

AGIX TERMS AND CONDITIONS

AGIX Linux Pty Ltd ACN 663 033 841 Level 2, 170 Greenhill Road, Parkside SA 5063 (**AGIX**) is a provider of information technology services including the provision of managed services, consulting and the supply, configuration, installation and maintenance of hardware.

When you deal with us either through our website, or by engaging us via email, phone or in person, you agree that our interactions will be governed by this document (**Terms**).

TERMS

1. DICTIONARY

In this Terms the following terms have the following meanings:

Business Day means a day other than a Saturday, Sunday or Public Holiday in South Australia.

Background Intellectual Property means Intellectual Property developed prior to or independently of, and without reference to, the provision of the Services;

Confidential Information means and includes any information that by its nature is confidential, is designated by a party as confidential, or the recipient knows or ought to know is confidential but does not include information which:

- (a) is or becomes public knowledge other than by breach of this Terms;
- (b) was known by the recipient as at the date of this Terms; or
- (c) has been independently developed or acquired by the recipient without reference to the disclosing party's Confidential Information,

where the burden of establishing any of the exceptions referred to in (a), (b) and (c) shall be upon the recipient.

Client Intellectual Property means Intellectual Property provided by you to AGIX for use in the provision of the Services;

Customer means the person, partnership, corporation or other entity purchasing the Services or Products of AGIX.

Fee means the fees payable to AGIX in relation to the supply of goods or services which will either be set out on our website at your time of purchase, or specified by us in a quotation.

Force Majeure Event means any of the following events which prevents a party from performing its obligations under this Terms but which is not caused by that party, including but not limited to fire, lightning, flood, earthquake, pandemic or weather event, war, revolution, civil commotion or acts of foreign enemies; national industrial disputation; acts of God; change in law; or acts or omissions of any government.

GST means goods and services tax as defined in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time and also includes any associated legislation and delegated legislation.

Insolvency Event means, in relation to a party, the occurrence of any of the following events:

- (a) a winding up application being made and not withdrawn within 21 days;
- (b) a failure to comply with a statutory demand;
- (c) the appointment of a provisional liquidator or administrator;
- (d) the entering into of an arrangement with creditors;
- (e) a voluntary winding up other than for the purpose of a bona fide corporate reconstruction;
- (f) any inability to pay debts as and when they fall due;
- (g) any admission of insolvency;
- (h) any court order relating to any of the above;
- (i) anything which occurs under the law of any jurisdiction which has a similar effect to any of the circumstances set out in paragraphs (a) to (h).

Intellectual Property means all statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions (including registered and unregistered patent rights), registered and unregistered trademarks, designs, the right to have Confidential Information (including trade secrets and know-how) kept confidential, and all other rights resulting from intellectual activity in industrial scientific, literary or artistic (including musical) fields.

Milestone means an agreed stage of works at which point an event is to occur (including the date on which a Fee will become due to be paid, or by which time additional tasks will be deemed to have been requested), and are set out in Quotes.

Personal Information means information or opinion (including information or opinion forming part of the database), whether true or not, and whether recorded in a material form or not, about an actual person whose identity is apparent or can reasonably be ascertained from the information or opinion.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Privacy Act means the *Privacy Act 1988* (Cth), including without limitation the Australian Privacy Principles.

Product means any product to be supplied to you by AGIX.

Project Materials means and includes all documents, data and other materials supplied by the Customer to AGIX for provision of the Services.

Quote means a document provided by us outlining the scope of Services and supply of any Product, together with expected Milestones and Fees.

Schedule means the Schedule to this Agreement.

Service means the service provided by AGIX, its employees or its sub-contractors.

Service Intellectual Property means Intellectual Property developed by AGIX in the course of and for the purpose of providing the Services.

Staff means the person employed or engaged by the AGIX to provide Services whether they're an employee or contractor.

Terms means these terms and conditions.

2. **INTERPRETATION**

In these Terms: a reference to one gender includes all other genders and neuter; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; reference to a party includes a successor to the rights or obligations of that party under these Terms; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward these Terms or any portion of it; another grammatical form of a defined word has a corresponding meaning; reference to legislation includes the legislation as at any time amended; a reference to 'you' or 'your' is a reference to the Customer; and a reference to 'we', 'our' or 'us' is a reference to AGIX.

