

MEMBERSHIP AGREEMENT

This document (**Agreement**) is between Sydney MRP III Pty Limited ABN 11 060 096 960 trading as Supply Clusters of Australia of Level 1 13-15 Bridge Street Rydalmere NSW 2116 (**Supply Clusters**) and the member (**Member**) as displayed in the Supply Clusters portal and set out in the execution panel,

together the "**Parties**", and individually a "**Party**".

Background

- A. Supply Clusters have negotiated agreements with various Suppliers, in relation to the supply of goods and services, for the exclusive benefit of members.
- B. The Member wishes to take advantage of these negotiated agreements and Supply Clusters agrees to make these available to the Member in accordance with the terms and conditions set out below.

Agreement

1. TERM OF MEMBERSHIP AND FEE

This Agreement commences on the date of acceptance of these terms and conditions by the Member (**Commencement Date**) and continues for the initial term which is 12 months plus the number of days remaining in the final and incomplete month (i.e. until the last day of that month) unless otherwise agreed in writing. On the Commencement Date, the Member must pay the annual Member Fee as set out in a valid tax invoice issued by Supply Clusters in accordance with *A New Tax System (Goods and Services) Act 1999* (Cth). At the expiry of the initial term, this Agreement will automatically renew upon payment of the Member Fee for an additional period of 12 months unless otherwise agreed in writing. However, the Member may terminate this Agreement at any time by providing notice in writing to Supply Clusters.

2. BENEFIT AND USE OF THE MEMBERSHIP

During the term of this Agreement, the Member will be provided with access to a list of Suppliers with whom Supply Clusters have negotiated agreements, provided by Supply Clusters and amended from time to time (**Suppliers**). The Member and any subsidiaries or related corporate entities of the Member (**Member Parties**) are entitled to purchase goods and services from Suppliers under this Agreement and access relevant member discounts, cashbacks and/or rebates in relation to such purchases, where applicable to their membership level as set out in the tax invoice issued by Supply Clusters.

This Agreement does not create any obligation on the Member to use the services offered by Supply Clusters or by its recommended Suppliers. Any transaction between the Member (or the Member Parties) and a Supplier will be on terms agreed between the Member (or the Member Parties) and the Supplier.

3. DATA

Member data is important to Supply Clusters and it is collected so that Supply Clusters may:

- a) provide the Member with business intelligence reports and analytical information in relation to the Member's expenditure; and
- b) validate member rebates, discounts and cashbacks that may be generated, where applicable.

Accordingly, the Member authorises and directs:

- i. Supply Clusters to collect all information and data in relation to any purchase or transaction made by a Member or the Member Parties from any Supplier under this Agreement. The information and data includes but is not limited to invoices; credit notes; debit notes; sales orders; trade notes or other sales documents related to purchases at the summary and detail level; master data relevant to sales and product spend analysis; pricing data relevant to line item spend including comparison to list price or other relevant benchmark pricing to assist in providing analysis of savings;
- ii. the Suppliers to release such data and information to Supply Clusters; and
- iii. Supply Clusters to show any Supplier this Agreement and specifically the authorisations and directions contained in this clause.

4. CONFIDENTIALITY

- a. For the purposes of this clause, Confidential Information of a Party means:
- i. any information that is confidential or commercially sensitive, specifically identified by a Party as confidential or commercially sensitive, or that the recipient of the information knows or ought to know is confidential or commercially sensitive;
 - ii. information relating to product and services pricing, discounts, cashbacks and member rebate pricing and structuring under this Agreement;
 - iii. information relating to any of the Supply Clusters Supplier agreements or Suppliers, including pricing and commercial terms, agreement terms and conditions, proposals, quotations and offers provided to the Member;
 - iv. the contents of any printed material stored under this Agreement;
 - v. all reports and data analysis provided to the Member by Supply Clusters;
 - vi. any sales, product and services data Supply Clusters has collected on behalf of the Member from Suppliers;
 - vii. any marketing or business plans of the Member or Supply Clusters;
 - viii. all tender information;
 - ix. financial and budget information;
 - x. existing or proposed computer systems and programmes; and
 - xi. any similar information relating to internal operations, business plans, policies and practices, but does not include information which is in the public domain.
- b. Each Party undertakes to each other to keep and ensure that all its officers, employees, agents, contractors and personnel (**Personnel**) keep confidential, and not disclose to any third party the Confidential Information of the other Party unless the other Party otherwise consents in writing, or where the recipient Party is compelled by law provided the other Party is given written notice prior to disclosure and the minimum amount of Confidential Information is disclosed. For the avoidance of doubt, Supply Clusters will keep confidential member data provided by the Member, and will not disclose any such data to other Members, Suppliers or other third parties, without the Member's consent, except to the extent that such data is aggregated or de-identified.
- c. The Member undertakes:
- i. to protect the Confidential Information of Supply Clusters with utmost care, and only disclose the Confidential Information of Supply Clusters to its employees or subcontractors who have a need to know and who are subject to confidentiality obligations substantially similar to those contained in this Agreement;
 - ii. not to, directly or indirectly, use or take advantage of the Confidential Information of Supply Clusters and its Suppliers, to compete with Supply Clusters; and
 - iii. not to use any of the Confidential Information of Supply Clusters to obtain for itself or anyone else, any benefit, right or privilege that would not have been available but for the Member having access to the Confidential Information.

