

HEAD TERMS

The following terms apply to all Supplies purchased by an Amplitel Group Entity under a Purchase Order (**PO**) on and from 1 November 2023.

1 ORDERING SUPPLIES

- 1.1 Purchase Orders (POs):** Amplitel may order the Supplies by issuing a PO to the Supplier. The Supplier is not obliged to provide (and must not charge for) any Supplies until Amplitel has issued a PO for those Supplies. The PO, together with these terms and conditions (**Head Terms**) and any applicable Module Terms, form the binding agreement between the parties (**Agreement**). The Supplier agrees that by supplying the Supplies to Amplitel it has accepted the terms of this Agreement and that all other terms and conditions are excluded, including terms and conditions otherwise supplied by the Supplier.
- 1.2 Basis of engagement:** The Supplier is not an exclusive provider of the Supplies to Amplitel. Amplitel is under no obligation to meet any minimum volume or fee commitments.
- 1.3 Online ordering and invoicing:** If Amplitel makes available an online facility for ordering and invoicing, the Supplier must use it.
- 1.4 Term:** This Agreement: (a) commences on the earlier of: (i) the date set out in the PO; or (ii) the date the Supplier commences providing the Supplies; and (b) continues until the later of: (i) any expiry date specified in the PO; or (ii) until all Supplies have been provided under the PO (**Term**).
- 1.5 SOW:** Where the PO specifies a SOW is included, that SOW will form part of the Agreement. Amplitel's only obligation under a SOW will be to supply any expressly identified Amplitel inputs (if any). If Amplitel fails to provide a Amplitel input under a SOW, the Supplier's sole remedy will be to require Amplitel to supply that input.
- 1.6 Inconsistency:** If there is an inconsistency between one or more of the documents which constitute the Agreement, the order of precedence will be: (a) any applicable Module Terms; (b) these Head Terms; (c) the PO (including any associated SOW); (d) a document expressly incorporated by reference in this Agreement (other than in the PO or SOW); and (e) a document expressly incorporated by reference in the PO or SOW.
- 1.7 Amplitel Group Entities (AGE):** Amplitel Group Entities may receive, use and enjoy the benefits of Supplies provided by the Supplier in accordance with this Agreement.

2 PROVIDING SUPPLIES

- 2.1 Provision of Supplies:** The Supplier must:
- provide Supplies in accordance with this Agreement, and in a way that meets or exceeds any service levels or performance criteria specified in this Agreement;
 - ensure that the Supplies: (i) are fit for the purposes set out in this Agreement; and (ii) comply with the Specifications, the PO, and any applicable Laws and Australian Standards;
 - maintain appropriate resources to provide the Supplies;
 - perform its obligations with due care and skill and in a manner consistent with applicable industry standards;
 - use its best endeavours to ensure that the provision of the Supplies causes as little disruption as possible to Amplitel's operations and network;
 - ensure that its Personnel: (i) have the necessary rights, qualifications, skills and experience to carry out the Supplier's obligations under this Agreement; and (ii) are aware of and comply with the Supplier's obligations under this Agreement;
 - comply, and ensure its Personnel comply, with all Amplitel Policies and applicable Laws in respect of the performance of its obligations under this Agreement, including ACL and Disability Discrimination Laws and maintaining all authorisations and licenses required to provide the Supplies;
- (h) not do any act, engage in any practice, or omit to do any act or engage in any practice that would breach (or cause Amplitel to breach) any Laws; and
- (i) ensure that any applicable Supplies comply with Accessibility Requirements.
- 2.2 Delivery of Supplies:** The Supplier must deliver the Supplies to Amplitel at the location(s) and by the date specified in the
- 2.3 PO** (or, if there is no date, within 30 days of the PO issue date) (**Delivery**).
- 2.4 Title to Supplies:** Title to and risk in any Supplies passes to Amplitel free of any encumbrances on Delivery.
- 2.5 Acceptance:** If the PO or SOW states a Supply is subject to acceptance by Amplitel, that Supply must undergo any reasonable acceptance testing or processes specified in the PO or SOW. If the Supply meets the agreed criteria for that Supply in the PO or SOW, Amplitel will notify the Supplier in writing of its acceptance. No Supply will be deemed to have been accepted until Amplitel has confirmed such acceptance in writing. If the Supply is rejected, Amplitel may require the Supplier to reimburse any Fees paid for that Supply and Amplitel may terminate the Agreement for cause.
- 2.6 Packaging and labelling:** The Supplier must ensure that any Supplies that are physical goods are packed, marked and labelled so as to prevent damage during transit.
- 2.7 Documentation:** The Supplier must provide Amplitel with sufficient written information to enable Amplitel to make full and safe use of the Supplies (**Documentation**), and Amplitel may make as many copies of the Documentation as it considers necessary to make full use of the Supplies.
- 2.8 Access to Amplitel environments:** The Supplier must only access Amplitel's premises, facilities or systems for the purposes approved in writing in advance by Amplitel. In doing so, the Supplier must comply with: (a) reasonable directions from Amplitel; (b) industry best practice; (c) its own risk management systems applicable to the Supplies; and (d) Amplitel's HSE requirements in cl 2.9.
- 2.9 Health, safety and environment (HSE):** The Supplier must:
- comply with: (i) all applicable HSE Laws and Amplitel Policies; (ii) any additional HSE obligations in the PO or SOW; and (iii) any reasonable directions or requests by Amplitel in relation to applicable HSE Laws and/or Amplitel Policies;
 - ensure that its Personnel are appropriately inducted, trained and supervised in relation to: (i) HSE risks associated with provision or performance of the Supplies; (ii) procedures required to manage those risks; and (iii) applicable HSE Laws and Amplitel Policies;
 - have in place, and fully comply with, HSE management systems that are consistent with Australian and New Zealand Standards AS/NZS 4801 and AS/NZS 14001 (or international equivalents);
 - immediately notify Amplitel of any Incidents that occur during the provision of the Supplies; and
 - without limiting cl 10.2, permit Amplitel to: (i) upon reasonable notice, review, inspect, audit compliance or observe the Supplier's HSE management systems, work practices and procedures applicable to this Agreement; and (ii) test the compliance of Supplier Personnel with this cl 2.9 as permitted or required by applicable HSE Laws or Amplitel Policies.
- 2.10 Additional HSE Obligations on site:** If the Supplier is providing Supplies on Amplitel premises and Amplitel informs the Supplier that in its reasonable opinion the Supplier is: (a) not performing in compliance with the Supplier's HSE obligations; or (b) providing the Supplies in such a way that endangers or harms (or is likely to endanger or harm) the environment or any person's health and safety or impact on Amplitel's reputation (**Harmful Provision**), the Supplier must

promptly at its own expense remedy that breach or Harmful Provision. Until such time as the breach or Harmful Provision has been remedied, Amplitel may (acting reasonably) direct the Supplier to suspend the performance of any or all of the Supplies and Amplitel will not be: (c) required to make any payment to the Supplier for Supplies impacted by the Harmful Provision during the suspension; or (d) liable for any of the Supplier's costs of such suspension.

2.11 Business continuity: The Supplier must:

- (a) maintain and implement business continuity and disaster recovery procedures to enable continuity in the provision of the Supplies in the event of a Disaster (**BCDR Procedures**);
- (b) regularly, and at least once per calendar year, test and update the BCDR Procedures;
- (c) on request by Amplitel, provide documentation of the BCDR Procedures (including the results of any testing);
- (d) ensure that its BCDR Procedures are kept fully operational, current and developed in accordance with ISO 22301 and ISO 27031; and
- (e) provide regular updates to Amplitel in the event of a Disaster including any actual or anticipated impact on its obligations under this Agreement.

2.12 Indigenous Engagement: The Supplier acknowledges Amplitel's commitment to stimulating the growth of Indigenous enterprises and providing Indigenous Australians with more opportunities to participate in the economy. Therefore, the Supplier will use reasonable endeavours to look for opportunities to increase, in the delivery of the Supplies where possible: (a) its purchasing from Indigenous Enterprises; and (b) employment of Indigenous Australians. Opportunities for such Indigenous engagement may be in the form of an Indigenous person(s) or Indigenous Enterprise as subcontractor, and/or use of Indigenous suppliers in the Supplier's own supply chain.

2.13 Changes to Amplitel Policies

- (a) Amplitel may add to or change the Amplitel Policies from time to time by providing written notice as follows:

Change type	Notice period
(i) Additions / changes required by Law, reasonably necessary for security or technical reasons, or to prevent fraud (Urgent Changes)	At least 3 days, or if Amplitel is unable to do so, as much notice as Amplitel can reasonably provide.
(ii) All other additions / changes that are not Urgent Changes (Standard Changes)	At least 30 days.

- (b) Subject to cl 2.13(c), the Supplier must comply with the additional or updated Amplitel Policies on and from the end of the applicable notice period.
- (c) Where a Standard Change is materially detrimental to the Supplier, and the Supplier notifies Amplitel in writing of this within 20 Business Days of receiving Amplitel's notice under cl 2.13(a), the parties must promptly hold good faith discussions to resolve the issue. The Supplier will not need to comply with the Standard Change until the issue is resolved. If the parties are unable to resolve the issue within 20 Business Days, then either party may terminate the Agreement with 10 Business Days' written notice to the other party.