3. **AMENDMENT**

AGIX reserves the right to change these Terms with prior notice to the Customer. If the Customer places an Order or agrees to a Quote after being notified of the change, the amended Terms will apply to that Order or Quote.

4. **SUPPLY ON QUOTATION**

4.1 AGIX may, from time to time, in response to a request from a Customer, provide a Quote for the provision of products and/or services.

4.2 When AGIX provides a Quote:

4.2.1 it is valid only for the period stated on the Quote, or if not stated on the Quote, 30 days from the day of its issue;

4.2.2 it is valid only in relation to the scope of services and types of products requested by the Customer;

4.2.3 AGIX is entitled to provide the quotation on whatever basis it deems appropriate, such as fixed fee or a time and materials basis;

4.2.4 unless otherwise stated, the Quote is exclusive of GST;

4.2.5 where the Quote includes the supply of Products, it is subject to the availability of the listed Products, and AGIX maintains the discretion to substitute other Products of comparable functionality and value;

4.2.6 if there is an increase to the wholesale price or shipping of a Product, AGIX may pass this increase on to the Customer in full; and

4.2.7 AGIX may withdraw a Quote at any time prior to its acceptance.

- 4.3 A Customer may accept a Quote by confirming that acceptance in writing within its period of validity. When this occurs, a contract will come into being on the terms of the Quote and these Terms. In the event of any inconsistency between these Terms and the Quote, these Terms take precedence unless the inconsistency is expressly stated to be a 'Special Condition'.
- 4.4 AGIX will provide you with the Services specified in the Quote in accordance with:
- 4.4.1 the requirements specified in the Quote;
 - 4.4.2 any timelines agreed in writing between the parties;
 - 4.4.3 these Terms; and
 - 4.4.4 reasonable skill and care.
- 4.5 In consideration for the performance of the Services and supply of any Product, you will pay the fees specified in the Quote.
- 4.6 If applicable, a minimum term may apply to our engagement as specified in the Quote (**Minimum Term**). Any termination of Services prior to the end of the Minimum Term will entitle AGIX to recover from you a fee equal to the costs it is unable to avoid by virtue of the termination plus the profits it would have made had the engagement proceeded for the full Minimum Term.
- 4.7 The provision of Services may, at the discretion of AGIX, be provided by, hired from, or located at the facilities of, a third party.

5. **VARIATION OF QUOTE**

- 5.1 A variation to the Quote may be proposed at any time by either party (**Variation**).
- 5.2 Any proposed Variation must be made in writing, and be communicated to the other party as soon as reasonably practicable.
- 5.3 Within 5 Business Days of receipt, or communication, of a proposed Variation, AGIX will issue an estimate of any changes to the Fee occasioned by the Variation.
- 5.4 A Variation shall only be made once agreed to by both parties in writing.
- 5.5 AGIX, in its absolute discretion, may charge an additional fee for its reasonable costs in providing a response to a request for a Variation made by a Customer.

6. OUR OBLIGATIONS

- 6.1 AGIX will perform the Services in accordance with any specification listed in the Quote, but is otherwise entitled to use its discretion in the manner it deems appropriate to perform the Services.
- 6.2 AGIX will not be obliged to perform any Services not expressly specified in the Quote. Any change to the Services must be agreed to by us in writing, and may result in a change to the cost of providing the Services.
- 6.3 AGIX may use sub-contractors in the provision to you of the Services. Where this occurs, AGIX will remain responsible for the actions of those sub-contractors.

7. YOUR OBLIGATIONS

- 7.1 Customer must promptly provide AGIX with:
 - 7.1.1 any information required by AGIX to provide the Services;
 - 7.1.2 clarifications of any questions that AGIX may have arising from the Quote; and
 - 7.1.3 a response to any request for clarifications within two business days of a request being made.
- 7.2 AGIX will not be responsible for any delay or failure to meet a Milestone caused by your failure to provide us with timely responses to our queries.
- 7.3 You will not take any action which has, or would be likely to have, a negative impact upon the operations of AGIX, its software or hardware systems, or those of its other customers. This includes:
 - 7.3.1 uploading malicious or destructive software (including Trojan horses, worms or other viruses) to our servers;
 - 7.3.2 using the Services for unlawful purposes;
 - 7.3.3 using the Services in a manner likely to bring AGIX into disrepute;
 - 7.3.4 making requests of the Services at a rate that is reasonably likely to have a negative impact on the ability of the Services to perform their usual functions;
 - 7.3.5 sending bulk or spam emails;
 - 7.3.6 uploading defamatory or obscene material;
 - 7.3.7 using the Services to infringe any third party's intellectual property rights; or
 - 7.3.8 to enable minors to access inappropriate material.

