



Service Level Agreement

ABOUT THIS DOCUMENT AND OUR SERVICE LEVEL AGREEMENTS

- a) This document sets out the terms and conditions on which K.I-BYTES Managed Services provides IT Support to Clients. These are known as our Standard terms and conditions.
- b) These Standard terms and conditions apply to K.I-BYTES Support Service Level Agreements or IT Services provided to you.
- c) A reference herein to 'the Agreement' is a reference to K.I-BYTES Service Level Agreements or services provided to you.

BACKGROUND

- a) The Company is in the business of providing IT support services to clients.
- b) The Parties have agreed to enter into the Agreement under which the Company will provide IT support and services to the Client on the terms and conditions provided in the Agreement.

OPERATIVE PROVISIONS

1) Definitions and interpretation:

Additional Charge means a charge levied to the Client's account in relation to the supply of a service or product or goods of and incidental to the Agreement that is:

- a) not included in the Agreement; and
- b) deemed by the Company to be reasonably necessary to give effect to the performance of the Agreement.

Agreement means this Managed Services Agreement.

Business Day means a day in South Australia that is not a Saturday, a Sunday or a gazetted public holiday in that state.

Client means the party that has entered into the Agreement with the Company.

Commencement Date means the date for the commencement of the services as specified in the Agreement.

Confidential Information means:

- a) all pricing information, business and financial information, sales and supply details, marketing strategies, customer and supplier listings, staff information, business listings, information concerning the business or customers relating to the Client or the Services;
- b) all information related to people who are currently or have previously wished to find employment with the Client and or any third party introduced by the Client;

- c) all processes, procedures, techniques, concepts, systems, manuals, licence agreements, disclosure documents, documents, agreements, contracts, notes, file and data base structures and software relating to the Services;
- d) any information which, by its nature, places or potentially places the Client at an advantage over its present or future business competitors;
- e) any pricing information which, by its nature, places or potentially places the Client at a disadvantage with its present or future clients;
- f) any information that would otherwise at law be considered secret or confidential information; whether or not marked "Confidential" but does not include information which:
 - i) at the time of first disclosure by a party is or is reasonably known to be or to have been a part of the public domain;
 - ii) after disclosure by a party is or becomes part of the public domain otherwise than by disclosure in breach of the terms of the Agreement; and
 - iii) was in the possession, knowledge, custody, power or control of the Company prior to disclosure; and
- g) any information relating to the Client, its members, customers, contributors or suppliers.

Corporations Act means the Corporations Act 2001 (Cth) and may be used interchangeably in the Agreement.

Due Date means: the date payment is due and payable by the Client to the Company for the supply of the Services or other matters or things of and incidental to the Agreement.

Emergency means anything that is considered to be of an extreme or catastrophic nature touching or impinging upon human life, property, goods, anything material or intangible deemed necessary to give effect to the Agreement.

Fees means the hourly rate or those costs prescribed in the schedule of Fees comprising the Agreement and may be used interchangeably to the extent applicable.

GST means:

- a) the same as in the GST Law;
- b) any other goods and services tax, or any tax applying to the Agreement in a similar way; and
- c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

GST Law means the same as "GST law" in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Initial Term means the committed period of engagement by the Client of the Company starting on the Commencement Date.

Insolvency Event in relation to the Client occurs where:

- a) the Client becomes an externally-administered body corporate for the purposes of the Corporations Act or an external insolvency administrator is appointed to any such party under the provisions of any companies or securities legislation of another jurisdiction;
- b) a controller (as that term is defined in the Corporations Act) or mortgagee in possession is appointed to the assets of the Client, or any such appointment is reasonably likely;

- c) the Client fails to comply with a statutory demand in the manner specified in section 459F of the Corporations Act, and has not made an application to set aside such demand under section 459G of the Corporations Act; or
- d) the Client is unable to pay its debts as and when they fall due.

Out of Scope means services provided that do not form a part of the Support Hours or Fees schedule or base costing of the Agreement to any extent applicable.

Parties means the parties to the Agreement, namely the Client and the Company and may be used interchangeably in the Agreement.

Penalty Rate means those amounts prescribed in the Agreement to any extent applicable.

Personal Information to the extent applicable to this Agreement has the same meaning as it has in sub-section 6(1) of the Privacy Act 1988 (Cth).

Related Bodies Corporate has the meaning given to that term in the Corporations Act.

Response Time means the maximum delay prior to the Company responding to a request for Services of and incidental to the Agreement.