3 DELAY

- 3.1 Delay:** If the Supplier becomes aware of any actual or likely delay in Delivery, the Supplier must notify Amplitel as soon as practicable of the details of the delay, Supplies affected and any additional time reasonably required.
- 3.2 Delay consequences:** The Supplier must take all reasonable

steps to mitigate and minimise the effects of any delay. Amplitel may, at its discretion, extend the affected due date by a reasonable period.

- 3.3 Delay Costs:** If the Supplier is responsible for the delay, the Supplier will reimburse Amplitel for any additional substantiated costs reasonably incurred by Amplitel during any extension granted under cl 3.2, which will be reduced to the extent that Amplitel is responsible for the delay.
- 3.4 Force Majeure:** A party will not be liable for any failure or delay in the performance of its obligations under the Agreement to the extent that such failure or delay is caused by a circumstance not within the reasonable control of the party and that could not have been reasonably avoided, prevented or circumvented by the party.

4 FEES AND PAYMENT

- 4.1 Fees:** Amplitel will pay the Supplier the Fees in accordance with this Agreement. Except as expressly set out in the PO, the Fees are the only amount payable by Amplitel in relation to the Supplies.
- 4.2 Invoicing:** The Supplier must only invoice Amplitel the Fees in accordance with the PO. Each invoice must be in a form reasonably acceptable to Amplitel, comply with any tax invoice/adjustment note requirements and be accompanied by sufficient detail to enable Amplitel to verify the invoice.
- 4.3 Payment:** Amplitel will pay each valid and correctly rendered invoice within the number of days set out in the PO (for this purpose, payment will be taken to have occurred on the date the invoice amount is debited from Amplitel's bank account).
- 4.4 Payment disputes:** If Amplitel reasonably disputes part or all of an invoice (including in relation to suspected non-compliance with this Agreement) it may withhold payment of the disputed amount until the dispute is resolved.
- 4.5 Set off:** Amplitel may set off any undisputed amounts payable by Amplitel to the Supplier against any amount payable to Amplitel by the Supplier on notice to the Supplier.

5 TAXES

- 5.1 Taxes:** Unless otherwise stated, the Fees are inclusive of all Taxes.
- 5.2 Tax Deduction:** If Amplitel is required by Law to make a Tax Deduction from a payment, no additional payment will be made to the Supplier. Each year, Amplitel will deliver to the Supplier reasonable evidence that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- 5.3 Recovery of GST:** If one party makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the GST-exclusive consideration must also pay an amount equal to the GST payable in respect of that supply.
- 5.4 Time for payment of GST amount:** subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the GST-exclusive consideration.
- 5.5 Indirect Taxes:** The Supplier may recover any Indirect Taxes imposed directly on the supply or supplies made to Amplitel provided that the Supplier provides such documentary evidence as is necessary for Amplitel to validly claim a credit from the relevant government authority or agency in respect of the tax included in the Supplier's invoice.
- 5.6 Indemnity and reimbursement payments:** If one party must indemnify or reimburse another party for any loss or expense incurred by the payee, the required payment does not include any amount which the payee (or an entity that is in the same GST group as the payee) is entitled to claim as an input tax credit or would have been entitled to claim as an input tax credit had the other party registered for GST in the event that it was required or entitled to do so, but will be increased under cl 5.2 if the payment is consideration for a taxable supply.
- 5.7 Adjustment events:** If an adjustment event arises in respect of a taxable supply made by a supplying party, the GST or

Indirect Taxes amount payable by the receiving party under cl 5.2 will be recalculated to reflect the adjustment event and a payment will be made by the receiving party to the supplying party, or by the supplying party to the receiving party, as the case requires.

- 5.8 ABN Withholding:** Where the Supplier does not provide Amplitel with an Australian Business Number (**ABN**) as part of the PO, the Supplier: (a) represents and warrants that the Supplier is not making a supply to Amplitel in the course of or furtherance of an enterprise carried on in Australia by the Supplier and therefore is not required to provide an ABN; and (b) the Supplier shall pay Amplitel any liability for Taxes, including any penalties and interest, incurred by Amplitel as a result of a breach of sub-cl 5.8(a).

6 INTELLECTUAL PROPERTY

- 6.1 Amplitel IP:** Amplitel will own all IP Rights in and to the Amplitel Material and Developed Material and any other IP Rights made available to the Supplier by or on behalf of Amplitel (together **Amplitel IP**). The Supplier assigns to Amplitel all IP Rights in and to the Developed Material, and any modifications or enhancements to the Amplitel Material, made by or on behalf of the Supplier on and from creation. Amplitel grants the Supplier a non-exclusive, non-transferable, royalty free, personal licence during the Term to use (and to sub-license its Approved Subcontractors to use) the Amplitel IP solely to the extent directly necessary for the purpose of performing its obligations under the Agreement.
- 6.2 Supplier IP:** (a) The Supplier will own all IP Rights in and to the Supplier Materials and any other IP Rights made available to Amplitel by or on behalf of the Supplier (excluding Third Party Materials and any Developed Material) (together **Supplier IP**). (b) To the extent it is not assigned to Amplitel or otherwise licenced under this Agreement the Supplier grants Amplitel a non-exclusive, perpetual, irrevocable, royalty free and worldwide licence to use, reproduce, modify, develop and otherwise exploit (and to allow the other AGEs and Amplitel Third Parties to use, reproduce, modify, develop and otherwise exploit) the Supplier IP as required to receive, use and otherwise enjoy the full benefit of the Supplies. (c) For clarity, the licence in sub-cl (b) does not apply to any Supplier IP that Supplier makes generally available under a standalone licence agreement (e.g. Software or SaaS Supplies).
- 6.3 Third Party IP:** To the extent that Third Party Materials are incorporated into the Supplies or are otherwise provided to Amplitel by the Supplier under this Agreement, the Supplier must procure for Amplitel: (a) rights in respect of the IP Rights in and to the Third Party Material (**Third Party IP**) no less extensive than the rights granted to Amplitel in respect of the Supplier IP set out in cl 6.2; or (b) such other licence rights in respect of the Third Party IP as agreed in writing by the parties.
- 6.4 Infringement Claim:** If an Infringement Claim is made, the Supplier must: (a) without prejudice to Amplitel's other rights or remedies and at no additional cost to Amplitel: (i) modify the affected Supplies in order to avoid any infringement without any adverse effects to the functionality, performance and quality of the Supplies; (ii) procure for Amplitel all rights required to continue using and exploiting the affected, unmodified Supplies in accordance with this Agreement; or (iii) procure for Amplitel non-infringing replacements for the affected Supplies equivalent in functionality, performance and quality; and (b) if the options in sub-cl (a)(i) to (iii) above are not possible, accept return of the affected Supplies or cease to provide or perform the affected Supplies (as applicable) and reimburse any Fees paid by Amplitel for those Supplies; and (c) indemnify Amplitel, the AGEs, and their respective Personnel for all Loss suffered or incurred in connection with the Infringement Claim (except to the extent the Loss is attributable to the negligence or wrongful act or omission of the Indemnified Person or could have been avoided had the Indemnified Person taken reasonable steps to mitigate such Loss).

7 CONFIDENTIALITY, PRIVACY AND AMPLITEL DATA

- 7.1 Confidential Information:** In this Agreement, "**Confidential Information**" of a party means:
- (a) information of a confidential nature relating to or developed in connection with the party's business or affairs which is disclosed to, learnt by, or which otherwise comes to the knowledge of or into the possession of, the other party;
 - (b) information designated by that party as confidential; or
 - (c) information about clients, customers, employees, or contractors of, or other persons doing business with, that party,
- but does not include information that:
- (d) is or becomes generally available in the public domain or is rightfully received from a third person, other than through any breach of confidence; or
 - (e) has been independently developed by the other party without using any other Confidential Information of the first party.
- Amplitel's Confidential Information includes Amplitel Data and any Developed Materials that are Confidential Information.
- 7.2 Protection:** Each party must only use or copy the other party's Confidential Information for the purposes of the Agreement and must take all steps reasonably necessary to:
- (a) maintain the confidentiality of the other party's Confidential Information;
 - (b) ensure that any person who has access to Confidential Information of the other party through it or on its behalf does not use, copy or disclose that Confidential Information other than in accordance with this Agreement; and
 - (c) enforce the confidentiality obligations under this Agreement.
- 7.3 Disclosure:** Each party must not disclose the Confidential Information of the other party to any person except:
- (a) to its Personnel (and in the case of Amplitel, to the Personnel of the AGEs and Amplitel Third Parties) who need to know the Confidential Information for the purposes of this Agreement;
 - (b) as required to be disclosed by Law;
 - (c) if the other party has given consent to the disclosure or use; or
 - (d) as expressly permitted by this Agreement.
- 7.4 Return:** (a) Subject to sub-cl (b), each party must, at the other party's option, return, destroy or permanently de-identify all copies of the other party's Confidential Information in its possession or control within 10 Business Days of expiry or termination of this Agreement. (b) If a party needs to retain the other party's Confidential Information for the purposes of complying with any Law, litigation, or internal quality assurance and record-keeping, then it may retain it and use it solely for this purpose (but must deal with it in accordance with sub-cl (a) promptly after it is no longer required for this purpose).
- 7.5 Relief:** In addition to other remedies, a party will be entitled to injunctive relief for any breach or threatened breach of the other party's obligations of confidentiality under the Agreement.
- 7.6 Publicity:** Unless required by Law, the Supplier must not make any public announcements relating to the subject matter of the Agreement without Amplitel's prior written consent.
- 7.7 Privacy:** If the Supplier deals with any Personal Information, the Supplier must:
- (a) comply with all Privacy Laws as if it were an entity regulated under those Privacy Laws;
 - (b) not do anything that would put Amplitel in breach of any Privacy Laws in relation to the Personal Information;
 - (c) comply with all reasonable directions given by Amplitel in connection with Personal Information that the Supplier or Supplier Personnel accesses, receives, uses, holds,

stores, or otherwise processes in connection with the Supplies, except to the extent that doing so would cause the Supplier to breach a Privacy Law;