- 7.4 You must at all times take reasonable steps to ensure the security of all systems used to access the Services, and ensure that all access and log-in details are maintained securely.
- 7.5 You must notify us of any likely breach of security that you become aware of as soon as is reasonably practicable.
- 7.6 You must not prevent our access to the servers on which the Services are provided.
- 7.7 You are required at all times to comply with applicable legislation that relates to your use of the Services, including the Privacy Act 1988 (Cth). You will ensure that, where appropriate, AGIX's access to Personal Information stored on its servers is set out in your privacy policy.

8. FEES

- 8.1 AGIX will charge, and you must pay, the Fees specified:
 - 8.1.1 where Products or Services are supplied following the issue of a Quote, in that Quote; or
 - 8.1.2 where Products or Services are ordered via our website, on our website, save that if the website contains a genuine pricing error, we may in our absolute discretion cancel that order and refund any money paid to us.
- 8.2 Fees are payable:
 - 8.2.1 In the case of products or services supplied following the issue of a Quote, as stated in that Quote;
 - 8.2.2 In the case of purchases via our website, upon the making of the purchase; and
 - 8.2.3 If not otherwise specified, within 14 days of you receiving an invoice from us, unless otherwise agreed with AGIX in writing.
- 8.3 Unless a separate agreement has been entered into regarding the payment of invoices that is inconsistent with these Terms, interest on overdue payments will be charged at the Reserve Bank of Australia Cash Rate Target as at the date of the invoice, plus two percent (2%). Interest begins to run on our invoices once they have remained unpaid for 30 days.
- 8.4 If an invoice does remain unpaid after 14 days after delivery AGIX may terminate the relevant Agreement, or all Agreements with you without prejudice to its rights.
- 8.5 In addition to the Fees, AGIX may also charge the Customer for any additional costs incurred by AGIX including but not limited to those costs as a result of:
 - 8.5.1 unforeseen delay in delivery of the Products covered by a circumstance out of AGIX's reasonable control;
 - 8.5.2 changes to a Product or order requested by a Customer where approved by AGIX;
 - 8.5.3 increases in shipping or wholesale pricing;

- 8.5.4 cancellation of order of a Product; and
- 8.5.5 return of a Product other than due to a fault caused by AGIX or its suppliers.
- 8.6 No order or part of order of Products placed by the Customer may be cancelled except with the prior written consent of AGIX.
- 8.7 If AGIX consents to a cancellation of an order or any part of an order placed by a Customer, AGIX may impose a cancellation fee.

9. SUPPLY OF PRODUCTS

- 9.1 Where AGIX is required to supply Products:
 - 9.1.1 AGIX is responsible for delivery of the Products to the Customer and AGIX reserves the right to engage the services of third party agents, carriers or couriers to deliver the Products to the Customer.
 - 9.1.2 Proof of delivery being made by a third party courier will be taken by the parties to be definitive, and AGIX will not be responsible for any lost, damaged or missing products if this has been provided.
 - 9.1.3 AGIX will attempt to deliver Products to the address provided by the Customer at the point of making an order. AGIX may (in its absolute discretion) provide an estimate of when delivery is likely to occur, but will not be held liable for any loss or damage suffered or incurred by the Customer or any third party for failure to meet that estimated delivery date.
 - 9.1.4 the Customer is responsible for ensuring the nominated place for delivery of the Products is safe and attended. The Customer acknowledges that if upon attempted delivery of the Products, AGIX or its third party carrier, agent or courier are unable to fulfil delivery of the Products to the Customer, AGIX may, or instruct its carrier, agent or courier to:
 - (a) leave the products at the entrance of the nominated place for delivery of the Products, at which time all risk in the Products will pass to the Customer; or
 - (b) return the Products to AGIX at the cost and expense of the Customer.
 - 9.1.5 If at the time of delivery of the Product by AGIX the Customer is not in a position to accept delivery of the Product, AGIX may recover from the Customer, the cost for any additional storage or delivery charges for which AGIX may become liable.
 - 9.1.6 The Customer indemnifies AGIX, its employees, contractors, other agents and its carriers indemnified against any claim howsoever arising from any loss or damage incurred by AGIX, its employees, contractors, other agents, its carrier or any third party arising directly or indirectly out of, or in connection with delivery of the Products or collection and delivery of the Products by a third party agent, carrier or courier, reduced to the extent AGIX contributed to that loss or damage.

