

## Service and Maintenance Terms and Conditions

AllightSykes Pty Ltd ABN 35 053 434 807 of 12 Hoskins Road, Landsdale WA (AllightSykes)

### 1 Service of Equipment

#### 1.1 Terms

All Services are subject to the terms and conditions of this document ("Terms"). The terms or conditions of any other document (including the terms and conditions on any Customer document or purchase order) are not valid or binding. These Terms prevail over any of the Customer's terms and conditions.

#### 1.2 Services

(a) During the Period AllightSykes will provide the Services to the Customer for the Equipment at the Work Site and the Customer will pay for those Services in accordance with clause 5. The Customer and AllightSykes will sign the Quotation which will evidence their agreement based on these Terms ("Agreement").

(b) The Customer must make the Equipment available to AllightSykes Personnel at the Work Site on the Service Dates to allow the Services to be carried out.

(c) The Excluded Services are not included in the Agreement. Where the Customer requests AllightSykes to provide any of the Excluded Services for the Equipment, AllightSykes will notify the Customer of the fees for performing the Excluded Services. If the Customer requests and AllightSykes agrees, AllightSykes (or its subcontractors) will provide the Excluded Services to the Customer and the Customer must pay the agreed fees for those Excluded Services.

(d) If the Customer requests and AllightSykes agrees, AllightSykes (or its subcontractors) will provide the Additional Services to the Customer. Customer must pay to AllightSykes fees for those Additional Services at the Hourly Rate.

### 2 Period

#### 2.1 Initial Period

The Agreement commences on the Commencement Date and, unless terminated sooner in accordance with these Terms, will continue in force until the expiration of the Period.

#### 2.2 Extension of Period

The Agreement will automatically be renewed at the expiration of each Period for a further term of twelve (12) months on the same terms and conditions contained in these Terms, unless a party gives the other party written notice at least thirty (30) days prior to the expiration of the then current Period that it does not wish for the Agreement to be renewed.

### 3 Standard of Services and Access

(a) AllightSykes will perform the Services in accordance with these Terms and in a good and workmanlike manner, in accordance with the level of care and skill required or reasonably expected under best industry practice for work of a similar nature to the Services.

(b) AllightSykes will ensure that AllightSykes Personnel working on the Work Site comply at all times with the relevant occupational health and safety and environmental regulations applicable to the Work Site.

(c) Where the Work Site is not AllightSykes' premises, the Customer will provide, at its cost, all AllightSykes Personnel attending the Work Site with all necessary Work Site training and induction, including without limitation, occupational health and safety and environmental training before the carrying out of the Services at the Work Site. AllightSykes will ensure that AllightSykes Personnel working on the Work Site comply at all times with the occupational health and safety and environmental training.

(d) Where the Work Site is not AllightSykes' premises, the Customer must permit AllightSykes Personnel access to the Work Site and will make available to AllightSykes such part or parts of the Work Site as are necessary to allow AllightSykes to properly perform the Services and comply with its obligations under these Terms. AllightSykes will ensure that movement of AllightSykes Personnel and equipment is restricted at all times to such areas of the Work Site as directed by the Customer from time to time.

### 4 Fee

(a) In consideration of AllightSykes carrying out the Services, the Customer will pay AllightSykes the Fee in accordance with these Terms.

(b) The Customer must also pay AllightSykes for any Excluded Services or Additional Services performed at the Hourly Rate or agreed fee.

(c) If the Equipment is located at a place other than the Work Site, any additional costs of AllightSykes in performing the Services and travelling to the location of the Equipment will be charged to the Customer at the Hourly Rate.

(d) Unless expressly included, the consideration for any taxable supply made under or in connection with these Terms does not include GST. The Customer must pay the GST relating to any taxable supply made by AllightSykes at the same time as it must pay for the taxable supply under these Terms.

### 5 Payment

(a) Unless otherwise agreed between the parties, prior to each Service Date, AllightSykes will invoice the Customer for the Services to be performed at the next Service Date. AllightSykes will also include on the invoice any Additional Services or Excluded Services provided at the previous Service Date.

(b) Unless clause 5(c) applies, the Customer must pay the Fee on the invoice, and any amounts payable under clause 4(b) prior to the Service Date referred to on the AllightSykes' invoice. AllightSykes will not be under any obligation to perform the Services until the invoice is paid.

(c) If the Customer has a credit account with AllightSykes, and AllightSykes has approved the Customer's credit for the Services, the Customer must pay to AllightSykes all amounts in each invoice from AllightSykes within 30 days after the date of the invoice, unless otherwise agreed in writing by AllightSykes.

(d) If the Services are performed outside Australia, the Customer must pay all amounts due under these Terms by irrevocable letter of credit confirmed by an Australian bank.

(e) The Customer must pay all amounts due under these Terms in Australian dollars, in full, without any set-off or deduction.

