agreed purchase order; and
  - iii. comply with all applicable laws and industry standards.

## 10. Delivery

We will use Our reasonable endeavours to deliver Goods and/or services to You by the date agreed but will not be liable for any delays in delivery caused by matters beyond Our control. The time for Our delivery of Goods and/or services is not of the essence.

## 11. Returns

Goods returned will only be credited to Your account if the return is authorised by Us, the Goods are in the same condition as delivered by Us, the Goods are received by Us within 7 days of delivery (or any other period as agreed with Us) and all other conditions as reasonably stipulated by Us for the return of the Goods are complied with. We reserve Our rights to charge You for any costs or losses incurred by Us if Goods which are not faulty are returned or returned without authorisation, returned later than 7 days from delivery or in a different condition to the condition the Goods were in when delivered by Us to You. We will use Our best endeavours to minimise such costs and losses.

## 12. Risk and Insurance

Risk of loss, theft, damage, deterioration or destruction of Goods passes to You upon the earlier of:

- i. Delivery to You;
- ii. The taking of possession by You; and
- iii. The delivery to any carrier (who will be deemed to be your agent) for delivery to You.

## 13. Title

Title to any Goods supplied by Us shall not pass to You until payment is received in full for all current and all previous shipments or deliveries (otherwise referred to as Our Security Interest). Until such time as title to the Goods passes to You, We shall have absolute authority to repossess and/or dispose of any Goods in which title to the Goods remains vested in Us. Subject to clauses 7(b)(iii), 7(b)(iv) and 7(b)(v) We may immediately without notice or demand, enter upon your premises and take possession of such Goods. This right is without prejudice to any other rights that We may have.

## 14. Confidentiality and credit assessments

- a) The parties agree that each party will keep at all times as strictly confidential any confidential information that is disclosed or provided to it by the other party. In this clause, "confidential information" means information in any form but does not include information that is already in the public domain at the time that it is disclosed or becomes part of the public domain otherwise than as a result of an unauthorised disclosure by Us or by You.
- b) You consent to Us utilising the information provided by You to Us in connection with this Security Agreement for the purposes of the PPSA 2009 and the Privacy Act 1988.
- c) With respect to credit assessments and subject to sub-section 14 (d) below, You agree that in accordance with the Privacy Act any personal information provided to Us about You (or the relevant individual named in the credit application) and permitted to be kept on a credit information file may be disclosed by AC3 to a credit reporting agency for the following purposes:
  - i. To obtain a credit report; and

- ii. To permit the credit reporting agency to create or maintain a credit information file containing information about You or that person;

And AC3 may in turn obtain from a credit reporting agency, a credit report for the purposes of assessing Your application for commercial credit and collecting overdue payments relating to moneys owed to AC3.

- d) The personal information used or disclosed to a credit reporting agency will be limited to information such as identity particulars about You or that individual such as name, gender, date of birth, guarantor details such as consent by the individual to act as guarantor, payments that are considerably overdue and/or where debt collection has commenced, advising that payments are no longer overdue or that the credit facility has been discharged, cheques that have been dishonoured or information that, in the reasonable opinion of AC3 should be disclosed such as fraud.
- e) You also agree that AC3 may use and disclose any credit reports received from a credit reporting agency or relevant information from those credit reports to:
  - i. Guarantors in connection with any AC3 credit applications;
  - ii. AC3's insurers for the purposes of assessing whether to provide AC3 with relevant insurances;
  - iii. Other credit providers named in the credit report or other persons that conduct a business and offer credit in a manner similar to AC3 for the purposes of assessing Your application for credit, notifying other credit providers of a default, enquiring the status of current credit facilities and assessing credit worthiness;

And, that the information exchanged can include other information about credit worthiness, history or capacity or other information permitted to be used and disclosed under the Privacy Act. You also agree that AC3 may obtain a banker's opinion if required.

## 15. Intellectual Property

You acknowledge that, unless otherwise agreed in writing, all intellectual property rights attaching to the Goods or arising out of the provision of Goods and/or services are and will remain Our property (or property of Our supplier, where such rights are owned by that supplier). Software will be licensed to You on the terms of the relevant license agreement provided with the Product or as otherwise agreed between the parties in writing.

