

AMCAS Subscriber Licence Terms and Conditions

1. ALC obligations

In consideration of the payment of the Licence Fee by the Subscriber to ALC, ALC:

- (a) grants the Subscriber a limited, non-exclusive, non-transferable licence to use the Audit Tool on the terms of this Licence Agreement;
- (b) will provide access to ALC's list of Auditors;
- (c) will provide assistance to the Subscriber in tracking its Audit process, including providing reminders for Entry Audits; Compliance Audits, Corrective Actions and Triggered Audits; and
- (d) will provide a certificate of satisfactory completion of an Audit in accordance with advice received from the relevant Auditor.

2. Subscriber obligations

The Subscriber:

- (a) must pay the Licence Fee within the time specified for payment in ALC's invoice;
- (b) acknowledges ALC's title to and copyright in the Audit Tool, and agrees to use the Audit Tool strictly in accordance with the terms of this Licence Agreement;
- (c) acknowledges that the Audit Tool comprises valuable intellectual property of ALC and undertakes to keep the Audit Tool confidential and not disclose its contents to any third party;
- (d) may only copy the Audit Tool for the purpose of an Audit;
- (e) acknowledges that ALC is not responsible for the expertise, experience or competency of the Auditors, and releases ALC from any liability in connection with the standard to which any Audit is conducted, and any loss or damage arising;
- (f) if a Non-Signatory, must undergo an Entry Audit within three months of submitting its Application and paying the Licence Fee, and acknowledges that satisfactory completion of the Entry Audit is a condition precedent for the coming into effect of this Licence Agreement (other than this clause 1(f)) - if the Subscriber fails satisfactorily to complete an Entry Audit as required by this clause, this Licence Agreement may be terminated by ALC and ALC will be under no obligation to refund any part of the Licence Fee;
- (g) must undertake:
 - (i) if an Existing Signatory, an initial Compliance Audit within 12 months of submitting its Application and paying the Licence Fee, and subsequent Compliance Audits at least every two years;

- (ii) if a Non-Signatory, an initial Compliance Audit within 12 months of the Subscriber's Entry Audit, and thereafter at least every two years; and
 - (iii) in all cases, Corrective Actions and Triggered Audits as and when required in accordance with the AMCAS Audit Framework;
- (h) must not:
 - (i) engage the same Auditor more than twice in succession at any one Facility;
 - (ii) engage an Auditor that has provided consultancy services to the Subscriber within the prior two years; and
 - (iii) seek to engage an Auditor that has undertaken an Audit for the Subscriber, to assist or advise the Subscriber in relation to Corrective Actions arising from that Audit;
- (i) must pay the agreed fees to any Auditor in accordance with the Auditor's terms and conditions, and must not engage in any conduct which may constitute an improper attempt to influence the outcome of an Audit;
- (j) must conduct appropriate site induction processes for Auditors, and take all HSE measures as required by Law; and
- (k) must maintain at all times during the Term, such occupier's and general liability insurances as a prudent business in the situation of the Subscriber would hold.

3. Corrective Actions

- (a) If an Auditor identifies Corrective Actions that must be taken by the Subscriber in order to comply with the Master Code, the Subscriber must complete those Corrective Actions within the time specified by the Auditor, or if no time is specified, within 28 days of the Auditor's notification to the Subscriber.
- (b) Until the Subscriber has completed the Corrective Actions to the Auditor's satisfaction ALC is not obliged to issue a certificate under clause 1(d).
- (c) If the Subscriber has not completed the Corrective Actions within 90 days of the audit date, the Subscriber must recommence the Audit process from the beginning in order to obtain a certificate from ALC under clause 1(d).

4. Term

This Licence Agreement comes into effect on the Commencement Date and ends one year after the Commencement Date unless terminated earlier in accordance with clause 5.

5. Termination

If the Subscriber commits a material breach of this Licence Agreement and does not remedy such breach within seven days following the day on which ALC gives to the Subscriber written notice requiring such remedy, then ALC may terminate this Licence Agreement and revoke the Licence immediately by notice in writing to the Subscriber. The Subscriber will not in those circumstances be entitled to a refund of all or any part of the Licence Fee. This clause does not limit any other rights or remedies ALC may have.

6. Liability and indemnity

The Subscriber:

- (a) releases ALC, to the maximum extent legally possible, from all liability in connection with any loss or damage sustained by the Subscriber arising from or in connection with this Licence Agreement, the Audit Tool, any warranties or guarantees imposed by statute or common law, an Auditor or an Audit, and to the extent liability cannot lawfully be excluded, agrees that ALC's liability for such loss and damage will be limited to the amount of the Licence Fee, payable in respect of each cause of action or claim; and
- (b) indemnifies ALC for any third party claims made against ALC arising from or in connection with this Licence Agreement, the Audit Tool, an Auditor or an Audit.

7. Confidentiality

The Subscriber:

- (a) must keep this Licence Agreement and the Audit Tool confidential, and not disclose any information from or about this Licence Agreement and the Audit Tool to any third party unless and except to the extent that disclosure:
 - (i) is permitted by this Licence Agreement;
 - (ii) is required by law;
 - (iii) is given with the written consent of each party to whom the information is confidential;
 - (iv) relates to information that is otherwise lawfully publicly available without breach of confidence; or
 - (v) is to advisers and then only to the extent that each has a need to know, and is aware and agrees in writing that the information must be kept confidential; and
- (b) must only use information from the Audit Tool for the purpose stated in this Licence Agreement.