Services means those services described in clause 5 and schedule 1 of the Agreement.

Service Level Guarantees means those set out in the Agreement and schedule 1.

Subsequent Term means the period of time the Client engages the Company following the conclusion of the Initial Term.

Supported Site Location means the locations in schedule 2

Tax Invoice means a tax invoice within the meaning of the GST Law.

Term means the Initial Term and any Subsequent Term as set out in the Agreement.

1.2 Interpretation

In these terms and conditions, except where the context otherwise requires:

- a) the singular includes the plural and vice versa, and a gender includes other genders;
- b) a reference to a definition that is capitalised may also be a reference to such definition in lower case;
- c) another grammatical form of a defined word or expression has a corresponding meaning;
- d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, the Agreement, and a reference to the Agreement includes any schedule or annexure;
- e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- f) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- g) a reference to time is to the time in [state], Australia;
- h) a reference to a party is to a party to the Agreement;
- i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- l) headings are for ease of reference only and do not affect interpretation;
- m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the agreement or these terms and conditions or any part of them; and
- o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2 DURATION

- a) The Agreement continues for its term unless otherwise stipulated or terminated in accordance with the terms and conditions of this Agreement.
- b) Following expiry of the Initial Term, month-to-month term agreements will automatically continue until the Client provides in writing a notice of termination. Each month will be a Subsequent Term. Termination of the Subsequent Term will take effect at the end of the following month from which the termination notification is provided. For the avoidance of doubt, as an example, notifications received in January will result in the Agreement terminating on the last day of February.
- c) The renewal will occur unless the Client notifies the Company in writing at least 30 days prior to the expiry of the Initial Term (or Subsequent Term) of the Client's intention to allow the Agreement to expire.

3 ACKNOWLEDGEMENTS AND NOTICE

- a) The Company acknowledges:
 - i) the Client enters into the Agreement and receives the benefit of the Services on behalf of itself;
 - ii) that, if not for the Client entering into the Agreement, the Client would not have allowed the Company to provide the Services to it;
 - iii) the confidentiality obligations created will not merge or be released upon cessation of any discussions between the Parties and will continue after such discussions.
- b) The Company notifies the Client:

- i) that these terms and conditions take effect from signing of this Agreement; and
 - ii) if an existing agreement is on foot to supply IT support services at the time these terms and conditions take effect:
- c) the existing agreement is enforceable until its expiration; and
 - d) at the expiration of the existing agreement, these terms and conditions apply.

4 CONFIDENTIALITY OBLIGATIONS

- a) The Company must not use the Confidential Information other than for the purpose of fulfilling the requirements of, and to give effect to, the performance of the Agreement.
- b) The Company must maintain strict confidentiality in relation to the Confidential Information and must not divulge all or any aspect of the Confidential Information to any person not in its employ or engagement in relation to fulfilling its obligations under the Agreement.
- c) If the Company wishes to disclose any of the Confidential Information to its accountant, business, financial or legal adviser (Professional Advisors), it may do so upon advising the Client and obtaining the prior written consent of the Client. That consent must not be unreasonably withheld.
- d) If the Company is uncertain whether any information is Confidential Information, it may seek direction from the Client before divulging the information to any third party.
- e) The Company must not grant or permit any person to have access to or possession of the Confidential Information.
- f) The obligations on the Parties under this clause 4 must not be taken to have been breached to the extent that the Confidential Information:
 - i) is disclosed by the Company to its Professional Advisers, officers, employees, agents or subcontractors solely and to the extent necessary in order to comply with obligations or to exercise rights under the Agreement;
 - ii) is disclosed by the Company to its internal management personnel, solely to enable effective management or auditing of related activities of and incidental to fulfilling its obligation to the Client under the Agreement; or
 - iii) is authorised or required by law or by order of any regulatory authority, stock exchange, judicial or parliamentary body or governmental agency to be disclosed.
- g) Where the Company discloses Confidential Information to another person under clauses 4(f)(i) and 4(f)(ii), the Company must:
 - i) notify the receiving person that the information is Confidential Information; and
 - ii) not provide the information unless the receiving person agrees in writing to keep the information confidential.
- h) If the Company is required to make a disclosure as described in sub-paragraph 4(f)(iii) the Company will disclose only the Confidential Information required to comply with the applicable law or order.
- i) Notwithstanding this clause 4, the Client is not entitled to restrict the use by the Company of any Intellectual Property in material which vests in the Client by claiming that the Intellectual Property is Confidential Information which would restrict the delivery of the Managed Services or impinge or unduly impact upon the Service Level Guarantees provided.