## 16. Termination

Where You:

- a) default in any payment or breach any of these Terms and do not, within 30 days of notice of same from Us specifying the non-payment or breach and requiring it to be remedied, make such payment or rectify such breach, except when clause 7(b)(iv) applies, in which case Our rights set out in this clause will accrue to Us upon expiry of the two (2) weeks' period referred to in clause 7(b)(iv);
- b) become unable to pay Your debts as and when they fall due; or
- c) commit an act of bankruptcy or, being a company, enter into liquidation or provisional liquidation whether compulsory or voluntary or have a receiver or manager or administrator appointed over all or part of Your assets or pass a resolution for winding-up or a petition is presented for Your winding-up,

We may without prejudice to any of Our rights or remedies under these Terms or otherwise by notice to You:

- i. Suspend further supply of Goods and/or Services and require payment in advance for future supply of same;
- ii. Recover possession of any Goods for which payment has not been made;
- iii. Terminate all or any purchase orders for Goods and/or Services which have been accepted by Us;
- iv. Claim immediate payment of all moneys due by You in respect of all Goods and/or Services which will then be immediately due and payable notwithstanding the due date or dates for payment or any terms previously agreed by Us with You; and/or

- v. Continue to enforce Our rights and recover from You such payments and any other amounts owing as and when they fall due.

## 17. No Representations

These Terms and all relevant purchase orders constitute the entire agreement between the parties and supersede all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of these Terms and all relevant purchase orders.

## 18. No Implied Terms

To the fullest extent permitted by law, the parties agree to exclude any terms which would otherwise be implied into these Terms by any statute, other than the PPSA 2009 and subject to the specific exclusions set out in this Security Agreement. Our liability for a breach of a condition or warranty implied into these Terms by sections 54 to 59 and sections 60 to 62 in Schedule 2 of the Competition and Consumer Act 2010 (Cth) ("CCA") and subject to the qualifications in section 64A of Schedule 2 of the CCA is limited at Our option:

- a) if the breach relates to Goods, to the replacement of the Goods or the supply of equivalent Goods, or the repair of the Goods, or the payment of the cost of replacing the Goods or of acquiring equivalent Goods or the payment of the cost of having the Goods repaired; and
- b) if the breach relates to services, the supplying of the services again or the payment of the cost of having the services supplied again.

## 19. Limitation of Liability

- a) We will not be liable to You for any indirect or consequential damages including for whether direct or indirect, loss of profits, revenue, data or use arising out of or in relation to the supply of Goods and/or services, even if We knew or should have known of the possibility of such loss or damage and whether damages are claimed in contract, tort (including negligence) or statute.
- b) Except in relation to liability for personal injury (including sickness and death), or damage to tangible property, Our liability to You in respect of any loss or damage (including consequential or indirect loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of Goods and/or services pursuant to these Terms or in respect of a failure or omission on Our part to comply with Our obligations under these Terms, shall be, in aggregate, limited to an amount equal to the amount paid by You to Us under these Terms.

## 20. Variation

Any variation to these Terms must be in writing and executed by the parties.

## 21. General

- a) All notices must be in writing and sent by mail, hand delivery or transmitted by facsimile or email to the address, facsimile number or email address of the receiving party.
- b) A Notice given to a person in accordance with this clause is treated as having been given and received:
  - i. if delivered in person, on the day of delivery if delivered before 5.00pm on a business day, otherwise on the next business day;
  - ii. if sent by pre-paid mail within Australia, on the third business day after posting;
  - iii. if sent by pre-paid airmail to an address outside Australia or from outside Australia, on the fifth business day (at the address to which it is posted) after posting;
  - iv. if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission, on that day if the report states that transmission was completed before 5.00pm on a business day, otherwise on the next business day; and
  - v. if transmitted by email before 5.00pm on a business day, on the day of transmission (otherwise, if sent after 5.00pm, on the next business day), provided that the sender does not

receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.