8. Force Majeure

- (a) This clause does not apply to any obligation to make a payment.
- (b) If a party by reason of Force Majeure is unable to perform or carry out any obligation under this Licence Agreement, then that obligation is suspended for so long and to the extent that it is affected by the Force Majeure. In that case, the affected party must give notice to the other party with reasonable particulars including, so far as it is known, the probable extent to which the party will be unable to perform or carry out or will be delayed in performing or carrying out its obligations.
- (c) A party is not liable for any failure or delay in the performance of any of its obligations under this Licence Agreement to the extent that the failure or delay is attributable to Force Majeure, regardless of the length of time for which the Force Majeure continues.
- (d) A party to this Licence Agreement may still suffer damage which that party may seek to recover from a third party, due to a failure or delay in the performance of an obligation under this Licence Agreement by a party to this Licence Agreement, attributable to circumstances amounting to Force Majeure which involve the third party.

9. Dispute Resolution

- (a) The parties agree to use reasonable commercial efforts to resolve by negotiation any problem that arises between them under this Licence Agreement. Neither party will resort to legal proceedings until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.
- (b) If a problem arises (including a breach or an alleged breach) under this Agreement which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a party concerned about the problem may notify the other. The parties will then endeavour in good faith to agree upon a resolution.
- (c) Should the parties fail to reach a solution in accordance with clause 9(b) within five business days (or such other time frame agreed between the parties), the parties may agree to mediation. The mediator will be selected by ALC.
- (d) If mediation fails, or if either party states that it does not wish to proceed with mediation, then either party may commence legal proceedings against the other.
- (e) Nothing in this clause limits ALC's rights of termination under clause 5.

10. Governing Law

This Licence Agreement is governed by and is to be interpreted according to the laws in force in the Australian Capital Territory. The parties submit to the non-exclusive jurisdiction of the courts operating in Canberra.

11. Definitions

In this Licence Agreement the following terms have the meanings ascribed to them unless the context requires otherwise:

- (a) **ALC** means Australian Logistics Council Limited ACN 131 860 136;
- (b) **Application** means the application made by the Subscriber for a Licence;
- (c) **Audit** means an audit of the Subscriber's compliance with the Master Code, undertaken by an Auditor in accordance with the Audit Tool;
- (d) **Audit Tool** means ALC's confidential, proprietary and copyright documented system for the assessment of an enterprise's compliance with the Master Code;
- (e) **Auditor** means an auditor on ALC's list of auditors who are approved to conduct Audits;
- (f) **Commencement Date** means the date on which each of:
 - (i) submission of an Application;
 - (ii) payment of the Licence Fee; and
 - (iii) completion of an Entry Audit,have been completed to ALC's satisfaction;
- (g) **Compliance Audit** has the same meaning as in the AMCAS Audit Framework;
- (h) **Corrective Action** has the same meaning as in the AMCAS Audit Framework;

- (i) **Entry Audit** means an Audit undertaken as a condition precedent to the commencement of this Licence Agreement, the purpose of which is to establish a baseline for future Audits;
- (j) **Existing Signatory** means a Subscriber who was, during 2018, a member of any one or more of the Australian Steel Institute – Logistics Safety Code, the Coal Seam Gas – Logistics Safety Code, the National Logistics Safety Code or the Retail Logistics Safety Code;
- (k) **Facility** means a site on which the Subscriber conducts activities that are or may be subject to the HVNL;
- (l) **Force Majeure** means any event or circumstance not within the control of the party claiming Force Majeure, and which, by exercise of reasonable diligence, that party was and is not reasonably able to prevent or overcome, including:
 - (i) an act of God;
 - (ii) a transport interruption;
 - (iii) a strike, lock out or other industrial disturbance;
 - (iv) an act of an enemy or terrorist, including war, blockade or insurrection;
 - (v) an act of any third party, including any accidental or malicious act, or vandalism;
 - (vi) a riot or civil disturbance; or
 - (vii) an authority's delay in giving any necessary approval;
- (m) **HSE** means health, safety and the environment;
- (n) **HVNL** means Heavy Vehicle National Law (Queensland), or, where that law has been enacted into the domestic law of a State or Territory, the law as so domestically enacted;
- (o) **Law** means:
 - (i) principles of law or equity established by decisions of courts;
 - (ii) as applicable, statutes, regulations or by-laws of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia; and
 - (iii) as applicable, requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia that have the force of law;
- (p) **Licence** means the licence granted by clause 1(a);
- (q) **Licence Agreement** means this document including the information contained in the Application;
- (r) **Licence Fee** means the amount payable by the Subscriber under this Licence Agreement, calculated in accordance with the tariffs published by ALC from time to time;
- (s) **Master Code** means the Registered Industry Code of Practice entitled "Master Code" registered under section 706 of the HVNL;
- (t) **Non-Signatory** means a Subscriber who is not an Existing Signatory;

- (u) **Subscriber** means the enterprise submitting the Application;
- (v) **Term** means the period described in clause 4;
- (w) **Triggered Audit** means an Audit initiated by the ALC or the subscriber in accordance with the AMCAS Audit Framework.