- j) The client agrees that it will:
 - i) treat as confidential information and keep secret during the term of this Agreement and for [period] after the termination of it all information relating to the business practices or clientele of the Company that is disclosed to it in confidence unless the Company gives its prior written consent to such disclosure unless such disclosure is required by law or relevant regulatory body; and
 - ii) not reproduce in whole or in part any report prepared by the Company for use by any other party without the Company's prior written approval.
- k) The Company's obligations of confidentiality will not merge or be released upon the expiry or termination of the Agreement, and will continue thereafter.

5 IT SERVICES AND SUPPORT INCLUDING DELIVERY OF SERVICES

- a) The Company must provide the Services to the Client:
 - i) in accordance with any Service Levels Guarantees; and
 - ii) otherwise on the terms and conditions of the Agreement, throughout the Term.
- b) The method of delivering the Services will be determined at the sole discretion of the Company and can be delivered via telephone, remotely or by onsite attendance. The company must act reasonably in exercising such direction.
- c) The company must provide and carry out the Service in an efficient and professional manner and in accordance with standards generally observed in the IT industry or profession for similar services.

5.2 ASSISTANCE

The client must:

- a) provide all reasonable assistance requested by the personnel of the Company in the diagnosis of any problem within the IT infrastructure and follow any reasonable direction of the Company in the course of doing so;
- b) make available free of charge and within a reasonable time all information, facilities and services reasonably required to enable the Company to provide the Services;
- c) provide reasonable access to its premises thereby granting a non-exclusive licence to the Company to give effect to the matters described in clauses 5.2(a) and 5.2(b); and
- d) provide such facilities as reasonably required by the Company for performance of the services.

5.3 INTERRUPTIONS

- a) The Company will use best endeavours to supply the Services without warranting that supply will be interruption or error free.
- b) Despite anything else within the Agreement, the Client acknowledges and accepts that the Services may not be available in all circumstances.

- c) The Client agrees to indemnify and release the Company against any claim for damages arising in contract and or tort (including negligence) for default or failure to perform the Company's obligations under the Agreement (including Service Level Guarantees) resulting from circumstances reasonably beyond its control. This includes but is not limited to, weather conditions, power failure, telecommunications failure, technical failure, maintenance requirements, our inability to access your premises, the client's acts or omissions or those of any third parties.
- d) The Company will rely upon this clause 5.3 to the full extent permitted by law. To the extent of any inconsistency between this clause 5.3 and clause 9, clause 9 will prevail to the extent of inconsistency.

5.4 ISSUES WITH EQUIPMENT

- a) Any serious, potential or any other issue which relates to the age, configuration or implementation of any supported equipment may be brought to the attention of the Client by the Company in writing.
- b) Where, in opinion of the Company, that equipment requires additional support or support beyond the scope of the obligations of the Company under the Agreement due to its age, configuration or implementation, the Company reserves the right in its sole discretion to cease support of that item of equipment under the Managed Services Agreement until the equipment is brought up to agreed industry standards.
- c) The Company will work with the Client to proactively identify appropriate replacement solution options and to assist the Client to procure such solutions. The Client expressly agrees to indemnify, release and hold harmless and blameless the Company for any consequential, economic, business or opportunity, direct or indirect loss or damage or harm of any type whatsoever (including negligence and in contract or tort) arising out of or incidental to any interruption to service, support or maintenance of the Clients operating network howsoever arising by the Company having ceased support of the said equipment. The Company will rely upon this clause 5.4(c) to the full extent permitted by law. To the extent of any inconsistency between this clause and clause 9, clause 9 will prevail to the extent of such inconsistency.

5.5 INCONSISTENCY

- a) To any extent necessary, clause 5.3 and 5.4 may be read together to interpret the application or operation of them individually or collectively in part or in whole.
- b) If there is any inconsistency between the clauses, the inconsistency will be severed without affecting the remaining provision. The remaining provision will be enforced and interpreted as if the severed provision had never existed.

5.6 OUT OF SCOPE

- a) No services other than the Services are covered by this Agreement.
- b) Any services other than the Services that are provided by the Company will be charged in accordance with the time and materials "Out of Scope" hourly rate included in the Agreement.
- c) The services that are Out of Scope include but are not limited to:
 - i) travel time to and from and support of equipment at remote locations such as staff homes not listed in the Supported Site Location list;
 - ii) installation of new or additional devices or provision of service which is not specifically mentioned in the Agreement or covered by its scope; and
 - iii) the relocation of equipment if the Client moves location.

