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## 1. Defined Terms and Interpretation

In this Licence:

- a. **Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth) as given effect under Part XI of the Competition and Consumer Act 2010 (Cth), and under the same or similar provisions of the Fair Trading Act 1987 (SA) or any consolidations, amendments or replacements of any such acts from time to time;
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  - iv. by Licensee Personnel or Licensee interfaced systems which is unique and specific to the Licensee's business and for which was not part of the Software;
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  - ii. a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material assets of the party;
  - iii. a security holder, mortgagee or chargee has taken attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or charge or over or in respect of all or a substantial portion of the party's assets; or
  - iv. an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it;
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  - ii. any application or right to apply for registration of any of the rights referred to in paragraph (i); and
  - iii. all rights of a similar nature to any of the rights in paragraphs (i) and (ii) which may subsist anywhere in the world (including Australia),

- iv. whether or not such rights are registered or capable of being registered;
- f. **Licensee** means any individual or entity that installs, downloads accesses or in any way uses the Software or any part or version of it;
- g. **Permitted Purpose** means use of the Software by the Licensee and its Personnel strictly in accordance with the terms of this Licence for the purposes of the Licensee conducting its ordinary business;
- h. **Personnel** means, in relation to a party, the officers, employees, contractors and agents of the party;
- i. **Product(s)** means products, software and or components to be manufactured or imported by and/or otherwise procured and supplied by Minetec;
- j. **Software** means any code written for the Product such as embedded software (also known as firmware), software residing within an operating system of a Product and application software (also known as software) that resides in network infrastructure; and
- k. **Warranty Statement** means the Minetec's warranty statement in respect of goods and services as outlined at <http://minetec.com.au/warranty/>.

## 2. Licence

- a. Subject always to the terms and conditions of this Licence and the payment of the relevant fees (as advised by Minetec to the Licensee), Minetec grants to the Licensee a perpetual, revocable, non-exclusive, non-transferable, non-sublicensable, limited licence to use the Software for the Permitted Purpose subject to these terms and conditions (**Licence**). To avoid any doubt, this Licence is a single installation licence.
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  - ii. the Licensee presently assigns to Minetec any Intellectual Property Rights which would, apart from this clause 3.b, have been owned by the Licensee; and
  - iii. the Licensee must sign all documents and do all things requested by Minetec in order to assure Minetec's rights in and to the modifications and associated Intellectual Property Rights.

### **4. Ownership and use of Content**

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### **5. Warranties**

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As a condition of the Licensee's use of the Software, the Licensee agrees to indemnify and keep indemnified Minetec and all of its Personnel against all claims (including any third party claims), expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against Minetec or its Personnel) that Minetec or its Personnel may sustain or incur as a result, whether directly or indirectly, of:

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- iii. any loss of, or damage to, any property (including data), or injury to, or death of, any person caused by the Licensee's access to and/or use of the Software in breach of this Licence.

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- a. Subject to clause 7.b, Minetec's liability to the Licensee arising directly or indirectly under or in connection with this Licence, and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:
  - i. Minetec will have no liability whatsoever to the Licensee for any loss, harm, damage, cost or expense (including legal fees) in the nature of special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data);
  - ii. the aggregate of Minetec's liability to the Licensee is otherwise limited to (at the election of Minetec):
    1. an amount not exceeding the cost of the Software; or
    2. rectification of the Software by Minetec; and
  - iii. any liability of Minetec in respect of a claim brought against it by the Licensee (or any third party) is reduced proportionality to the extent that any breach of this Licence or act or omission of the Licensee contributes to or causes the claim.
- b. If a supply by Minetec under this Licence is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in this Licence excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits Minetec to limit its liability, then Minetec's liability shall be limited to:
  - i. in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
  - ii. in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- c. The Licensee acknowledges that, to the extent permitted by law, Minetec does not accept liability for any errors, omissions, expenses, losses or damages caused by:
  - i. the Licensee's access to and/or use of the Software (including for the Permitted Purpose);
  - ii. any failure of the Software; or
  - iii. any loss of or corruption to any data generated or used by the Software.

**8. Conflict of Interest**

Minetec reserves the sole and unencumbered right to ensure that no conflict of interest exists between the Licensee's use of the Software under this Licence and Minetec's core business generally.