- c) A party may change its address for service by giving notice of that change to each other party.
- d) No leniency, indulgence or extension of time granted by Us to You will prejudice any of Our rights in any way or constitute a waiver of any of Our rights.
- e) If any of these Terms are for any reason declared to be or become unenforceable, invalid or illegal, the remaining Terms will remain in full force and effect.
- f) These Terms are governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

## 22. Taxes and GST

- a) The amount payable to Us ("Price") is inclusive of existing taxes, duties and government charges imposed or levied in Australia in connection with the supply of the Goods and/or services. You shall be liable for any new taxes, duties or charges imposed subsequent to Our quotation or proposal or to this Security Agreement in respect of the supply of the Goods and/or services.
- b) Notwithstanding any other provision in this Security Agreement, if the imposition of the GST or any subsequent change in the GST law is accompanied by or undertaken in connection with an adjustment in any existing wholesale sales taxes or like taxes the quantum of which is directly relevant to either the price, or cost to Us of acquiring the Goods and/or services, the Price (excluding any GST) will be adjusted to reflect the net effect of all changes to such taxes.

## 23. Insurance

We must maintain the following policies of insurance with reputable insurers, for the following sums:

- a) Professional indemnity insurance for the sum of at least \$10 million throughout the term of this Security Agreement and for a period of at least 6 years after their expiry or termination;
- b) Public liability insurance for the sum of at least \$20 million throughout the term of this Security Agreement; and
- c) Such other insurance as is required by law, throughout the term of these Terms.

and We will provide You with a certificate of currency of the foregoing insurance policies on request.

## 24. Assignment, subcontractors

Neither party may assign or novate these Terms without the prior written consent of the other party. We may engage sub-contractors to assist Us to perform services for You, provided always that:

- a) We must notify You in writing before doing so;
- b) We must not engage sub-contractors to perform a substantial portion of the services without Your prior written consent.

## DEED OF GUARANTEE AND INDEMNITY [FOR COMPANIES ONLY]

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Guarantee and Indemnity dated \_\_\_\_\_ *(insert date)*

between \_\_\_\_\_ *(insert name)* **(the Guarantor)**

of  
\_\_\_\_\_ *(insert address)*

and \_\_\_\_\_ *(insert name and ABN/ACN)* **(the Customer)**

of  
\_\_\_\_\_ *(insert address)*

and Australian Centre for Advanced Computing and Communication Pty Ltd ABN 27 095 046 923 of Suite 801, Level 8 East, 8 Central Avenue, Eveleigh NSW 2015  
**(hereinafter referred to as "AC3")**

### 1. DEFINITIONS

- a) "Guaranteed Money" means all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by the Customer AC3 on any account at any time under or in connection with the Security Agreement or any transaction contemplated by the Security Agreement, whether present or future, actual or contingent or incurred alone, jointly, severally or jointly and severally and without regard to the capacity in which the Customer is liable.
- b) "Guaranteed Obligations" means the obligations of the Customer to pay the Guaranteed Money and all its other obligations to AC3 (monetary or non-monetary, present or future, actual or contingent) arising under or in connection with the Security Agreement.
- c) "Security Agreement" means the Security Agreement entered into by the Customer and AC3 dated: \_\_\_\_\_

## 2. GUARANTEE

- a) At the request of the Guarantors, AC3 has agreed to supply the Customer with goods on credit and the Guarantor guarantees to AC3 the due and punctual payment by the Customer to AC3 of the Guaranteed Money and performance by the Customer of the Guaranteed Obligations.
- b) The Guarantor's obligations in this document are principal obligations and may be enforced against the Guarantor without AC3 first being required to exhaust any remedy it may have against the Customer or enforce any security it may hold.
- c) This document is a continuing guarantee. The Guarantor's obligations in this document are absolute, unconditional and irrevocable. The liability of the Guarantor under this document extends to and is not affected by any circumstance, act or omission which, but for this subclause, might otherwise affect it at law or in equity.
- d) Until the Guaranteed Money and Guaranteed Obligations have been irrevocably paid and performed in full, the Guarantor may not exercise any right of subrogation to AC3 and may not exercise any rights as surety in competition with AC3.
- e) The Guarantor acknowledges and agrees that the Guarantor has read and understood the obligations set out in this Deed of Guarantee and Indemnity and which includes obtaining independent legal advice prior to executing this Deed; and; that the Guarantor enters this Deed freely and voluntarily understanding and accepting the consequences of doing so.