- (d) only collect, store, use, disclose, or otherwise deal with Personal Information as required for the purposes of providing the Supplies or as otherwise expressly permitted under this Agreement;
- (e) take reasonable steps to: (i) ensure that the Personal Information it uses or discloses in providing the Supplies is up-to-date, complete and relevant having regard to the nature of the Supplies; and (ii) protect the Personal Information from misuse, interference and loss, and from unauthorised access, modification or disclosure; and
- (f) if the Supplier discloses any Personal Information to a third party (**PI Recipient**) as permitted under this Agreement: (i) ensure that the PI Recipient is aware of and complies with the Supplier's privacy obligations as if it was the Supplier; and (ii) accept responsibility for any act or omission by the PI Recipient in relation to the Personal Information as if it was an act or omission of the Supplier under this Agreement.

7.8 Data Security Requirements: The Supplier must:

- (a) comply with all applicable Amplitel Policies (including standards and procedures) relating to security and Amplitel Data notified by Amplitel to the Supplier in accordance with this Agreement;
- (b) implement, maintain and enforce appropriate and industry best practice security procedures and safeguards in order to protect Amplitel Data in the Supplier's possession and control against any misuse, loss, interference unauthorised access, modification or disclosure;
- (c) ensure that Amplitel has access at all times to Amplitel Data while it is in the Supplier's possession or control and provide that Amplitel Data to Amplitel upon request;
- (d) if any Amplitel Data is lost, damaged, corrupted or otherwise unable to be accessed, take all reasonably practicable measures available to the Supplier to recover and restore that Amplitel Data immediately (and such measures will be at Supplier's cost to the extent such loss, damage, corruption or loss of access is caused or contributed to by the Supplier or its Personnel);
- (e) immediately notify Amplitel if it becomes aware of any likely, suspected or actual misuse or loss of, interference with or unauthorised access to, modification of, or disclosure of, Amplitel Data, or breach of the Supplier's obligations relating to Amplitel Data (a **Data Breach**), or is or may be required by Law to disclose any Amplitel Data or Data Breach (**Notifiable Event**);
- (f) comply with any reasonable direction from Amplitel with respect to: (i) assessing, investigating, remedying and addressing a Data Breach; or (ii) a Notifiable Event, including providing information requested by Amplitel relevant to the Notifiable Event, and not otherwise disclosing to any third party the circumstances regarding the Notifiable Event without express prior written approval from Amplitel;
- (g) inform and co-operate with Amplitel in the event of any breach or risk regarding the security of Amplitel Data;
- (h) ensure that any person who is authorised by the Supplier to have access to Amplitel Data complies and agrees to comply with this clause to the same extent as the Supplier;
- (i) comply with any additional data security requirements set out in the Module Terms and the PO or SOW (in which case the parties agree that the more onerous requirement will take precedence to the extent of any inconsistency); and
- (j) only disclose, store, transfer, and make accessible Amplitel Data within Australia, the country in which the

Amplitel Data is shared by Amplitel, or as otherwise set out in the PO or SOW.

8 RISK ALLOCATION

- 8.1 Mutual Indemnities:** Each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) and the Indemnified Party's Personnel (including in the case of Amplitel, the AGEs and their Personnel) (together **Indemnified Persons**) against all Loss suffered or incurred by the Indemnified Persons arising in connection with:
- (a) any fraudulent or unlawful act or omission of the Indemnifying Party or its Personnel;
 - (b) third party claims relating to any death or personal injury caused or contributed to by any breach of this Agreement or negligent or wrongful act or omission of the Indemnifying Party or its Personnel;
 - (c) any damage to or loss or destruction of real or personal property caused or contributed to by any breach of this Agreement or negligent or wrongful act or omission of the Indemnifying Party or its Personnel; and
 - (d) any breach of confidentiality obligations by the Indemnifying Party or its Personnel,
- except to the extent the Loss is attributable to the negligence or wrongful act or omission of the Indemnified Person or could have been avoided had the Indemnified Person taken reasonable steps to mitigate such Loss.
- 8.2 Additional Supplier Indemnities:** The Supplier indemnifies the Amplitel Indemnified Persons against all Loss suffered or incurred by the Amplitel Indemnified Persons arising in connection with:
- (a) any third party claims caused or contributed to by the Supplier or its Personnel's breach of obligations relating to privacy under this Agreement; and
 - (b) any breach by the Supplier or its Personnel of obligations relating to Amplitel Data under this Agreement (including any breach that results in loss or corruption of the Amplitel Data),
- except to the extent the Loss is attributable to the negligence or wrongful act or omission of the Indemnified Person or could have been avoided had the Indemnified Person taken reasonable steps to mitigate such Loss.
- 8.3 Liability cap:** Subject to cl 8.5, the aggregate liability of a party for Loss suffered or incurred by the other party arising out of or in connection with this Agreement (whether under statute, in contract or in tort, including for negligence, or otherwise) is limited to the greater of (a) \$3 million; and (b) 1.5 times the total amounts paid and payable to the Supplier under this Agreement.
- 8.4 Consequential loss exclusion:** Subject to cl 8.5, a party is not liable for any Consequential Loss suffered or incurred by the other party in connection with this Agreement.
- 8.5 Exception to limitations and exclusions:** The limitations and exclusions in cl 8.3 and 8.4 do not apply to a party's liability for Loss covered by an indemnity under this Agreement.
- 8.6 Insurance:** The Supplier must at its cost maintain (and on request produce to Amplitel evidence of) valid and enforceable insurance policies for: (a) workers compensation in accordance with applicable local Laws; (b) products liability with a minimum annual coverage of AUD\$5 million; (c) both public liability and professional indemnity, each with a minimum coverage of AUD\$5 million per claim; and (d) any other insurance requirements set out in the PO or SOW.
- 8.7 Limitation of liability of Amplitel as trustee of the Trust**
- (a) This cl 8.7 applies to Amplitel in its capacity as the trustee of the Trust.
 - (b) Subject to cl 8.7(c), and despite any other provisions of this Agreement, a liability arising under or in connection with this Agreement is limited and can be enforced against Amplitel only to the extent to which Amplitel, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. No

person will be entitled to:

- (i) claim from or commence proceedings against Amplitel in respect of any liability under this Agreement in any capacity other than as trustee for the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar officeholder to Amplitel, or prove in any liquidation, administration or arrangement of or affecting Amplitel, except in relation to the property of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this Agreement against Amplitel in any capacity other than as trustee of the Trust.
- (c) The limitation in cl 8.7(b) does not apply to any obligation or liability of Amplitel to the extent to which there is, in respect of that obligation or liability, whether under the Trust's trust deed or by operation of Law, a reduction in the extent of Amplitel's indemnity, or a loss of Amplitel's right to indemnification, out of the assets of the Trust in respect of which it is trustee, because Amplitel has no right or power to have trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because Amplitel's behaviour was beyond power or improper in relation to the Trust.

9 DEFECTS

- 9.1 Defects:** The Supplier must, as soon as practicable and at no cost or expense to Amplitel, rectify any Defect that occurs during the Warranty Period and comply with any additional requirements set out in the PO or SOW.
- 9.2 Failure to rectify:** If the Supplier does not rectify the Defect in accordance with cl 9.1, then Amplitel may, itself or through a third party, rectify such Defect and the Supplier must reimburse the reasonable costs of such rectification on request by Amplitel.
- 9.3 Third party warranties:** If any of the Supplies are covered (in whole or in part) under a warranty from a third party, the Supplier must ensure that Amplitel has, and that the Supplier makes use of, the benefits offered by that warranty.