5. PRIVACY

Supply Clusters is committed to protecting the privacy of the Member's Personnel. We observe a privacy policy under which we protect and manage any personal information obtained from the Member's Personnel when we work with a Member. Details of our privacy policy may be obtained from our website or by contacting us.

When Supply Clusters receives reports from its Suppliers in connection with Member spend (**Supplier Reports**) Supply Clusters may receive limited personal information about the Member's Personnel such as an individual's name and email address (**Data**). A copy of this Data is stored in a secure location for no more than thirty (30) days by Supply Clusters during which time it de-identifies all Supplier Reports to remove Data before generating and providing relevant spend reports to Members. Supply Clusters does not use, disclose or otherwise store any Data for any purpose.

Supply Clusters will inform the Member if there has been, or there is a risk of, an incident that meets the definition of an eligible data breach under the Privacy Act 1988 (Cth) (the **Act**). Supply Clusters will take any reasonable steps required of it under the Act in connection with an eligible data breach.

6. MODERN SLAVERY

In performing its obligations under this Agreement, Supply Clusters shall:

- a) comply with all applicable anti-slavery and human trafficking laws and regulations including but not limited to the Modern Slavery Act 2018; and
- b) not engage in any activity, practice or conduct that would constitute an offence under:
 - i. the Modern Slavery Act 2018; or
 - ii. Division 270 or Division 271 of the Schedule to the Criminal Code Act 1995 (Cth) if such activity, practice or conduct were carried out in Australia; and
- c) include in its agreements with its suppliers and subcontractors executed on or after 1st January 2021 anti-slavery and human trafficking provisions that are similar in intent as those set out in this clause.

Supply Clusters represents and warrants that neither Supply Clusters nor any of its officers, employees or agents have been convicted of any offence involving slavery and human trafficking.

7. MEMBER REBATES

- a) If the Member purchases supplies through any of the Suppliers, and the Member holds a level of membership that provides access to rebates, then the Member may be entitled to rebates that have been negotiated with the Suppliers in respect of purchases made by that Member (**Member Rebates**).
- b) Supply Clusters will collect and administer the Member Rebates as follows:
 - i. the Member will be entitled to receive 50% of any Member Rebates that are collected by Supply Clusters from the relevant Suppliers;
 - ii. Member Rebates payable to the Member will be calculated each 6 months in respect of any Member Rebates received by Supply Clusters during the previous 6 month period (**Calculation Period**), and will be paid into the Member's nominated bank account as set out in subclause e).
 - iii. Supply Cluster's share of Member Rebates will be capped at \$10,000 per 6 month Calculation Period. For clarity, during each 6 month Calculation Period, the Member will be entitled to 100% of the Member Rebate for every Member Rebate dollar generated over \$20,000 in a Calculation Period;
 - iv. the six month Calculation Periods are:
 - i. April – September inclusive, and
 - ii. October – March inclusive.
- c) Supply Clusters reserves the right to alter the Calculation Period by notice in writing, in which case it will notify the Member at least 60 days prior to implementing any such change, and clause 12. c) will apply.
- d) Supply Clusters reserves the right to alter the share of Member Rebates by notice in writing, in which case it will notify the Member at least 60 days prior to implementing any such change, and clause 12. c) will apply.
- e) Subject to subclause f), and where the relevant Suppliers have complied with all of their obligations to provide data and rebate payments to Supply Clusters, Supply Clusters will process to the Member's nominated bank account any applicable Member Rebates within 60 days from the end of each 6 month Calculation Period;
- f) The Member acknowledges and agrees that Supply Cluster's ability to pay the Member Rebates within the time period set out in subclause e) above, and at all, is dependent on:
 - i. each Supplier's timely provision of both data and Member Rebate payments. Supply Clusters is not responsible for any resulting delays in the payment of Member Rebates, or resulting failure in the payment of Member Rebates;
 - ii. the Member providing its nominated bank account to Supply Clusters within 12 months from the end of the six month Calculation Period. In the event that a nominated bank account is not provided within 12 months from the end of the six month Calculation Period the right to the rebate will be forfeited and will not be paid by Supply Clusters unless otherwise agreed in writing between the Parties; and
 - iii. the Member paying all valid invoices of each relevant Supplier within the payment terms negotiated between the Supplier and the Member. Supply Clusters reserves the right to withhold payment and not pay any Member Rebates accrued to the Member in any six Month Calculation Period where the Member has not paid all invoices in that six Month Calculation Period within those trading terms for any relevant Supplier; and
- g) Supply Clusters reserves the right to offset against Member Rebates accrued to the Member any Member Fee that is unpaid by the Member.