6 SERVICE FEE

- a) The Fees are payable monthly and are due and payable within 14 days of the date of a Tax Invoice supplied (Due Date).
- b) Fees which do not appear on a Tax Invoice for a particular period may appear on future Tax Invoices.
- c) The Client will pay all Tax Invoices by the Due Date or, if the Client elects to pay by credit card or by direct debit, the Company will debit the credit card or nominated direct debit account for the amount of the Tax Invoice and any other Fees by the Due Date.
- d) If the Client does not pay an invoice by the Due Date, the Company may charge daily interest from the Due Date until the date on which payment is received.
- e) The Client will be liable for all reasonable and necessary collection costs (including legal fees charged on a solicitor/client basis and indemnify the Company for such costs) the Company incurs to collect an amount outstanding.
- f) If the Client in good faith disputes an amount in an invoice, the Client must notify the Company in writing within 7 days of the date of invoice. This notice must set out reasons for the dispute and the amount in dispute (Disputed Amount). The Company will within 14 days of the date of receipt of the notice review the invoice for the purposes of resolving such dispute.
- g) If a Fee is disputed, the Client is not entitled to withhold payment of the undisputed amount of the invoice.
- h) Subject to due performance by the Company of its obligations under this Agreement and to the terms of this Agreement, except where an interruption, unavailability or impaired quality of the Service has been caused or contributed to by the Company, the Client remains liable for all Fees.
- i) Accounts remaining in debit 14 days past Due Date will be placed on credit hold without notice.
- j) Fees may be adjusted on the anniversary of the Commencement Date and each subsequent anniversary of the Commencement Date by an agreed amount.

- k) The Company will increase or decrease on a monthly basis the Fees based either on the total number of devices or the effective full-time users. These increases or decreases will be calculated using the costing method upon which your current signed agreement was calculated i.e. per device pricing or per user pricing.

7 SUSPENSION OR TERMINATION

- a) Without limiting the Company's rights under the Agreement, the Company may suspend the supply of Services with notice (which may be written or verbal) to the Client if:
- i) it is an Emergency;
 - ii) the Company is directed/required to do under the law; or
 - iii) the Client fails to pay an amount due and payable that is 14 days past the Due Date which is not the subject of a good faith dispute, and for which a valid Tax invoice has been issued.
- b) Without limiting clause 7(a), the Company may suspend Services by providing 7 days' written notice if:
- i) a resolution is passed or an application is made to, or an order is made by, a court of competent jurisdiction for the winding up of the Client (except pursuant to internal amalgamation or reconstruction);
 - ii) an administrator or a receiver or a receiver and manager or an external controller is appointed to any of the assets or undertaking;
 - iii) the Client's or its guarantors (if applicable) makes an arrangement for the benefit of or enters into an arrangement or composition with its creditors; the Client has an official manager or inspector appointed pursuant to the provisions of the Corporations Act;
 - iv) if the Client or your guarantors (if applicable) commit an act of insolvent trading and or are likely to be unable to pay debts as and when they fall due and payable within the meaning of the Corporations Act; or
 - v) a director is convicted of a criminal offence or is subject to regulatory action resulting in a civil penalty declaration or administrative banning order or adverse finding, including Enforceable Undertaking.
- 1) After the expiration of the Initial Term of the Agreement, the Company may terminate at its sole discretion the supply of a particular Service at any time by providing the Client 7 days' prior written notice.
- 1) the Company may terminate the Agreement immediately if:
- i) the Client breaches a material provision of this Agreement;
 - ii) the Company gives the Client 14 days' written notice:
 - a) specifying the nature of the Client's breach or default;
 - b) telling the Client what is required to be done to remedy the breach or default; and

- c) advising the Client that the Company intends to terminate this agreement if the Client fails to remedy the breach or the default within the given notice period; and
 - iii) the Client fails to remedy the breach or default within the given notice period.
- 1) Without limiting clause 2(b), the Client may immediately terminate the Agreement, by sending the Company a written notice of that fact if:
 - i) the Company repudiates a material or fundamental term of the Agreement; and
 - ii) the Company fails to remedy, to the satisfaction of the parties, a fundamental breach of service delivery incidental to the Agreement on 3 separate occasions within 30 days after the date on which the Client issued the Company a written notice requiring the Company to remedy those breaches.
- 1) Any termination or expiry of the Agreement will not prejudice any equitable or legal right of action or remedy which may have accrued or manifest to either party prior to or after termination of the Agreement.
- 1) The Company may in its absolute discretion release the Client from its obligations under the Agreement before expiration of the Term and will be entitled to claim damages in accordance with clause 9.
- 1) Termination of the Services in accordance with the Agreement does not affect the application of the provisions of these terms and conditions relating to limitation of liability or indemnity.