10 RELATIONSHIP MANAGEMENT

- 10.1 Records:** The Supplier must:
- (a) keep and maintain proper, accurate, complete and reasonably detailed records and books of accounts (**Records**) relating to the performance of the Supplier's obligations under this Agreement and for all transactions related to this Agreement, and ensure that such Records present a true and fair view of those payments and transactions;
 - (b) keep the Records referred to in cl 10.1(a) for seven years after termination or expiry of this Agreement; and
 - (c) on Amplitel's request, the Supplier must provide a copy of such Records to Amplitel so Amplitel can assess the Supplier's compliance with this Agreement.
- 10.2 Audit:** If permitted under the PO, SOW or an applicable Amplitel Policy, Amplitel (or a third party nominated by Amplitel) may audit the Supplier's compliance with its obligations relating to this Agreement and the Supplier must comply with any additional audit obligations set out in the PO, SOW or applicable Amplitel Policy.
- 10.3 Financial performance:** On Amplitel's request, the Supplier must provide records and information requested by Amplitel, in relation to the Supplier's financial position. The Supplier is not required to disclose any information that relates to the Supplier's profit margins or its other customers or that, if disclosed, would result in the Supplier being in breach of its confidentiality obligations to any person.
- 10.4 Governance:** The Supplier must participate in any governance process and provide any governance reports set out in the PO or SOW.

- 10.5 Subcontracting:** The Supplier must not subcontract the provision of the Supplies or allow an Approved Subcontractor to further subcontract provision of the Supplies without Amplitel's prior written consent (not to be unreasonably withheld). The Supplier must ensure that the Approved Subcontractor complies with this Agreement, and the Supplier will be responsible for all acts and omissions of its subcontractors as if they were the acts and omissions of the Supplier.
- 10.6 Notification of conflicts:** The Supplier must promptly notify Amplitel (a) if it is likely to be subject to insolvency claims or proceedings or is otherwise insolvent; and (b) of any actual or potential Conflict of Interest of which it becomes aware. The Supplier must use reasonable endeavours to avoid Conflicts of Interest and resolve any Conflicts of Interest which arise.
- 10.7 Dispute resolution:** If a dispute arises in connection with this Agreement (**Dispute**) either party may issue a notice to the other party, setting out reasonable details of the Dispute (**Dispute Notice**), following which the parties must promptly hold good faith discussions to attempt to resolve the Dispute. Neither party may commence legal proceedings in relation to the Dispute unless: (a) the purpose of the proceedings is to seek urgent injunctive or declaratory relief; or (b) the parties have been unable to resolve the Dispute within 20 Business Days of the applicable Dispute Notice being received. Except where Amplitel has suspended this Agreement in accordance with cl 11.1, each party must continue to perform its obligations under this Agreement notwithstanding the existence of any unresolved Dispute.

11 SUSPENSION AND TERMINATION

- 11.1 Suspension for non-compliance:** If Amplitel suspects (acting reasonably) or identifies (whether through an audit or otherwise), that the Supplier is not complying with its obligations under cl 2, 6, 7, 9, or 10, Amplitel may direct the Supplier to suspend the performance of all or part of the Supplier's obligations that are affected by the non-compliance (in which case, Amplitel will not be obliged to pay any Fees in respect of those obligations during the period of the suspension).
- 11.2 Termination without cause:**
- (a) Amplitel may terminate this Agreement in whole or in part at any time by giving the Supplier the greater of: (i) 20 Business Days' notice; and (ii) any notice period set out in the PO. Amplitel will only exercise this right where it has a reasonable basis for doing so (for example, due to changes in its business requirements or budget).
 - (b) If Amplitel issues a notice of termination under cl 11.3 but the notice is not effective to terminate this Agreement, the notice will be deemed to be a notice of termination without cause under this cl 11.2, issued on the date of the notice.
 - (c) Subject to cl 4.5, where a PO or SOW expressly states a committed minimum term (in addition to an expiry or end date), Amplitel can terminate this Agreement under cl 11.2(a) before the end of that minimum term and Amplitel will reimburse the Supplier's reasonable, unavoidable, substantiated, and properly incurred costs arising directly from the early termination.
- 11.3 Termination for cause:** A party may terminate the Agreement in whole or in part by notice to the other party if the other party: (a) commits a material breach of this Agreement that is capable of remedy and has not remedied that breach within 10 Business Days after receiving notice of the breach; (b) commits a breach of cl 2.1(g) or 2.1(h); (c) commits a breach of this Agreement that is not capable of remedy; (d) suffers an Insolvency Event; or (e) has an administrator, receiver or scheme administrator appointed that does not adopt this Agreement and/or accept personal liability for performance of this Agreement (including, in the case of a Supplier, providing the Supplies) within 3 Business Days of a request that they do so. A material breach of this Agreement includes a material breach in respect of individual or particular Supplies or the

PO.

11.4 Consequences of termination and expiry: On expiry or termination (in whole or in part) of this Agreement for any reason, in addition to any termination assistance obligations set out in the Module Terms, PO, SOW, or otherwise agreed by the parties:

- (a) Amplitel will only be liable to pay the Supplier for Supplies completed in accordance with the requirements of this Agreement by the effective date of termination and may recover from the Supplier any money paid for Supplies not completed by that date;
- (b) on request by Amplitel, the Supplier must remove from Amplitel's premises all of the Supplier's Personnel and equipment and provide any disengagement assistance reasonably specified by Amplitel; and
- (c) where Amplitel has terminated due to breach of cl 2.1(g) or 2.1(h) Amplitel will have no obligation to return any of the Supplies unless Amplitel has received all government authorisations required to do so. On termination of this Agreement in whole or in part by Amplitel for cause, Amplitel may suspend making any payment to the Supplier under this Agreement.

11.5 Survival: The rights, obligations and indemnities in cl 2.1(g), 2.1(h), 6, 7, 8, 10.1, 10.2, 10.7, 11.4, and 11.5 and any other obligations which are expressed to, or by their nature, survive expiry or termination of the Agreement, will survive the termination or expiry of this Agreement. The expiry or termination of this Agreement does not affect any rights which accrued before the date of expiry or termination.

12 GENERAL

12.1 Assignment: Amplitel may assign, novate, or otherwise transfer any of its rights or obligations arising out of or under this Agreement to any AGE with sufficient financial capacity to perform its obligations under this Agreement without the Supplier's consent. Supplier may only assign, novate or otherwise transfer any of its rights or obligations arising out of or under this Agreement to another person with Amplitel's prior written approval (which will not be unreasonably withheld).

12.2 Entire agreement: This Agreement represents the entire agreement between the parties in relation to the Supplies and supersedes all prior discussions, negotiations, understandings and agreements in relation to those Supplies.

12.3 Governing law and jurisdiction: This Agreement will be governed by the Laws of the State of Victoria. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Victoria.

12.4 Variation and waiver: A provision of this Agreement, or right, power or remedy created under them, may not be varied or waived except as agreed in writing.

12.5 Relationship of the parties: The relationship between Amplitel and the Supplier is that of principal and independent contractor. The Supplier and its Personnel must not represent themselves as employees or agents of Amplitel.

12.6 Interpretation: In the Agreement: (a) headings, bold type and square brackets are for convenience only and will not affect interpretation of this Agreement; (b) words in the singular include the plural and vice versa, according to the requirements of the context; (c) a reference to legislation or other Law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them; (d) a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation"; and (e) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given in that Act, unless the context otherwise requires.

12.7 Telstra Standards and Processes:

- (a) This Agreement refers to a number of Telstra standards, documentation, systems, methods or processes (**Telstra Standards and Processes**). Any Telstra Standards and

Processes should be interpreted as if references to Telstra were references to Amplitel, unless the context indicates otherwise.

- (b) Amplitel's intention is that, over time, the Telstra Standards and Processes will be incrementally amended, updated, supplemented or replaced by standards, documentation, systems, methods and processes specifically created for Amplitel (**Amplitel Standards and Processes**).
- (c) The Supplier acknowledges and agrees that Amplitel may amend, update, supplement or replace the Telstra Standards and Processes under this Agreement with Amplitel Standards and Processes by notice to the Supplier and as relevant the parties will promptly update this Agreement accordingly.

12.8 References to Amplitel: For the purposes of this Agreement, a reference to Amplitel:

- (a) owning a structure or thing may be a reference to Telstra owning that structure or thing;
- (b) doing a thing includes Amplitel procuring Telstra to do that thing; and
- (c) being entitled to do a thing includes Amplitel permitting Telstra to do that thing.

12.9 Definitions: In this Agreement unless otherwise indicated:

Accessibility Requirements means:

- (a) ISO AS EN 310 54 or the latest Web Accessibility Content Guidelines (WCAG) Level AA (version 2.1 or later)
- (b) Telstra's Disability and Accessibility Policy; and
- (c) Telstra's Group Digital Accessibility Guidelines.

Accessibility Requirements only apply to Supplies that involve the provision or amendment of any digital content or tools (including mobile and desktop websites, web and native mobile applications, browser-based tools, authoring tools, documents and digital signage), including where such content and tools are provided on the basis that they will be white-labelled by the Amplitel Group.

ACL means the Australian Consumer Laws contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement has the meaning set out in cl 1.1.

Amplitel means Amplitel Pty Ltd as trustee of the Towers Business Operating Trust (ABN 75 357 171 746) or if otherwise identified in the PO or SOW, means the identified AGE who is purchasing the Supplies.

Amplitel Data means data of any kind of an AGE or of any customer or supplier of an AGE (other than the Supplier) that the Supplier accesses, stores or handles in the course of providing the Supplies, and includes all data that is: (a) Personal Information; or (b) corporate proprietary or financial information.