**9. Termination rights**

- a. Minetec may terminate the Licence:
  - i. with immediate effect if:
    1. the Licensee commits a material breach of a term of this Licence (which, for the avoidance of doubt, includes any failure by the Licensee to make payment to Minetec as and when required under clause 2.a of this Licence) and does not rectify that breach within 30 days of a notice from Minetec requiring the Licensee to do so; or
    2. the Licensee suffers an Insolvency Event; or
    3. there is a conflict of interest as described in clause 8; or
    4. Licensee fails to comply with an audit as set out in clause 2.h.
  - ii. by the provision of 90 days prior written notice, which notice may be issued at any time and for any reason.
- b. The Licensee may terminate this Licence at any time with immediate effect if Minetec commits a material breach of a term of this Licence and does not rectify that breach within 30 days' notice from the Licensee requiring it to do so.
- c. If this Licence is terminated under the terms of this Licence or for any reason:
  - i. the Licensee must immediately cease using the Software; and
  - ii. at the election of Minetec, the Licensee must on or before the termination date (or such other date as may be agreed in writing):
    1. return to Minetec; and/or
    2. uninstall, delete, destroy and certify in writing to Minetec the uninstallation, deletion, destruction (as well as provide evidence of the same), ofthe Software and all property, systems or material relating to the Software provided to the Licensee by Minetec.
- d. The Licensee acknowledges that:
  - i. termination of the Licence may result in the loss of data held by, generated by or contained in the Software (if any); and
  - ii. Minetec has no obligation to maintain or provide (or return) to the Licensee any material or information held by, generated by or contained in the Software.
- e. The following clauses will survive expiry or termination of this Licence: clause 3, 5, 6, 7, 9.c, 10 and 13.e.

**10. Assignment**

- a. The Licensee must not assign the Licence or any right under this Licence without the prior written consent of Minetec.
- b. Minetec may at any time and in its sole discretion novate this Licence to any related body corporate or to any third party purchaser of all or substantially all of the assets of Minetec

(New Licensor). The Licensee agrees to such novation such that no further consent by the Licensee is required. In the event of a novation by Minetec under this clause:

- i. Minetec and the Licensee will be released from their obligations under this Licence, and their respective rights against one another under this Licence will cease; and
- ii. the novated Licence will be on the same terms and conditions as this Licence, such that the New Licensor and the Licensee will assume the same obligations toward one another and acquire the identical rights against one another as the rights and obligations discharged under paragraph (10.b.i), except that the New Licensor replaces Minetec.

## 11. Disputes

- a. If a dispute arises between Minetec and the Licensee (individually a “party” and together the “parties”) which relates to the Licence and/ or the terms of this Licence (**Dispute**), the parties will use their best endeavours to resolve such Dispute and to act at all times in good faith. In the event a Dispute cannot be resolved, both parties acknowledge and agree to firstly refer the Dispute for resolution to their respective chief executive officers, and in default of agreement between those persons, the following dispute resolution procedures shall be followed.
- b. A party is not entitled to initiate court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this clause 11.
- c. A party claiming that a Dispute has arisen must notify the other party, giving details of the Dispute.
- d. During the seven (7) days after a notice is given under clause 11.c (or longer period agreed in writing by the parties) (**Initial Period**) each party must use its best efforts to resolve the Dispute.
- e. If the parties are unable to resolve the Dispute within the Initial Period, the Dispute must be referred for mediation to:
  - i. a mediator agreed on by both parties; or
  - ii. if the parties are unable to agree on a mediator within five (5) days after the Initial Period, a mediator nominated by the then President of the Law Society of South Australia or his/her nominee or successor.
- f. Unless otherwise agreed, mediation under this clause 11 will be held in South Australia, Australia, at a location agreed by the parties or otherwise nominated by the mediator.
- g. The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- h. Any information or documents disclosed by a party under this clause 11 must be kept confidential and may not be used except to attempt to resolve the Dispute.
- i. Each party must bear its own costs of complying with this clause 11 and the parties must bear equally the costs of any mediator engaged.
- j. If mediation does not resolve the Dispute within 28 days of service of the notice under clause 11.c, then either party may commence court proceedings in respect of the Dispute.

## 12. Notices

- a. Any notice required to be given under this Licence must be in writing and, in addition to any other mode of service permitted by law, will be treated as being duly given if it is:

- i. sent by pre-paid mail to the recipient's nominated address in which case it will be deemed to have been given three (3) days after the date on which it was posted; or
- ii. transmitted by facsimile to the recipient's nominated facsimile number and a correct and complete transmission report is received by the sender, in which case it will be deemed to have been given contemporaneously; or
- iii. sent by email to the recipient's nominated email address in which case it will be deemed to have been given contemporaneously, provided that the recipient confirms receipt of the email.

### **13. Miscellaneous**

- a. This Licence constitutes the entire agreement between the parties in connection with the Licence and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- b. A term or part of a term of this Licence that is illegal or unenforceable may be severed from this Licence and the remaining terms or parts of the terms of this Licence continue in force.
- c. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- d. Except where this Licence expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.
- e. This Licence is governed by the law of South Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and the South Australian registry of the Federal Court of Australia.