(f) If the Customer fails to make any payment by the due date set out in this clause 5, then: (1) it must pay to AllightSykes on demand interest on the amount outstanding from the day payment was due until the day it is paid, at the ANZ Business Overdraft Indicator Lending Rate (or its replacement) plus 2%, accruing daily; and (2) AllightSykes may retain possession of any Equipment and suspend performance of any further Services until payment is received; and (3) AllightSykes may terminate the Agreement under clause 14.

### 6 Equipment

(a) During the Period, the Customer must operate the Equipment strictly in accordance with:

- (i) any specifications and any operation and maintenance manual provided by AllightSykes or the original Equipment manufacturer (**Manufacturer**), including without limitation the Manufacturer's rated capacity;
- (ii) any reasonable directions from AllightSykes or the Manufacturer in respect to operating the Equipment, based on AllightSykes' and the Manufacturer's

experience in operating and maintaining similar machines; and

(iii) good operating and engineering practice which allows for the achievement of optimum productivity commensurate with minimal machine distress.

(b) During the Period, the Customer must ensure that all Customer personnel operating and maintaining the Equipment are appropriately trained so as to ensure that the standards set out in this clause 6 are maintained, and that the other terms and conditions of these Terms are satisfied.

(c) The Customer must ensure that the Equipment is stored in a safe and secure location.

(d) During the Period, the Customer must not, without the prior written consent of AllightSykes modify or install parts or attachments to the Equipment which are not approved by AllightSykes or the Manufacturer. If the Customer breaches this clause 6, AllightSykes may increase the Fee by such amount as is necessary to take into consideration any increased service costs as a result of the Customer's breach of this clause 6.

(e) In the event that the Customer has not complied with clauses (a) to (d) above and, as a result AllightSykes deems the Equipment unserviceable, AllightSykes retains the right to refuse to service the Equipment.

## 7 Timing of Services

(a) AllightSykes will provide the Services on the Service Dates.

(b) If the parties agree, the Customer may request a change to the Service Dates on providing AllightSykes with at least 5 days' notice of any change request.

(c) The Customer must notify AllightSykes of any breakdown of the Equipment within 24 hours.

(d) AllightSykes will respond to breakdowns in accordance with any emergency breakdown terms included in the Quotation or as soon as a member of AllightSykes Personnel is available.

(e) If additional damage would occur to the Equipment because of a breakdown or some other operational issue, the Customer must immediately stop using the Equipment.

## 8 Exclusions

In addition to the Excluded Services, AllightSykes shall not be responsible for:

(a) any repairs or services required as a result of vandalism, negligence, operator abuse, accidents, collisions, riots, strikes, civil disturbance, or floods;

(b) any maintenance or repair work carried out to the Equipment by a third party during the Period; and

(c) any damage caused to the Equipment caused by the Customer operating the Equipment in breach of clause 6 or 7(e).

## 9 Confidential Information

(a) The Customer must keep confidential all of AllightSykes' Confidential Information, and not disclose it except with AllightSykes' prior written consent.

(b) Nothing in these Terms prohibits disclosure by a party of information which is in the public domain (other than as a wrongful act of that party); or required to be disclosed by law or any government agency having authority over a party, but before making any such disclosure, the party must to the extent reasonably possible, provide the other party with sufficient notice to enable it to seek a protective order or other remedy.

(c) AllightSykes may disclose the Customer's information to its related bodies corporate.

## 10 Warranty

(a) AllightSykes will provide the Services Warranty in relation to its Services under these Terms, provided that the Customer has complied with the warranty conditions in the Services Warranty.

(b) If the manufacturer of any component part of any parts used in the Services provides the Customer a warranty for that component part, the terms of that warranty take precedence over any warranty provided by AllightSykes.

## 11 Customer's indemnity

The Customer indemnifies AllightSykes, its directors, officers and employees (**indemnified persons**), and must keep them indemnified, against any Loss an indemnified person suffers, incurs or is liable for arising from or in connection with any act, negligence or default of the Customer or the Customer's breach of these Terms.

## 12 Liability

### 12.1 Non-excludable obligations

(a) Nothing in these Terms operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute if to do so would: (1) contravene the statute; or (2) cause any of these Terms to be void (**Non-excludable Obligation**).

(b) Subject to clause 12(c), AllightSykes' liability for a failure to comply with any Non-excludable Obligation is limited to: (1) in the case of services, the cost (or payment of the cost) of supplying the services again; and (2) in the case of goods, the cost (or payment of the cost) of replacing the goods, supplying equivalent goods or having the goods repaired.

(c) Clause 12(b) does not apply to: (1) a guarantee as to title, encumbrances or quiet possession under Australian Consumer Law; or (2) goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption. AllightSykes liability in respect of the matters mentioned in this clause is not limited by these Terms.

### 12.2 Other liability

(a) Except in relation to Non-excludable Obligations, and any warranty expressly provided by AllightSykes to the Customer, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under these Terms.