Amplitel IP has the meaning given in cl 6.1.

Amplitel Group Entity (or AGE) means any of the following entities: (a) Amplitel; (b) a RBC of Amplitel; (c) a body corporate, trust, partnership, proprietary company, unincorporated joint venture or other business association controlled by Amplitel or a RBC of Amplitel; or (d) an unincorporated joint venture or business association controlled by Amplitel or a RBC of Amplitel. For the purposes of (c) and (d), one body corporate will be deemed to control another when at the relevant time it has a shareholding, issues units, equity or participation interest of at least 30%.

Amplitel Materials means all Materials provided by or on behalf of Amplitel to the Supplier in connection this Agreement, including Amplitel Data and Amplitel inputs, and includes any modifications and enhancements to those Materials.

Amplitel Policies means:

- (d) the Supplier Code of Conduct, available at

<https://www.telstra.com.au/aboutus/our-company/supplying-to-telstra/sustainable-procurement>;

- (e) the Whistleblowing Policy available at: <https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf%20F/2020-Whistleblowing-Policy.pdf>); and
- (f) the Information Management and the Security Policies, where provided by Telstra; and
- (g) any other policies identified in the PO or SOW or otherwise provided, updated, or made available to the Supplier by Amplitel under cl 2.13 or cl 7 of the SaaS Module (as applicable).

Amplitel Third Parties mean Amplitel's third party contractors and service providers.

Approved Subcontractor means a subcontractor approved in writing by Amplitel.

BCDR Procedures has the meaning given in cl 2.11(a).

Business Day means any day other than a Saturday, Sunday or public holiday observed in the State of Victoria.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand.

Confidential Information has the meaning given in cl 7.1.

Conflict of Interest means: (a) any Claim against or involving the Supplier or a RBC of the Supplier or their respective Personnel, which may adversely affect the Supplier's ability to provide the Supplies in accordance with this Agreement; or (b) the supply or proposed supply of goods or services by the Supplier in a manner and to an extent that may adversely affect the ability of the Supplier to provide the Supplies to Amplitel in accordance with this Agreement.

Consequential Loss means any Loss suffered or incurred by the other party in connection with this Agreement that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the Loss. For the purpose of this Agreement, the following are not Consequential Loss and are considered to be direct losses:

- (a) costs of assessing, remedying, responding to or mitigating a Defect or a breach of this Agreement (including the costs of replacing, repairing or recreating any Supplies or other assets that have been lost, destroyed or damaged as a consequence of the breach);
- (b) holding costs resulting from a breach of this Agreement;
- (c) costs of notifying, communicating or compensating customers or other third parties affected by a breach of this Agreement;
- (d) third party claims resulting from a breach of this Agreement;
- (e) fines or penalties resulting from any breach of Law as a result of a breach of this Agreement;
- (f) costs of any corrective action undertaken by a party further to a regulatory action or notice to comply as a result of a breach of this Agreement; or
- (g) time and related expenses and overhead (including travel, lodging, wages) for Personnel who are working on corrective actions as a result of a breach of this Agreement.

Data Breach has the meaning given in cl 7.8(e).

Defect means any characteristic that makes the whole or any part of the Supplies inoperable or inconsistent with the Specifications.

Delivery has the meaning set out in cl 2.2.

Developed Material means any Materials that are created by or on behalf of the Supplier under the Agreement in connection with the Supplies.

Disability Discrimination Laws means any laws directed at, regulating or applicable to Amplitel, the Supplier, the Supplies or this agreement including the *Disability Discrimination Act 1992* (Cth) and any similar State or Territory laws.

Disaster means the occurrence of one or more events which materially adversely affects the provision of Supplies.

Dispute has the meaning given in cl 10.7.

Dispute Notice has the meaning given in cl 10.7.

Documentation has the meaning given in cl 2.7.

Environmental Incident means an incident or event that is a breach of, or requires notification or is reportable in accordance with any applicable environmental Laws.

Fees means the fees set out in the PO.

Harmful Provision has the meaning given in cl 2.10.

Head Terms has the meaning given in cl 1.1.

HSE means health, safety and environment.

Incident means a death, Serious Injury or Illness, Dangerous Incident or Environmental Incident. **Serious Injury or Illness** and **Dangerous Incident** have the meanings given to them under the WHSA. If the Supplies are provided or performed outside of Australia, those terms have their ordinary meanings.

Indemnified Party has the meaning given in cl 8.1.

Indemnified Persons has the meaning given in cl 8.1.

Indemnifying Party has the meaning given in cl 8.1.

Indigenous Enterprise means an organisation that is at least 50 per cent or more Indigenous Australian owned as required by Supply Nation (details available here: <https://supplynation.org.au/>)

Indirect Taxes means any tax payable on the sale of goods, services or other things and includes goods and services tax, value added tax, sales tax, consumption tax or any similar impost imposed in a jurisdiction other than Australia.

Infringement Claim means any Claim by a third party that the provision of the Supplier Materials, the Third Party Materials, the Developed Material, the Supplies, or any modifications or enhancements to the Amplitel Material made by or on behalf of the Supplier or the enjoyment or use of any of the foregoing in accordance with the Agreement infringe that third party's IP Rights.

Insolvency Event, in relation to a party (**Insolvent Party**) means any one of the following:

- (a) the Insolvent Party ceases or takes steps to cease to conduct its business in the normal manner;
- (b) the Insolvent Party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (c) the Insolvent Party is unable to pay its debts when they are due or is deemed under the Corporations Act 2001 (Cth) to be insolvent;
- (d) an administrator, liquidator or provisional liquidator is appointed to the Insolvent Party or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of the Insolvent Party;
- (e) an application or order is made or a resolution is passed for the winding up of the Insolvent Party; or
- (f) any act or event analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (f) of this definition.

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

Law means any law of any applicable jurisdiction, including any common law, equity, statute, regulation, proclamation, ordinance, by-law, mandatory code of conduct, Australian Standard, Trade Control Laws, HSE Laws, writ, judgment and any award or other industrial instrument.

Loss means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs.

Material means software, firmware, tools, documentation, reports, data, diagrams, procedures, plans and other materials.

Module Terms means the additional Supply-specific module terms and conditions that apply to the Supplies, as attached to these terms and conditions.

Notifiable Event has the meaning given in cl 7.8(e).

Personal Information means all personal information (as defined in the Privacy Act 1988 (Cth)) which is received or learnt by a party from any source as a consequence of or in the course of exercising or performing its rights and obligations under this Agreement.

Personnel means a party's employees, secondees, directors, officers, contractors, professional advisers and agents.

PI Recipient has the meaning given in cl 7.7(f).

PO means the purchase order issued by Amplitel for the Supplies.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth), the *Telecommunications Act 1997* (Cth), the privacy policy issued by Amplitel from time to time (available at [Amplitel Privacy](#)) and any other applicable Laws and binding industry codes and policies relating to the management of Personal Information applicable to the local jurisdiction in which the Supplies are received by an AGE and/or an AGE customer.

Records has the meaning given in cl 10.1.

Related Body Corporate (or RBC): (a) has the meaning given to that term in the *Corporations Act 2001* (Cth) but also as if each reference to a "body corporate" includes a proprietary company, a partnership or a trust; or (b) if (a) does not apply, means an entity (including a proprietary company, partnership or trust) controlled by, controlling, or under common control with a party. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity whether through the ownership of voting securities, by contract, or otherwise.

Specifications means the specifications for each of the Supplies set out in: (a) the PO; and (b) any Documentation, but only to the extent that it is not inconsistent with that set out in the PO.

Subsidiary of an entity has the meaning given to that term in the *Corporations Act 2001* (Cth), but also include (a) a partnership in which the entity has, in aggregate, a direct or indirect interest of over 50% in the partnership or which is controlled by the entity; and (b) a trust in which the entity has, in aggregate, a direct or indirect interest of over 50% of the issued units of the trust.

Supplier means the entity that has agreed to provide Supplies under this Agreement.

Supplier IP has the meaning given in cl 6.2.

Supplier Materials means all Materials provided by or on behalf of the Supplier in connection with this Agreement, other than the Third Party Materials and Developed Material, and includes any modifications and enhancements to these Materials (unless assigned to Amplitel under this Agreement).

Supplies means the items, deliverables and/or services provided, or to be provided, by the Supplier to Amplitel as identified in the PO (including any necessary Documentation).

Taxes means taxes, levies, imposts, duties, excise, and charges, deductions or withholdings, however described, imposed by Law or government authority or agency, other than GST, Indirect Taxes, and any tax imposed on, or calculated having regard to, net income.

Tax Deduction means a deduction or withholding for or on account of Taxes from a payment.

Telstra means Telstra Corporation Ltd (ABN 33 051 775 556).

Term has the meaning given in cl 1.4.

Third Party IP has the meaning given in cl 6.3.

Third Party Materials means Materials provided by or on behalf of the Supplier in connection with the Agreement, the IP Rights in which are owned by a third party, including any modifications and enhancements to those Materials.