- 9.2 Upon receipt of the Products, the Customer must inspect the Product and within 5 Business Days give written notice to AGIX if the Customer considered the Products are defective (**Defective Product**).
- 9.3 If notice under clause 9.2 is not given by the Customer, then to the extent permitted by law the Products will be deemed to have been accepted by the Customer and the Customer will remain responsible for the Fees in accordance with the Terms. For the avoidance of doubt, in the event a defect would not have been reasonably apparent upon initial inspection of a Product, the Customer's rights with respect to that Product are unaffected by this clause.
- 9.4 If notice of a Defective Product is provided to AGIX in accordance with clause 9.2, the Customer must take reasonable steps to preserve the Product until such time as AGIX or its nominee can undertake an inspection of the Product and failure to do so may result in AGIX declining any claims by the Customer for the Defective Product.
- 9.5 Defective Products may only be returned to AGIX if:
- 9.5.1 the Customer complied with the clause 9.2 notice requirement, the defect only became reasonable apparent after the inspection period in that clause had elapsed, or replacement is required by law that cannot be avoided by contract;
 - 9.5.2 upon inspection of the Defective Product, AGIX or its nominee provide written notification to the Customer acknowledging they agree the Product is defective (or AGIX waive their right to inspection);
 - 9.5.3 the Defective Product is returned to or collected in a similar condition to which it was delivered to the Customer; and
 - 9.5.4 the Defective Product is returned within 30 days of notice being provided to AGIX by the Customer of the claimed defect.

- 9.6 The Customer is liable for any fees payable including freight costs associated with any return of the Defective Product to AGIX and if upon inspection of the Defective Product, AGIX or its nominee (acting reasonably) do not determine the Product to be a Defective Product, the Customer may be liable for expenses incurred in conducting the inspection.
- 9.7 The Customer acknowledges that where AGIX or its nominee has notified the Customer that the Product is a Defective Product and the defect is in manufacture and the manufacturer of that Defective Product was by a third party and not produced by AGIX, any rectification of the Defective Product is to the extent permitted by law the responsibility of the third party manufacturer and the Customer will hold AGIX harmless from any claim or loss or damage arising from and associated with such defect.
- 9.8 If AGIX is to replace a Product that is a Defective Product for a reason that is AGIX's responsibility, AGIX resumes ownership of the original Products supplied to the Customer and may collect from the Customer or require the Customer to destroy the Product at AGIX's cost.
- 9.9 The Products will remain the risk of AGIX until such time the Products have been delivered to or made available to the Customer.
- 9.10 Upon delivery of the Products or the Products being made available to the Customer, the risk of any loss, damage or otherwise to the Product passes to the Customer.
- 9.11 This clause 9 survives any termination of these Terms.

10. **GOODS AND SERVICES TAX**

10.1 **Exclusive**

Any amounts payable under these Terms are calculated or expressed exclusive of GST.

10.2 **Pay GST**

If GST is or become payable by AGIX under these Terms the Customer must pay to AGIX an amount equal to the GST payable on the supply.

10.3 **Time of Payment**

An amount payable under this clause must be paid:

10.3.1 at the same time as the payment of the amount in respect of that supply is due; and

10.3.2 in addition to the amount payable under these Terms.

10.4 **Recovery**

If the Recipient fails to pay such GST when due, AGIX may recover it from the Recipient as a debt under these Terms.

10.5 Tax Invoice

Unless a tax invoice for an amount payable under this clause has already been provided, AGIX must deliver a tax invoice to the Recipient within 14 days after receiving such payment.

10.6 Terms

In this clause expressions that have particular meanings in the GST Law take those meanings.

11. WARRANTIES AND LIABILITY

11.1 To the extent permitted by law:

11.1.1 all terms, conditions, warranties, guarantees or undertakings in respect of the Services (whether express, implied or otherwise) are specifically excluded; and

11.1.2 where such warranties cannot be excluded, AGIX's maximum liability will be to either (at its sole option) to resupply the Services, or pay the cost of resupplying the Services.