## 3. DEFAULT BY THE CUSTOMER

- a) If the Customer defaults in the due and punctual payment of its account with AC3, the Guarantor must pay that money on demand to, or as directed by, AC3.
- b) If the Customer defaults in the due and punctual performance of any Guaranteed Obligation, the Guarantor must:
  - i. indemnify AC3 against all losses, liabilities and expenses (including legal expenses on a full indemnity basis) that AC3 incurs (directly or indirectly) as a result of that default; and
  - ii. pay the amount of those losses, liabilities and expenses on demand to, or as directed by, AC3.

## 4. INDEMNITY

- a) The Guarantor unconditionally indemnifies AC3 against any loss that AC3 may suffer as a result of:
  - i. The Guaranteed Obligations being unenforceable; or
  - ii. The Guaranteed Money not being recoverable from the Customer.
- b) The unconditional indemnity extends to any money that is not recoverable:
  - i. Due to any legal limitation, disability or incapacity of or affecting the Customer or any other person;
  - ii. Due to any transaction relating to the Guaranteed Money being void, illegal, voidable or unenforceable;
  - iii. Regardless of whether or not AC3 knew or should have known any of the relevant facts; or
  - iv. Because of any fact or circumstance.

## 5. GENERAL

- a) AC3 may, at its own discretion, at any time, and without giving any notice whatsoever to the Guarantor, refuse to provide further credit or supplies to the Customer.
- b) A demand by AC3 under this document may be signed by any of its managers or other officers, or any of its solicitors, and served on the Customer at its ordinary place of business or on the Guarantor at its address shown below or transmitted by facsimile or email to the facsimile number or email address below:

**Guarantor**

Address \_\_\_\_\_

Fax \_\_\_\_\_

Email \_\_\_\_\_

- i. A demand by AC3 will be taken to have been served:
  - ii. if delivered in person, on the day of delivery if delivered before 5.00pm on a business day, otherwise on the next business day;
  - iii. if sent by pre-paid mail within Australia, on the third business day after posting;
  - iv. if sent by pre-paid airmail to an address outside Australia or from outside Australia, on the fifth business day (at the address to which it is posted) after posting;
  - v. if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission, on that day if the report states that transmission was completed before 5.00pm on a business day, otherwise on the next business day; and
  - vi. if transmitted by email before 5.00pm on a business day, on the day of transmission (otherwise, if sent after 5.00pm, on the next business day), provided that the sender does not receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.
- c) This document binds each of the persons executing it even if:
  - i. One or more of the persons named in this document as a Guarantor does not execute this document or is not bound or ceases to be bound by this document; or
  - ii. AC3 does not execute or only subsequently executes this document.





**EXECUTED AS A DEED  
SIGNED SEALED AND DELIVERED**

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by

*(insert name of guarantor)*

in the presence of:

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**Witness**

**EXECUTED** as a **DEED** by \_\_\_\_\_ *(company name)* in accordance with Section 127 of the *Corporations Act 2001*:

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**Director/Company Secretary**

please cross-out as appropriate

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**Name of Director/Company Secretary**

(BLOCK LETTERS)

please cross-out as appropriate

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**Director**

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**Name of Director**

(BLOCK LETTERS)



**EXECUTED** as a **DEED** by AUSTRALIAN CENTRE FOR ADVANCED COMPUTING AND COMMUNICATION PTY LTD in accordance with Section 127 of the *Corporations Act 2001*:

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**Director/Company Secretary**  
please cross out as appropriate

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**Director**

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**Name of Director/Company Secretary**  
(BLOCK LETTERS)  
please cross out as appropriate

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**Name of Director**  
(BLOCK LETTERS)