Trade Control Laws means any sanctions, export control, or import laws, or other regulations, orders, directives, designations, licenses, or decisions relating to the trade of goods, technology, software and services which are imposed, administered or enforced from time to time by Australia, the United States, the United Kingdom, the EU, EU Member States, Switzerland, the United Nations or United Nations Security Council, and also includes U.S. antiboycott laws and regulations.

Trust means the trust known as the Towers Business Operating Trust, the trustee of which is initially Amplitel.

Warranty Period means, unless otherwise identified in the PO or SOW, the period of 24 months from:

- (a) the date of Delivery of the Supply; or
- (b) if the Supply is subject to an acceptance process, the date of acceptance of the Supply or first use by Amplitel, and, for Supplies that are repaired or replaced during this period, will continue for the longer of: (i) the remainder of the original warranty period for those Supplies; or (ii) 12 months from the date on which those Supplies were last repaired or replaced.

WHS means the *Work Health and Safety Act 2011* (Cth) or any other applicable HSE Laws.

SOFTWARE LICENCE MODULE

In addition to the Head Terms, the following terms apply only to Software Supplies purchased by a Amplitel Group Entity under the Agreement.

1 SUPPLY OF SOFTWARE

1.1 The Supplier must provide the software identified in the PO (**Software**) and Documentation in the manner and by the delivery date specified in the PO.

2 LICENCE OF SOFTWARE

2.1 On and from the date on which the Supplier provides the Software, and for the term specified in the PO (or if there is no term specified in the PO, for a perpetual term), the Supplier grants to Amplitel a non-exclusive, royalty free, worldwide licence to:

- (a) use and modify, and to allow the other AGEs and Amplitel Third Parties to use and modify, the Software and the Documentation for Amplitel's business purposes (including for the purposes of the Amplitel Third Parties providing services to Amplitel and the AGEs); and
- (b) make as many copies of the Software and Documentation as reasonably required for the purposes of backup, testing, disaster recovery (including for use at mirror sites established for disaster recovery) security and archiving at no additional charge.

2.2 The licence terms set out in cl 2.1 apply in relation to the Software and Documentation notwithstanding anything to the contrary in the Head Terms.

2.3 Amplitel will not remove or alter any of the Supplier's notices that appear on the Software or Documentation.

2.4 Except as otherwise permitted under this Agreement or any Law, Amplitel will not rent, lease, reverse engineer, decompile or disassemble the Software.

2.5 Amplitel may move or transfer licences to the Software between machines (including virtual machines) or platforms at no additional cost.

2.6 If the PO specifies that the licence to use the Software and Documentation is for a fixed term, Amplitel may retain and continue to use one copy of the Software and Documentation after the expiry of that term or earlier termination of this Agreement for archival, regulatory compliance and audit purposes.

2.7 If the PO specifies that the licence to use the Software is restricted by quantity and Amplitel makes changes to the machines or platforms on which the Software is installed, for a grace period of 60 Business Days Amplitel may create and use such additional copies of the Software as necessary to effect such a change. The Supplier must not unreasonably refuse to extend that grace period.

2.8 If the PO specifies that the licence to use the Software and Documentation is perpetual and Amplitel has paid all applicable licence fees in full, the licence granted does not terminate even if this Agreement expires or is terminated by either party.

3 DOCUMENTATION

3.1 The Supplier must develop and maintain all Documentation on a regular basis and provide Amplitel with any new or updated Documentation as soon as reasonably practicable.

3.2 Where the Documentation is or becomes inaccurate or incomplete, the Supplier must correct such Documentation and deliver to Amplitel the corrected Documentation within 10 Business Days.

3.3 Supplier may provide or deliver Documentation by notifying Amplitel (where applicable) that the Documentation is available to download.

HARDWARE MODULE

In addition to the Head Terms, the following terms apply only to Hardware Supplies purchased by a Amplitel Group Entity under the Agreement.

1 SUPPLY OF HARDWARE

1.1 The Supplier must deliver the hardware identified in the PO (**Hardware**), together with the relevant Documentation (including any user manuals):

- (a) to the shipping address specified in the PO (**Place of Delivery**);
- (b) on a 'delivered duty paid' (as that term is defined in the 'International Chamber of Commerce INCOTERMS 2020 Edition') basis to the Place of Delivery;
- (c) by the delivery date specified in the PO; and
- (d) only during the relevant delivery schedule approved by Amplitel (**Delivery**).

1.2 The Supplier must obtain a signed receipt of Delivery of such Hardware from an authorised Amplitel representative (including the sighting of relevant identification) and must not leave Hardware unattended at the Place of Delivery without Amplitel's prior written consent.

1.3 Where Amplitel places one or more Purchase Orders for separate hardware that are designed or intended to be used together (**Related Hardware**) the Supplier must not invoice Amplitel the Fees for the Related Hardware until it is entitled under this Agreement to invoice Amplitel for all applicable Related Hardware.

2 PACKING AND LABELLING

2.1 **Packing:** The Supplier must fix a packing list giving full details of the contents of a consignment to the outside of the packaging so that it is easily located and unlikely to be lost or damaged, including the following details: (a) Place of Delivery address; (b) relevant identity numbers (e.g. PO, line item, and manufacturer's part/item numbers or Amplitel's serial/item numbers (where allotted)); (c) item description and quantity; (d) consignment weight in kilograms; (e) any recommended handling instructions; (f) any special safety/dangerous goods details; and (g) dispatch date.

2.2 The Supplier must pack the Hardware:

- (a) securely to prevent damage in transit, storage and distribution, including to protect Hardware against mechanical shock and vibration from transportation, water and humidity, deterioration through excessive heating and drying; fungi, bacteria, pests, static electricity, and changes in atmospheric pressure;
- (b) where they constitute dangerous hardware, so that they are identified, classified and packed in accordance with sections 3, 4, & 5 of the Australian Code for the Transport of Dangerous Goods by Road and Rail (latest edition);
- (c) as individual items or in reasonably and logically sized packs, and where possible, so the weight of individual packs do not exceed 20kg and is compatible with Amplitel's 'Unit of Qty or Issue Unit' as advised by Amplitel;
- (d) where large quantities are supplied and the items are to be issued as single units, with dividers inserted in reasonable and logical breaks to assist in their issue and stocktaking;
- (e) where they contain components that are liable to sustain or cause damage if mounted in the hardware during transportation in a manner so that:
 - (i) such components are removed from the Hardware and packed separately; and
 - (ii) the case containing such components is identified and cross referenced to the Case containing the

- main unit for which they are required;
- (f) in packaging materials that are (i) kept to a minimum and where possible are reusable, recyclable and degradable; (ii) safe and easy to dispose of; (iii) non-corrosive, non-toxic and where possible non-flammable; (iv) compliant with Australian Standard 3537 (latest edition) where packaging materials use solid or corrugated fibreboard boxes; and (v) labelled with plastic recyclable codes; and
- (g) where cases or crates are used and not stacked onto pallets, with external battens secured beneath the case or crate to facilitate handling by standard fork lifts and to allow for block stacking of the Hardware.

3 DOCUMENTATION AND INFORMATION

- 3.1 Documentation:** Where the Documentation is or becomes incomplete or inaccurate, the Supplier must correct such Documentation and deliver to Amplitel the corrected Documentation as soon as reasonably practicable.
- 3.2 HSE information:** If requested by Amplitel, the Supplier must demonstrate to Amplitel that:
- (a) it has taken all reasonably available steps to ensure that the Hardware is designed, constructed or manufactured so as to be, so far as is reasonably practicable and when used in accordance with accompanying information provided to Amplitel, safe and without risks to the health and safety of any person or the environment; and
- (b) to the extent that it is possible to do so, the manufacturer or original Supplier of the Hardware has carried out research, testing and examination necessary to discover and eliminate or minimise any risk to the health or safety of any person or the environment that may arise from the condition of the Hardware.
- 3.3** Before delivery of any Hardware, the Supplier must provide all information required by Law.
- 3.4** The Supplier must ensure that the use of the Hardware in accordance with the information provided by the Supplier will not cause an unreasonable risk to the environment or the health and safety of any person.
- 3.5** If in Amplitel's reasonable opinion the Supplier is or may be in breach of this cl 3.5 then, if directed by Amplitel, the Supplier must provide to Amplitel:
- (a) any supporting HSE information in relation to any aspect of the safety of, and the correctness of, any of the information submitted by the Supplier; and
- (b) verification from a suitably qualified third party, as to the safety of the Hardware.

4 EVOLUTION AND OBSOLESCENCE PROTECTION

- 4.1 Compatibility:** The Supplier must ensure that all Hardware supplied and operating in Amplitel's environment and network, including any spares and inventory, will be compatible with and fully interoperate with previously supplied Hardware.
- 4.2 Current versions:** The Supplier must:
- (a) continue to offer a current version of the Hardware, or equipment that is directly substitutable for the Hardware and that complies with the Specifications, for:
- (i) the commercial life of the Hardware specified in the PO; and
- (ii) at least the current version notice period specified in the PO, after written advice that that version will cease to be offered; and
- (b) during the period in cl 4.2(a)(ii) offer the Hardware or substitute equipment to Amplitel at a price no less favourable to Amplitel than if the Hardware had not been discontinued.