8 CLIENT RESPONSIBILITIES

- a) The Client must:
 - i. comply promptly with the Company's reasonable directions in relation to the provision of the Services;
 - ii. provide promptly all information, decisions, facilities and assistance the Company reasonably requires to supply the Services;
 - iii. comply with all laws and guidelines concerning the Client's use of the Services;
 - iv. provide the Company safe access to and egress from the premises to which the Services are supplied and obtain the consent of the owner (where required) for the Company to install, inspect, repair, maintain or remove equipment connected with the provision of the Services; and
 - v. notify the Company of the Client's inability to comply with reasonable requests in line with this clause, outlining why the Client cannot comply and providing alternate options so that the Company may continue to meet its obligations under the Agreement.
- b) Unless otherwise permitted under the Agreement, the Client must not use or permit any other person to use any of the Services for any unauthorised purpose.

9 LIMITATION AND EXCLUSION OF LIABILITY

- a) Subject to clause 9(d), the Company is not liable to the Client for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the agreement, except to the extent that such liability may not lawfully be limited or excluded. For the avoidance of doubt this extends to any employees, contractors, agents, representatives, licensees or permitted assigns of the Company.
- b) Notwithstanding the generality of clause 9(a), the Company expressly excludes liability for consequential loss or damage which may arise in relation to the Services or for loss of loss of data, loss of, or claim for, revenue, profits, actual or potential business opportunities or anticipated savings or profit, whether direct, indirect, economic, consequential howsoever arising by way of act or omission in contract or in tort. The Client hereby agrees to release and indemnify the Company to that extent.
- c) Where the Company cannot by law exclude such liability, its liability to the Client will be limited, at the Company's choice, to:
 - i. if the breach relates to goods — the replacement or repair the goods; or
 - ii. if the breach relates to services — the supply of those services or the payment of the cost of those services supplied again.

This clause applies despite anything else in the Agreement and to the fullest extent permitted by law.

- d) Notwithstanding clause 9(a), the limitation of liability set out in clause 9(a) will not apply to any liability arising as a result of, or in connection with:
 - i. fraud or wilful misconduct by the Company;'
 - ii. breach of confidentiality by the Company;
 - iii. breach of privacy by the Company; or
 - iv. infringement of a third party's Intellectual Property Rights by the Company.

For the purposes of this clause 9(d), the term "the Company" means the Company, its officers, employees, sub-contractors, suppliers and agents, whether individually or collectively.

- i. To the fullest extent permitted by law, the Company excludes all warranties implied by law except as expressly set out in the Agreement.
- ii. Any unreasonable and material interference by the Client or its agents, servants, employees, subcontractors or other third party with the consent of the Client with equipment, network or configuration relevant to or of and incidental to the Agreement will void any guaranteed response time or quality of service commitments, remove any liability to the Client for the quality of the Service the subject of such interference and may also incur fees to cover costs of rectification as the rectification will be considered as an excluded item of the Agreement.

10 ENDING THE AGREEMENT PREMATURELY

- a) Without prejudice to any other rights under the Agreement or at law, if the Company terminates the Agreement in accordance with clause 7, or the Agreement prematurely ends because the Client is in breach of its obligations under the Agreement:
 - i. the Company's rights in respect of the breaches and unfulfilled obligations under the Agreement at that time continue; and
 - ii. the Client must pay all outstanding Fees at that time together with an amount equal to the Fees which would have been payable if the Agreement had continued for the full Term; and
 - iii. the Company has the exclusive right to claim any outstanding Fees as liquidated damages (and not as a penalty) in relation to the cost of non-performed work or goods supplied incidental to the Agreement due to the breach of the Client. The amount as liquidated damages shall be calculated on the basis of the Fees divided by 365 days multiplied by the number of days remaining had the Agreement continued for the full Term.
- b) Notwithstanding anything else, the liability of the Company under the Agreement of and incidental to any breach thereof will be limited to the total cost of the Agreement per single event or occurrence. This clause 10(b) applies to the fullest extent permitted by law despite anything else incidental to the Agreement.