11.2 In respect of the Products, the parties agree that:

11.2.1 to the greatest extent permissible by law, AGIX give no warranty and make no representation, express or implied as to:

- (a) the adequacy or appropriateness of any Product supplied by AGIX to you;
- (b) the truth, correctness, completeness or freedom from error of the Product;
- (c) any implied warranty or condition as to merchantability or fitness of any of the Product for a purpose other than which it is commonly used.

11.2.2 To the extent permitted by law, if Products provided by AGIX are short or defective for reasons that are AGIX's responsibility, AGIX's total liability is limited (at AGIX's election) to:

- (a) the prompt replacement of the Product or supply of equivalent Products;
- (b) repair of the Products where the Product can be repaired;
- (c) payment of the costs of incurred of supplying a replacement or equivalent Product or having the Products repaired.

11.3 Certain products or services involve a series of risks and dependencies that could lead to you suffering loss or damage regardless of the care and skill exercised by AGIX. Where known risks and dependencies are listed in a Quote or on our Website, you agree that, to the extent permitted by law, you will hold harmless AGIX its officers, agents and employees from any liability whatsoever arising from any listed risks arising, or a dependency failing.

11.4 This clause 11 survives any termination of these Terms

12. **PPSA**

12.1 The Customer acknowledges that:

12.1.1 these Terms constitute a security agreement;

12.1.2 until such time as ownership and title in the Product passes to the Customer, AGIX obtain a security interest over the Product;

12.1.3 at any time and without prior notice to the Customer, AGIX may register the security interest or one or more financing statements / financing change statements on the register maintained under the PPSA;

12.1.4 the Customer will not in any way assign, charge, lease or otherwise deal with the Products in such a manner as to create a security interest over the Products in favour of the Customer or any third party; and

12.1.5 it will, within 7 Business Days of any requests made by AGIX do all such things that may be necessary to assist with registration of a security interest or ensuring the security interests are a priority over any other security interest (present or future) over the same collateral granted to a third party.

12.2 The Customer waives its right to receive a copy of any financing statement or financing change statement registered by AGIX in respect of the security interest.

13. **INTELLECTUAL PROPERTY**

13.1 Ownership of Background Intellectual Property and Client Intellectual Property is not transferred by virtue of this Agreement.

13.2 All Services Intellectual Property will be, from the time of creation, owned by and vested in AGIX.

13.3 AGIX grants you a perpetual, irrevocable, royalty free, non-exclusive, world-wide, sub-licenceable licence to use the Services Intellectual Property for the purpose of enjoying the benefits of the Services.

13.4 AGIX grants you a revocable, royalty free, non-exclusive licence to use the Background Intellectual Property for so long as AGIX is providing you with the Services.

13.5 You grant AGIX a perpetual, irrevocable, royalty-free, non-exclusive, world-wide, assignable and sub-licenceable licence to use the Client

Intellectual Property in providing you with the Services, and for use in the work portfolio of AGIX.

7.3 This clause 13 survives any termination of these Terms.

8. **CONFIDENTIAL INFORMATION**

8.3 The parties must not disclose any Confidential Information belonging to the other party except as genuinely or necessary required for the purposes of this Terms.

8.4 A party may disclose Confidential Information belonging to the other party:

8.4.1 to an employee, agent or advisor of that party on a need to know and confidential basis;

8.4.2 as required by law or court order;

8.4.3 for the purpose of prosecuting or defending proceedings.

8.5 This clause 14 survives any termination of these Terms

9. **TERMINATION**

9.3 **Immediate Termination**

Notwithstanding anything in these Terms to the contrary:

9.3.1 AGIX may terminate these Terms at any time by notice in writing to the Customer if the Customer:

(a) does not make payment of the Fee and such failure is not remedied within seven Business Days from the date AGIX notified the Customer;

(b) repudiates these Terms or commits a material breach of these Terms, which is incapable of remedy or which it fails to remedy within 14 days of being given notice of it;

(c) or any of its personnel are guilty of any dishonesty, serious misconduct or serious neglect of duty.

9.4 **Termination without cause**

9.4.1 Either party may terminate these Terms by giving the other party not less than three months that they wish to terminate these Terms.

9.4.2 During the notice period, AGIX shall continue to complete any outstanding Services not yet completed and provide invoices for work completed during the notice period.