8. CASHBACKS

The Member may be entitled to cashback payments in relation to purchases made by the Member from relevant Suppliers. Supply Clusters reserves the right to withhold payment of cashback payments or offset against cashback payments due to the Member if the Member fails to pay any Member Fee.

Where cashback payments are applicable, and the relevant Suppliers have complied with all of their obligations to provide data and cashback payments to Supply Clusters, the administration and collection of those cashback payments will be completed by Supply Clusters as follows:

- (a) cashback payments owing to the Member will be calculated at the end of each month and will accordingly be paid into the Member's nominated bank account within 30 days from the end of each month; and
- (b) the Member acknowledges and agrees that Supply Clusters' ability to pay the cashback payments within the time period set out in subclause (a) above, and at all, is dependent on:
 - i. each Supplier's timely provision of both data and cashback payments. Supply Clusters is not responsible for any resulting delays in the payment of cashbacks, or resulting failure in the payment of cash backs;
 - ii. the Member providing its nominated bank account to Supply Clusters within 12 months from the end of the relevant month. In the event that a nominated bank account is not provided within 12 months from the end of the relevant month the cashback will be forfeited and will not be paid by Supply Clusters, unless otherwise agreed in writing between the Parties; and
 - iii. the Member paying all valid invoices of each relevant Supplier within the payment terms negotiated between the Supplier and the Member. Supply Clusters reserves the right to withhold payment and not pay any cashback payments accrued to the Member in any relevant month where the Member has not paid all invoices for the relevant month in accordance with the relevant Supplier trading terms.

9. RECIPIENT CREATED TAX INVOICE

The Parties agree that Member Rebates and cashbacks (where either or both are applicable) are taxable supplies within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (Cth). Unless otherwise agreed in writing the Parties agree that Supply Clusters (**Recipient**) may issue recipient created tax invoices (**RCTI**) to the Member and the Member (**Supplier**) will not issue tax invoices in respect of these supplies. The Supplier acknowledges that it is registered for GST and that it will notify the Recipient if it ceases to be registered. The Recipient acknowledges that it is registered for GST and that it will notify the Supplier if it ceases to be registered for GST.

10. ACTIVE MEMBER

The Member and Member Parties are entitled to access the services provided by Supply Clusters under this Agreement, including each relevant supplier agreement pricing, discounts, cashbacks and Member Rebates where applicable, during the term of this Agreement if the Member has maintained its membership in accordance with this Agreement and paid all relevant Supplier's invoices in accordance with the Supplier's terms. If the Member has not maintained its membership payments, or if it has not paid all relevant Supplier's invoices in accordance with the Supplier's terms, then the Member and the Member Parties will not be entitled to access Supply Cluster's services or supplier agreement pricing, discounts, cashbacks or Member Rebates (where applicable). The Member must keep its contact and banking details current at all times by logging into and updating the details in the member portal on www.supplyclusters.com.au. The Member agrees that Supply Clusters shall not be held responsible for any loss or damage that may be suffered by the Member resulting from the Member's failure to provide valid and accurate banking details in the member portal.

11. DISCLAIMER

Supply Clusters does not endorse, sponsor or approve of any of the Suppliers or the Suppliers' goods or services, and the Member must make their own enquiries of any Supplier. Supply Clusters makes no representations or warranties of any kind, express or implied, about any of the following: the reliability, suitability or availability with respect to the goods or services provided by a Supplier for any purpose; the pricing of any of the Supplier's goods or services; the availability and/or payment where applicable of rebates, discounts or cashbacks by a Supplier; or the reputation and financial viability of a Supplier. Any use of the goods and services provided by the Supplier is strictly at the Member's own risk. Supply Clusters will use reasonable endeavours to analyse data from Suppliers, but is not responsible to the Member for any inaccuracies in the Supplier's data or the payment or calculation of rebates, discounts and cashbacks where applicable by the Suppliers.

The Member does not provide any warranties or make any representations express or implied in relation to its likely forecast spend on any goods or services.

12. GENERAL PROVISIONS

- a) This Agreement contains the entire agreement between the Parties about its subject matter and supersedes all prior discussions, representations, agreements and understandings between the Parties in connection with the subject matter.
- b) Supply Clusters may amend this Agreement at any time, and any such amendments will be posted on the website at www.supplyclusters.com.au in the member portal.
- c) If the Member does not accept such amendments, or if this Agreement otherwise permits, it must notify Supply Clusters in writing by sending an email to legal@supplyclusters.com.au stating that it does not accept the amendments and this Agreement will terminate with effect from when Supply Clusters receives such written notification.
- d) Neither Party has the authority to bind the other Party.
- e) This Agreement may be signed electronically and the Parties agree to be bound by their electronic signatures.
- f) This Agreement is governed by the laws of New South Wales, and the Parties submit to the exclusive jurisdiction of the courts of that state.