11 NOTICE PROVISIONS

- a) Any notice, consent or other communications given or made to a party under the Agreement must be in writing and delivered or sent by email, pre-paid ordinary post or facsimile transmission to the address or fax number of the party as last or reasonably known to either party or to such other address or facsimile number as the party may from time to time notify for the purpose of this clause.
- b) Proof of posting by prepaid or ordinary post is deemed receipt within 2 Business Days after posting.
- c) Proof of dispatch by fax is proof of receipt upon production of a fax report by the machine from which the fax is sent. Where the sender machine indicates a malfunction in transmission or the recipient immediately notifies the sender of an incomplete transmission, the transmission is deemed not to have been given or served.
- d) Proof of delivery by email is proof of receipt upon production of a delivery confirmation report appearing on the sender's computer. If the sender's computer indicates delivery has not been carried out, delivery will be deemed not to have been effected.

12 ASSIGNMENT AND SUBCONTRACTING

- a) You must not assign or otherwise transfer your rights or obligations under the Agreement without the prior written consent of K.I-BYTES, which shall not be unreasonably withheld.
- b) The Company may subcontract Service obligations under the Agreement provided that the Company is:
 - i. not relieved from any obligations under the Agreement; and
 - ii. liable for any breach of the Agreement committed, caused or contributed to by the subcontractors.

13 MISCELLANEOUS

13.1 Waiver

- a) The waiver by either party of any breach of the Agreement does not licence the other party to repeat or continue any such breach. Such a waiver will not operate as a waiver of any subsequent breach.
- b) The failure of either party to exercise any right is not be deemed to be an abandonment or waiver of any right for damages injunction or otherwise.

13.2 Entire Agreement

This Agreement constitutes the entire agreement of the parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understandings, undertakings and negotiations in respect of the matters dealt with in this Agreement.

13.3 Force Majeure

- a) The non-performance or delay in performance by a party of any obligation under the Agreement is excused during the time and to the extent that such performance is prevented by a circumstance or event beyond its reasonable control (Force Majeure Event), provided that the party affected by the Force Majeure Event uses its best endeavours to perform as soon as possible its obligations under the Agreement (including by the use of reasonable workarounds and interim measures).
- b) If a Force Majeure Event continues for more than 30 days, either party may terminate the Agreement immediately by notice in writing to the other party.

13.4 Governing Law

This Agreement is governed by, and is to be construed and take effect in accordance with, the laws of the State of South Australia.

13.5 Severability

- a) The Company and the Client consider the covenants, obligations and restrictions contained within this Agreement to be reasonable in all the circumstances of the Agreement.
- b) Unenforceability of a provision of this Agreement does not affect the enforceability of any other provision.
- c) If any provision is void, voidable or unenforceable, it is taken to be severed from the Agreement.

13.6 Non merger

All obligations of the parties which expressly or by their nature survive the expiration or termination of the Agreement will continue in full force and effect notwithstanding such expiration or termination.

13.7 Non solicitation

- a) The Client must not solicit or attempt directly or indirectly to solicit any of the Company's employees, either directly as an employee, as a contractor or as a subcontractor for employment or separate

engagement as a contractor during the term of the Agreement and for 12 months after the date of expiration of the Agreement.

- b) If the Client breaches this clause, the Client agrees to pay the Company a fee equal to the solicited/engaged employee's last annual gross taxable remuneration package as compensation.

13.8 Variation

This Agreement may not be changed or modified in any way except in writing signed by or on behalf of all the parties.

13.9 Counterparts

This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.

14 GST

- a) Any consideration to be paid or provided for a supply made under or in connection with the Agreement, unless specifically described in the Agreement as 'GST Inclusive', does not include an amount on account of GST (GST Exclusive Consideration).
- b) If any supply made or to be made by a party (Supplier) under or in connection with the Agreement is a taxable supply, the Supplier may, in addition to the GST Exclusive Consideration, recover from the recipient of that supply (Recipient) an amount on account of GST. This is to be calculated by multiplying the GST exclusive consideration for the supply by the GST rate prevailing at the time that the supply is made.
- c) Any additional amount on account of GST recoverable from the Recipient under clause 14(b) is payable on provision by the Supplier of a Tax Invoice.
- d) In this clause 14, words or expressions that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given to them by that Act.

END OF TERMS AND CONDITIONS