5 QUALITY

- 5.1** The Supplier must:
- (a) comply with all applicable Australian standards with respect to the Hardware;

- (b) ensure that all Hardware, and any repaired, modified or replaced components of Hardware, are:
- (i) new, or of a quality equivalent to new, components; and
- (ii) comply with the Specifications;
- (c) promptly respond to any complaints from Amplitel concerning the Hardware; and
- (d) maintain records relating to failure and repair of Hardware for the longer of:
- (i) the Term of this Agreement; and
- (ii) the Warranty Period,

in a format agreed by the parties, and provide Amplitel with a copy of those records on request by Amplitel.

6 PARTIAL OR DEFECTIVE HARDWARE

- 6.1** Where some or all of the Hardware is not Delivered in compliance with this Agreement or have any Defects (are **Defective**) at the time of Delivery, Amplitel may:
- (a) accept the non-compliant or Defective Hardware, provided that the Supplier remedies such non-compliance or Defect within the timeframe agreed between the parties; or
- (b) reject any non-compliant or Defective Hardware but accept Delivery of the remainder of the Hardware ordered with the Defective Hardware, and either require re-Delivery of the rejected Hardware or terminate this Agreement in part in respect of the rejected Hardware.
- 6.2** For any Hardware that Amplitel rejects:
- (a) Amplitel will return the Hardware to the Supplier at the Supplier's cost; and
- (b) title to and risk in the Hardware will revert to the Supplier when the Hardware is delivered to a carrier for return.
- 6.3** For a period of 5 years from the date of Delivery of that Hardware (unless otherwise specified in the PO), where any Hardware has a Design Defect during the Warranty Period, the Supplier must, (in addition to its other obligations under this Agreement):
- (a) rectify the Design Defect within a reasonable period specified by Amplitel, with rectification to include recovery, repair or replacement, and re-installation of the affected Supplies;
- (b) maintain a register and report on Design Defect Status; and
- (c) notify Amplitel in writing of a Design Defect within 2 Business Days of becoming aware of the Design Defect.
- 6.4** For the purpose of cl 6.3, a **Design Defect** is an attribute in any Hardware Supply that:
- (a) results or is likely to result in a continuing pattern of the same type of failures that is not reasonably expected for the type of Hardware or outside the incidence of random failures contemplated in the Specifications; or
- (b) means use of the Hardware in accordance with this Agreement will create an inherent risk of Amplitel suffering some Loss that is not reasonably expected for the type of Hardware.

7 FORECASTS AND BUFFER STOCK

- 7.1** Amplitel may elect to provide regular forecasts (**Forecasts**) of its anticipated demand for any of the Hardware as set out in the PO.
- 7.2** Any Forecasts Amplitel provides are indicative only, and are not a commitment to purchase the forecast amounts. Amplitel will not be liable for any failure to place orders in accordance with a Forecast.
- 7.3** If Amplitel specifies a quantity of Hardware in the PO that the Supplier must maintain in order to meet Amplitel's anticipated demand for that Hardware (**Buffer Stock**), the Supplier must maintain the Buffer Stock.

MAINTENANCE & SUPPORT MODULE

In addition to the Head Terms, the following terms apply only to Maintenance & Support Supplies purchased by a Amplitel Group Entity under the Agreement.

1 SUPPLY OF MAINTENANCE AND SUPPORT
1.1 Support Period

- (a) During the period set out in the PO (the **Support Period**), the Supplier must perform the maintenance and support obligations set out in the PO and these Module Terms (**Maintenance and Support**) in respect of the Supplies identified in the PO (**Maintained Supplies**) in accordance with this Agreement.
- (b) If a Warranty Period applies to the Maintained Supplies during the Support Period, Maintenance and Support will be provided at no cost to Amplitel until the expiry of that Warranty Period.

1.2 Changes to Maintained Supplies

- (a) Amplitel may: (i) withdraw items from the Maintained Supplies by providing one month's written notice to the Supplier; and (ii) add items to the Maintained Supplies with the Supplier's consent.
- (b) If Maintained Supplies are withdrawn or added pursuant to sub-cl (a) above, then:
 - (i) within ten (10) Business Days of notification, the Supplier will provide an updated list of Maintained Supplies, to be executed by both parties; and
 - (ii) to the extent that the Maintenance and Support is provided on a fixed fee basis, the parties will agree to adjust the applicable Fees by varying the PO to reflect any material changes to Maintained Supplies (including the volume of work required to provide the Maintenance and Support). The adjusted Fees must not reflect any costs reimbursed under cl (c) below.
- (c) Where a PO or SOW for the Maintained Supplies expressly states a committed minimum term (in addition to an expiry or end date) and withdraws items under sub-cl (a) above before the end of that minimum term, Amplitel will reimburse the Supplier's reasonable, unavoidable, substantiated, and properly incurred costs arising directly from the early withdrawal.

2 HELP DESK

2.1 Where specified in the PO, the Supplier must make available a help desk facility (**Help Desk**) to Amplitel to enable:

- (a) the Supplier to respond to requests made to the Help Desk;
- (b) the Supplier to respond to technical and user questions relating to the Maintained Supplies; and
- (c) Amplitel to report the Supplier Defects of which it becomes aware,

each in accordance with the Service Levels.

2.2 When reporting a Defect to the Supplier, Amplitel must provide any information relating to that Defect reasonably requested by the Supplier.

3 REMEDIAL MAINTENANCE

3.1 The Supplier will provide remedial maintenance, including defect rectification in accordance with this clause, to ensure that the Maintained Supplies are fully functional and perform in accordance with the relevant Specifications

3.2 Defects will be classified by Amplitel according to the classifications set out in the table below. Amplitel may reclassify a Defect by notice to the Supplier if the impact or importance of the Defect changes.

Severity Level	Description
Severity 1 Incident - Critical	Customer impacting incident requiring immediate corrective action due to the large number of customers affected or that has major business impact as a result of a network, product or service unavailability or degradation across national or multiple geographical areas or that has the potential to result in damage to Amplitel's brand/reputation or incur a major financial penalty.
Severity 2 Incident - High	Customer impacting incident requiring prompt corrective action due to the large number of customers affected or that has significant business impact as a result of a network, product or service unavailability or degradation across national or multiple geographical areas or that has the potential to result in damage to Amplitel's brand/reputation or incur a major financial penalty.
Severity 3 Incident - Medium	Customer impacting incident requiring a managed restoration where business impact is minimal despite network, product or service unavailability or degradation.
Severity 4 Incident - Low	Customer impacting incident requiring restoration where business/customer impact is manageable despite network, product or service unavailability or degradation.
Service Request (Problem)	All other network activities that have no impact on customers and are not otherwise classified as a severity incident.

3.3 When a Defect is reported to the Supplier, or when the Supplier becomes aware of a Defect, the Supplier must:

- (a) **respond** – notify Amplitel in accordance with the Defect notification procedure agreed between the parties;
- (b) **restore** – restore the Maintained Supplies affected by the Defect (which may include the provision of a workaround or alternative procedure to address the Defect, provided that this does not adversely affect the Maintained Supplies and the Supplier uses its best endeavours to limit the use of workarounds); and
- (c) **rectify** – permanently fix the Defect,

in each case within the timeframes specified in the service levels contained in clause M4 below (**Service Levels**). Each workaround and fix will be deemed to form part of the Supplies, and the Supplier must provide such information about the workaround or fix as reasonably requested by Amplitel.

4 SERVICE LEVELS

4.1 The Supplier must meet or exceed the following service levels in the performance of Maintenance and Support:

Service Levels and Service Credits Points (SCPs)*				
Availability				
Availability	99.99%	SCPs	150	
Defect Rectification				
Severity	Respond	Restore	Rectify	SCPs
Severity 1	30 min	90 min	15 Business Days	250

Severity 2	60 min	3 hours	20 Business Days	150
Severity 3	2 hours	6 hours	30 Business Days	100
Severity 4	2 hours	48 hours	Next Release	50

*SCPs only apply to SaaS Supplies provided under this Agreement

4.2 If the Supplier fails to meet a Service Level in relation to any SaaS Supplies provided under this Agreement, it must pay Amplitel a percentage of the Fees for that month, calculated in accordance with the table below (**Service Credits**):

SCPs in the month	% of Fees for the month
0-200	0%
250-300	5%
Each 50 SCPs thereafter	An additional 1%, up to max of 20%

4.3 The Supplier must measure and report its performance against service levels on a monthly basis, and where requested by Amplitel, attend any meetings to discuss its performance.

5 RELEASES

5.1 This clause 5 applies only to the extent that any Software or firmware forms part of the Maintained Supplies.

5.2 The Supplier must offer any improvements to, or modifications, enhancements or extensions of the existing functionality or performance of any Software or firmware that forms part of the Supplies, including fixes to and updates or new releases of the Software or firmware (each a **Release**) promptly after they become available and, if requested by Amplitel, provide any information relating to that Release reasonably requested by Amplitel.

5.3 If Amplitel notifies the Supplier that it wishes to use a Release:

- (a) the Supplier must deliver the Release at no additional charge or increase to the Fees;
- (b) that Release will be deemed to be part of the Maintained Supplies and provided on the same terms as those Maintained Supplies.