(b) Except in relation to Non-excludable Obligations, AllightSykes' liability arising directly or indirectly in connection with these Terms 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: (1) AllightSykes is not liable for any indirect or consequential losses or any loss of revenue, loss of profit, loss of business opportunity, economic loss, loss of data or systems, loss of use, payment of liquidated sums, penalties or damages under any agreement sustained by the Customer or any other person arising from or in connection with these Terms; and (2) AllightSykes' total aggregate liability under or in any way connected with these Terms is limited to 10% of the Fee.

## 13 Force majeure

If any reason outside a party's reasonable control prevents or delays performance of any obligation under these Terms, that obligation is suspended while that reason continues. If the reason continues for 3 months, the other party may cancel the Agreement immediately by notice. This clause does not apply to an obligation to pay money.

## 14 Termination

- (a) Either party may terminate the Agreement by giving at least 30 days written notice to the other party.
- (b) Either party may terminate the Agreement without notice if the other party becomes insolvent.
- (c) In addition to, and without limiting, any other remedy or right which AllightSykes has, AllightSykes may terminate the Agreement immediately by notice to the Customer if: (1) the Customer breaches these Terms; (2) the Customer closes or disposes of all or a substantial part of its business; or (3) there is a 'change of control' of the Customer, for the purposes of the Corporations Act 2001.
- (d) If the Agreement is terminated, then the Customer must:
- (1) within 14 days after termination, pay AllightSykes any amounts it owes AllightSykes;
  - (2) unless cancellation is under clause 13 or by exercise of the Customer's rights under the Australian Consumer Law, pay to AllightSykes on demand all costs and expenses incurred by AllightSykes (including labour, materials, service or administration time) in relation to performing the Agreement to the date of termination; and
  - (3) at AllightSykes' election, return or destroy all Confidential Information of AllightSykes.

## 15 Insurance

The Customer must maintain the following insurances and any other insurances set out in the Quotation with a reputable insurer for the amounts set out in the Quotation:

- (a) workers' compensation and employer's indemnity insurance, which complies with the relevant laws covering all claims and liabilities under any statute and at common law (where applicable) for the death of or injury to:
- (i) any person employed by the Customer or any of its sub-contractors in connection with these Terms; and
  - (ii) any person who is a worker of the Customer or any of their sub-contractors in connection with these Terms and who may be deemed under statute to be a worker of the Customer.
- (b) motor vehicle insurance covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with these Terms, including:
- (i) insurance that is compulsory under applicable laws governing the use of motor vehicles and liability for personal injury or death; and
  - (ii) liability insurance for third party property damage.
- (c) public liability insurance.

The Customer must ensure the insurance notes AllightSykes as an interested party. The Customer must, upon request, provide AllightSykes with certificates of currency for the insurance. If the Customer does not effect or maintain the insurance, or provide AllightSykes with certificates of currency on request, AllightSykes may at its option obtain or maintain the insurance and recover (or set-off) the cost of doing so from the Customer.

## 16 General

- (a) Any notice or other communication under these Terms and the Agreement must be in writing and sent to the address advised by the other party from time to time. Notices sent by post are regarded as delivered 4 days from and including the date of posting.
- (b) The Agreement is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.
- (c) A variation to these Terms and the Agreement must be in writing and signed by the parties.

(d) The Agreement replaces all previous agreements between the parties in respect of the Services.

(e) AllightSykes may subcontract any of its obligations, or assign its rights and obligations under these Terms without the Customer's consent. The Customer may not assign any of its rights or obligations under these Terms without AllightSykes' prior written consent, which AllightSykes may withhold at its absolute discretion.

## 17 Definitions

The meanings of words used in these Terms are set out below:

**Additional Services** means any additional services agreed in writing by AllightSykes and the Customer from time to time.

**AllightSykes Personnel** means the AllightSykes service personnel providing the Services and other services under these Terms.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 2010* (WA).

**Commencement Date** means the commencement date set out in the Quotation.

**Confidential Information** means any information concerning a party's business including but not limited to Equipment, work processes, employees, customers, services, technical information, intellectual property, ideas, designs, and programs.

**Customer** means the customer named in the Quotation.

**Equipment** means the equipment set out in the Quotation.

**Excluded Services** means the excluded services set out in the Quotation.

**Fee** means the fee set out in the Quotation for the provision of the Services.

**GST** means any applicable goods and services tax or value-added tax.

**Hourly Rate** means the rates set out in the Quotation.

**Loss** means any claim, action, damage, loss, liability, cost, charge or expense a party pays suffers, incurs or is liable for.

**Non-excludable Obligation** is defined in clause 12.1(a).

**Period** means the term of the Agreement set out in the Quotation.

**Quotation** means the AllightSykes Pty Ltd Service Quotation setting out the quotation for the servicing and maintenance of the Customer's Equipment.

**Service Dates** means the service dates set out in the Quotation at which AllightSykes will perform the Services.

**Services** means the maintenance services, including any Additional Services, in relation to the Equipment listed in the Quotation (excluding the Excluded Services listed in the Quotation) to be provided by AllightSykes to the Customer pursuant to these Terms.

**Services Warranty** means AllightSykes services warranty provided with or attached to these Terms.

**Work Site** means the work site location specified in the Quotation.