

# Standard Terms and Conditions of Sale

These conditions apply (as and to the extent relevant) to all contractual commitments entered by the Company in accordance with their terms and as referred to in the Company's standard forms of agreement for supply of equipment and/or services. They are available in soft copy on request.

These conditions also apply to all quotations and other pre-contractual dealings by the Company. All such dealings are invitations to treat only; no such dealings constitute an offer on the part of the Company to enter any contractual commitment on any particular terms or at all. No contract will in any event come into existence unless and until accepted by the Company through submission of a specific order confirmation, or otherwise in writing, and then only the basis referred to in the previous paragraph.

The Company may amend these conditions from time to time at its discretion (prospectively but not retrospectively) and in any such case will notify customers by e-mail before the new version takes effect. It will also display the latest version on its web site under the link above. Each version is identified by the revision date in the footnote at the bottom of this page and will apply to (and form part of) all contractual arrangements entered by the Company on or after the date specified.

## 1. Definitions

In these conditions and the Agreement generally:

- 1.1. 'Agreement' means agreement entered into by the Company for the supply of Equipment and/or Services (as referred to above) and includes these conditions;
- 1.2. 'Company' means Aryon Pty Ltd ACN 150 736 155;
- 1.3. 'Computer Systems' means the Customer's servers and operating systems, networks, UPS, backup systems, virus protection systems, e-mail systems, Internet and workstations;
- 1.4. 'Confidential Information' means, in relation to a Party, its confidential information (in the sense of information that is specifically designated by it as confidential or, by reason of its nature or the circumstances generally, may reasonably be considered confidential) including information relating to:
  - (1) its personnel, customers, policies, business strategies, operations and finances;
  - (2) trade secrets and know-how;
  - (3) the terms upon which services are to be supplied or have been supplied pursuant to the Agreement; and
  - (4) the technology and design of the Computer Systems;

- 1.5. 'Delivery Date' means the date or the period for the delivery of Equipment as advised to the Customer in writing by the Company;
- 1.6. 'Equipment' means equipment specified in the Agreement;
- 1.7. 'Force Majeure' means, in relation to a Party, a circumstance beyond its reasonable control resulting in the unavailability of the Customer's Computer System or part thereof and including:
  - (1) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
  - (2) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, and strikes;
  - (3) 'Installation Date' means the date for the installation of the Equipment as advised to the Customer in writing by the Company;
  - (4) 'Intellectual Property Rights' means copyright, trade marks, design rights and patents including rights to apply for, and pending applications in respect of, any of them;
  - (5) 'Party' means the Company or the Customer or each of them according to the context;
  - (6) 'Services' means services specified in the Agreement; and
  - (7) 'Site' means the location specified in the Agreement in relation to Equipment or Services.

## 2. Interpretation

- 2.1. In these conditions and the Agreement generally unless the contrary intention appears:
  - (1) the clause headings are for ease of reference only and shall not be relevant to interpretation;
  - (2) a reference to a clause number is a reference to its subclauses;
  - (3) words in the singular number include the plural and vice versa;
  - (4) words importing a gender may include any other gender;
  - (5) a reference to a person includes bodies corporate and unincorporated associations and partnerships;

(6) a reference to a clause, sub-clause, schedule or appendix is a reference to a clause or sub-clause of or a schedule or appendix to the Agreement;

(7) where a word or phrase is given a particular meaning, other parts of the speech and grammatical forms of that word or phrase have corresponding meanings;

(8) monetary references are references to Australian currency; and

(9) the words 'include' and 'including' are to be construed as importing the term 'without limitation'.

2.2. The Agreement (other than these conditions) is to prevail over these conditions in the event of any inconsistency.

### 3. Equipment

3.1. The Company will use reasonable endeavours to deliver the Equipment to the Customer on the Delivery Date at the Site during the Customer's normal business hours but may at its sole discretion make delivery elsewhere if so requested by the Customer upon not less than seven days' notice and may charge the Customer for doing so.

3.2. If the Customer requests delivery of the Equipment in advance of the estimated Delivery Date or postponed beyond the estimated Delivery Date, the Company shall use reasonable endeavours to re-schedule delivery accordingly (and may charge the Customer for doing so) but shall otherwise be under no obligation to comply with the Customer's request.

3.3. The Company does not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond the Company's reasonable control, including failures in supply to the Company or delays caused by third parties, such as delivery companies, manufacturers, unexpected illness, or absence, etc.

3.4. Packing materials remain the property of the Company and shall be removed or otherwise disposed of at the sole discretion of the Company.

3.5. If the Company requests permission to deliver the Equipment prior to the estimated Delivery Date, the Customer shall use reasonable endeavours to prepare the Site and to do all other things necessary to enable it to comply with the request and to accept early delivery.

3.6. Risk in all Equipment will pass to the Customer immediately upon:

(1) departure of Equipment from manufacturer/ supplier /the Company's warehouse for delivery to the Customer, the Customer's agent or into the Customer's custody or control; or

(2) collection by the Customer, or the Customer's nominated carrier or agent.  
Nothing in this clause will affect title to the Equipment.

3.7. The Customer is not relieved of their obligation to accept or pay for the Equipment by reason of a delay in delivery.

3.8. The Company may substitute any component of the Equipment or part of any component of the Equipment prior to delivery without consultation with the Customer (but nevertheless subject to advising the Customer on or before delivery) and may in any other respect modify the Equipment if, in the reasonable opinion of the Company, doing so will not:

(1) adversely affect the performance or capacity of the Equipment;

(2) alter the configuration of the Equipment in any material respect; or

(3) otherwise materially affect the obligations of the Company or prejudice the rights of the Customer under the Agreement.