9.4.3 If the Customer terminated the agreement pursuant to clause 15.2.1, AGIX will be entitled to invoice the Customer for:

(a) Any fees relating to an unexpired Minimum Term calculated in accordance with clause 4.6; and

- (b) Any costs, losses or damage suffered by AGIX that could not reasonably have been avoided.

10. **INSOLVENCY**

A party may terminate these Terms, with immediate effect, by notice to the other party, if the latter party suffers an Insolvency Event.

11. **EFFECT OF TERMINATION**

11.3 In the event of termination of these Terms, any amount payable to AGIX under these Terms is immediately due and payable.

11.4 Despite termination or expiration of these Terms, any clause that by its nature will remain in force will continue to survive.

12. **FORCE MAJEURE**

A party may immediately terminate these Terms by notice to the other party if the other party fails to perform its obligations under these Terms for a continuous period of 60 days as a result of a Force Majeure Event.

13. **DISPUTE RESOLUTION**

13.3 A party to these Terms claiming that a dispute has arisen from or in connection with these Terms (**Dispute**) must not commence court or arbitration proceedings arising from or relating to the Dispute, other than a claim for urgent interlocutory relief, unless that party has attempted to resolve the Dispute in accordance with this Clause 13.

13.4 Compliance with this clause is a condition precedent to the right of any party to commence litigation or arbitration arising from, or in connection with, the Dispute.

13.5 A party to these Terms claiming that the Dispute has arisen must give a written notice to the other party or parties to this contract in accordance with Clause 4 specifying the nature of the Dispute (**Dispute Notice**) together with relevant supporting documents.

13.6 Following service of the Dispute Notice, each party must send to a meeting within 14 days of the dispute notice an agent with authority to resolve the Dispute and at the meeting make a good faith attempt to resolve the Dispute.

13.7 A party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.

14. **NOTICES**

14.3 **In Writing**

A notice required or authorised to be given or served on a party under these Terms must be in writing and may be given or served by email, post or hand to that party at its address or email address as the party may have last notified the other party or parties in writing.

14.4 Method of Service

A notice is deemed to have been given or served on the party to whom it was sent:

- 14.4.1 in the case of hand delivery, on delivery during Business Hours;
- 14.4.2 in the case of pre-paid post 4 Business Days after the date of despatch;
- 14.4.3 in the case of email, email is to be treated as given on delivery, unless the sender receives a message that the email has not been effectively transmitted. If an email or message is received outside normal business hours of the person to whom it is sent, the notice is said to be treated as having been given at the beginning of business on the next business day;

14.5 Sufficient Service

A notice given or served under these Terms is sufficient if:

- 14.5.1 in the case of Customer it is signed by a director, officer or secretary of that Customer; or
- 14.5.2 in the case of an individual it is signed by that party; or
- 14.5.3 given or made for or on behalf of such party by his authorised agent or by his solicitors.

15. GENERAL

15.3 Counterparts

These Terms may be executed in any number of counterparts, each executed counterpart is deemed an original of this document and all those counterparts taken together are regarded as one instrument.

15.4 Costs of Terms

Each party must bear its own costs arising out of the negotiation, preparation and execution of these Terms.

15.5 Assignment

The Customer cannot assign any of its rights or obligations under these Terms without the prior written consent of the Customer.

15.6 Relationship

- 15.6.1 The relationship between AGIX and the Customer is that of independent contractors.
- 15.6.2 The parties are not partners, joint ventures, principal and agent or that of employees and employers.

15.7 No Waiver

- 15.7.1 No Extinguishment

The failure of a party to exercise or delay in exercising a right, power or remedy under these Terms does not prevent its exercise.

15.7.2 In Writing

A provision of or right under these Terms may not be waived except by a waiver in writing signed by each party granting the waiver, and will be effective only to the extent specifically set out in that waiver.

15.8 **Time of the Essence**

Time shall be of the essence as regards any date or period determined under these Terms except to the extent that any such date or period may be altered by Terms between the parties and then time shall be of the essence as regards such altered date or period.

15.9 **Entire Terms**

These Terms, together with the schedules, contain the entire understanding of the parties as to its subject matter and any and all previous understandings or Terms on that subject matter cease to have any effect from the date of these Terms.

15.10 **Severance**

If any provision of these Terms is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement are and continue to be valid and enforceable in accordance with their terms.

15.11 **Governing law and jurisdiction**

These Terms are governed by the law of South Australia and each party irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of South Australia.