5.4 Amplitel is not obliged to accept a Release. Where Amplitel notifies the Supplier that it does not wish to use an Update, continue to provide Maintenance and Support in relation to the existing Maintained Supplies.

5.5 Supplier must provide Maintenance and Support in respect of (at minimum) the then-current major version, and the two previous major versions, of the Maintained Supplies.

6 REPLACEMENT OF PARTS

6.1 Unless otherwise specified in the PO, Maintenance and Support will include repair and replacement of parts deemed necessary by the Supplier or the manufacturer for the proper performance of the Maintained Supplies, and may include the rebuilding of any Hardware.

6.2 All parts will be furnished on an exchange basis, and will be new standard parts, or of a quality equivalent to new. Unless otherwise agreed between the parties, for original hardware manufacturer items, replaced parts must be certified by the original hardware manufacturer.

6.3 The Supplier warrants that any replacement parts provided during the Support Period will be free of Defects in materials and workmanship for a new Defect Warranty Period starting from the date of replacement.

7 DOCUMENTATION AND RECORD KEEPING

7.1 The Supplier must amend or substitute the Documentation in order to address and adequately explain any implications of:

- (a) any substitution or modification of the Maintained

Supplies; and

- (b) any rectification of an error in the Maintained Supplies, as soon as reasonably practicable and in any event within 10 Business Days of the date of the substitution, modification or rectification.

7.2 The Supplier must keep full records of Maintenance and Support provided, including, for each Defect:

- (a) the time that the Defect was reported or identified;
 - (b) the remedial action taken, including the time each action is taken;
 - (c) any parts replaced or repaired; and
 - (d) the time that the Defect was resolved,
- and must provide Amplitel with a copy of those records on request by Amplitel.

SAAS MODULE

The following terms apply to Software as a Service (SaaS) Supplies purchased by a Amplitel Group Entity under the Agreement.

1 SUPPLY OF SAAS

1.1 The Supplier must provide the cloud hosted software, services and Documentation identified in the PO (**SaaS**) to Amplitel and any other persons (or class of persons) specified in the PO (**Authorised Users**):

- (a) in accordance with this Agreement, including by any required dates set out in the PO; and
- (b) in a way that:
 - (i) allows Amplitel and all the Authorised Users to make full and proper use of the SaaS; and
 - (ii) meets or exceeds all applicable Service Levels in this Agreement, including as set out in the PO.

1.2 The Maintenance and Support Module Terms apply to all services provided as part of the SaaS Supplies, and the Fees for such Maintenance and Support services are included in the SaaS licence Fees. As part of the reporting for SaaS, the Supplier will provide a report containing a high-level “dashboard” illustrating its performance against the Service Levels for each calendar month.

1.3 The Supplier's obligations in relation to Documentation in cl 3.1 of the Software Module Terms apply to all SaaS Documentation.

1.4 The Supplier must provide to (and maintain throughout the PO term) Amplitel and its Authorised Users all applicable account/credential, log in or access codes, passwords, SaaS portals (if any) and any other similar access requirements required by Amplitel and its Authorised Users to make full and proper use of the SaaS and Documentation.

2 LICENCE TO SAAS

2.1 The Supplier grants to Amplitel a non-exclusive, worldwide licence to:

- (a) access and use, and to allow the Authorised Users to access and use, the SaaS (including access to any Supplier portals) and the Documentation for Amplitel's business purposes (including for the purposes of Amplitel Third Parties providing services to Amplitel and the AGES) for the term specified in the PO; and
- (b) make as many copies of the Documentation as Amplitel considers necessary to make full use of the SaaS and for backup, testing, security and archival purposes at no additional charge.

2.2 The licence terms set out in cl 2.1 apply in relation to the SaaS and the Documentation notwithstanding anything to the contrary in the Head Terms.

3 MAJOR UPDATES AND MODIFICATIONS

3.1 The Supplier may make major modifications or updates to the SaaS on at least 20 Business Days' notice to Amplitel only if the Supplier:

- (a) makes available to the Authorised Users at no additional charge all improvements and additions that the Supplier incorporates into its standard SaaS service offering; and
- (b) does not make any major modifications or updates that are likely to detrimentally affect or interrupt the use of the SaaS by Amplitel or an Authorised User, including removing any features or reducing functionality of the SaaS.

4 HOSTING OF THE SAAS

4.1 The Supplier must supply, maintain and keep up-to-date, all hardware, software and network infrastructure (**Infrastructure**) necessary to comply with the Supply of SaaS to Amplitel and Authorised Users under this Module.

4.2 The Supplier must ensure that:

- (a) all commercially available software that is part of the Infrastructure is:
 - (i) maintained at no more than one version behind the then-current version (i.e. version n-1); and
 - (ii) at all times a supported version of that software;
- (b) the Infrastructure is sufficient to allow the simultaneous use of the SaaS by all Authorised Users; and
- (c) the software and hardware identified in the Specifications as the minimum requirements for client systems are sufficient to allow the use of the SaaS by Authorised Users, in a manner that complies with the Specifications and any Service Levels.

4.3 Where

- (a) the SaaS is provided from a shared hardware or software environment; and
- (b) Amplitel notifies the Supplier that segregation of relevant systems, processes or data is required,

then the Supplier must not store any Amplitel Data on the same virtual server instance or physical environment used to store any third party data.

5 USE OF THE SAAS

5.1 Amplitel will:

- (a) use the SaaS for lawful purposes and in accordance with this Agreement;
- (b) use its best endeavours to protect any login credentials for accessing and using the SaaS and Documentation against misuse and promptly notify the Supplier upon becoming aware of any need to suspend or change such credentials; and
- (c) except as permitted under this Agreement or any Law, not rent, lease, reverse engineer, decompile or disassemble the SaaS.

6 POST-TERMINATION OBLIGATIONS

6.1 During: the period from:

- (a) the notice of termination or date of expiry of the Agreement; and
- (b) for a period of 120 days (or such longer period agreed by the parties) following the effective date of expiration or termination of the Agreement,

if requested by Amplitel, the Supplier must:

- (c) grant Amplitel and its Personnel limited access (including any applicable licences) to the SaaS platform (including use of applicable APIs and SaaS portal(s)) solely for purposes of Amplitel's (and/or such nominated third party's) retrieval of Amplitel Data and any other Confidential Information; and
- (d) provide reasonable assistance as requested by Amplitel for the purposes of migrating Amplitel Data from the Supplier's systems onto Amplitel's systems and the systems of any third party nominated by Amplitel. Any migration may be carried out in stages in accordance with a project plan and timetable specified by Amplitel.

7 DATA SECURITY OBLIGATIONS

7.1 In addition to cl 7.8 of the Head Terms, the Supplier must comply with this clause at no additional cost to Amplitel.

7.2 Security patching: When a security patch becomes available, the Supplier must ensure it patches any part of its network that stores or processes Amplitel Data or connects to Amplitel's networks as soon as reasonably practicable.

7.3 Encryption: The Supplier must ensure that:

- (a) all Amplitel Data is encrypted at rest and in transit (and in accordance with Amplitel's encryption standards where such standards are provided by Amplitel on or before the start of this Agreement); and
- (b) all devices accessing, storing or processing Amplitel Data have end point encryption installed.

7.4 Controlled access to systems and logging:

- (a) The Supplier and its Personnel must only access Amplitel Data for the purposes of providing the Supplies;
- (b) the Supplier must keep and maintain accurate and up-to-date records of any access, collection or changes of Amplitel Data by Supplier (**Data Records**), including details of the relevant Supplier Personnel involved and the date and purpose of the access, collection or change; and
- (c) at Amplitel's request, Supplier must provide Amplitel with copies of the Data Records in real time, and if not possible, within 24 hours of real time.

7.5 Data Loss Prevention Capability: The Supplier must have in place appropriate software, systems and processes that are designed to detect and prevent loss of Amplitel Data.**7.6 Back up and data recovery capability:** The Supplier must:

- (a) make backup copies of the Amplitel Data and system configurations at least every 10 Business Days (**Back-Ups**);
- (b) store Back-Ups securely (including in accordance with Amplitel's backup requirements where such requirements are provided by Amplitel on or before the start of this Agreement);
- (c) retain Back-Ups at no additional cost to Amplitel for 42 Days (or longer if requested by Amplitel); and
- (d) provide Amplitel Data to Amplitel if requested.

7.7 Vulnerability detection: Supplier must:

- (a) ensure that any server or computer connected to the Internet that is used to access, store, modify or use Amplitel Data undergoes vulnerability scans:
 - (i) monthly; and
 - (ii) promptly following any system change; and
- (b) immediately fix any vulnerabilities discovered and report such vulnerabilities and fixes to Amplitel as soon as reasonably practicable.

7.8 Erasure of Amplitel Data:

- (a) Amplitel must approve the occurrence and method of any de-identification, destruction or permanent erasure of Amplitel Data under this Agreement in writing.
 - (b) If Supplier must replace data storage infrastructure under this Agreement, it must ensure any Amplitel Data is permanently erased or the infrastructure is destroyed in a secure destruction centre.
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