3.9. The Company shall install the Equipment at the Site on the Installation Date and (unless otherwise agreed in writing) during the Company's normal business hours.

3.10. If the Customer requests installation of the Equipment at a location other than the Site, it shall make a request in writing to the Company to that effect not later than thirty days prior to the Installation Date, and the Company may at its sole discretion determine whether to agree to such a request and whether to charge the Customer for doing so and what other conditions, if any, shall apply in the event of it agreeing to such a request.

3.11. If the Customer requests installation in advance of the Installation Date, the Company shall use reasonable endeavours to reschedule installation accordingly (and may charge the Customer for doing so) but shall otherwise be under no obligation to comply with the Customer's request.

3.12. The Customer shall provide the Company with such assistance (including the provision of personnel and facilities) as the Company reasonably considers necessary to ensure satisfactory installation of the Equipment. The Customer shall ensure the Company is granted all the reasonable access (including necessary security clearances) accordingly.

3.13. If the Company requests permission to install the Equipment prior to the Installation Date, the Customer shall use reasonable endeavours to prepare the Site and do all other things necessary to comply with the request and to accommodate early installation.

## 4. Cooperation – Access & Support

- 4.1. The Customer shall, where relevant, ensure the Company has full and safe access (including any applicable security clearance) to the Site and any necessary equipment, materials and information. The Customer shall ensure that the Company is provided with all facilities, services and accessories reasonably required, and generally cooperates with the Company, to enable the Company to comply with its obligations under the Agreement.
- 4.2. The Customer shall, where relevant, provide on request a suitably qualified or informed person to accompany the Company's personnel and to advise the Company on project requirements, access, security procedures and any other matter within the Customer's knowledge or control which will assist the Company in complying with its obligations under the Agreement.

## 5. Site Preparation

- 5.1. The Customer shall at its own expense prepare the Site, and access to the Site, prior to delivery of Equipment (complying with any directions or specifications issued by the Company) and ensure the availability at the Site of:
  - (1) adequate electric current;
  - (2) adequate electrical and mechanical fittings; and
  - (3) appropriate environmental conditions.
- 5.2. The Company shall, upon request from the Customer, supply such information and assistance as the Company considers reasonable and necessary to enable the Customer to prepare the Site and shall, if requested by the Customer and at the Customer's expense, inspect the Site prior to delivery to provide an opinion as to whether the Site is suitable for delivery and installation of Equipment.
- 5.3. The Customer shall be liable to the Company for all reasonable costs and expenses incurred by it directly or indirectly as a result of any delay in delivery or installation of the Equipment due to inadequate preparation of or access to the Site.

## 6. Title & Risk

- 6.1. Title in any Intellectual Property Rights and Equipment will pass to the Customer upon full and final payment to the Company in cleared funds of all sums payable by the Customer under the Agreement.
- 6.2. Risk of loss or damage to any Equipment passes to the Customer upon delivery of the Equipment to the Site or the Company's premises, and the Customer shall insure the Equipment with a reputable insurance company in favour of the

Customer in an amount equal to the amount payable for it under the Agreement against all risks of loss or damage due to any cause.

## 7. Invoicing & Payment

7.1. The Company shall render an invoice to the Customer for:

- (1) the supply of Services; and
- (2) the first to occur of the delivery of the Equipment to the Site and receipt of it by the Company's on its own premises.

7.2. The Customer shall make payment to the Company of all amounts payable by it under the Agreement in accordance with the Customer's credit terms approved in writing by the Company subject to the following:

- (1) Where the Customer is an approved credit account customer, and the Customer will be making payment through a lease, rental or hire-purchase facility, the Customer shall provide a certificate of approval addressed to the Company by the relevant finance company before the Agreement is processed by the Company;
- (2) Where the Customer is an approved credit account customer, and those amounts for Equipment are equal to or exceed \$50,000, the Company may require the Customer to provide a deposit of 25% of those amounts for Equipment before the Agreement is processed;
- (3) Where the Customer is an approved credit account customer, and the Customer will be making payment using a credit card facility, the Company may charge a credit card administration fee equal to 3% of those amounts; and (
- (4) Where the Customer does not have an approved credit account with the Company, the Customer shall make payment in advance or pay cash on delivery, in each case for the full amount, and, if the Customer will be making payment using a credit card facility, the Company may charge a credit card administration fee equal to 3% of those amounts.

7.3. The Customer shall pay all reasonable out of pocket expenses (including telephone, parking, mileage, accommodation, and airfares) incurred by the Company in providing the Services, and the Company shall retain and provide copies of receipts on request.

7.4. If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by the Company, the Customer shall make due payment of the portion of the amount stated in the invoice which is not in dispute and shall notify the Company in writing (within seven days of receipt of invoice) of the reasons for disputing the balance. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was invoiced, then the Customer shall pay the amount forthwith. In the event that the Parties cannot agree on the

disputed amount, they shall resolve the dispute in accordance with the dispute resolution process provided for in Clause 23.

- 7.5. The Company may at its sole discretion (and without prejudice to any other right under the Agreement or at law but in relation to the subject-matter of any current issue under the dispute resolution process under sub-clause 7.4) cease to perform Services or supply and/or install Equipment without notice to the Customer, and enter any premises occupied by the Customer for the purposes of removing any Equipment in the possession or under the control of the Customer, wherever situated, for which payment has not been made in accordance with the Agreement.
- 7.6. The Customer may not in relation to any sum payable by it exercise any right of set-off or counterclaim except in accordance with sub-clause 7.4.
- 7.7. The Company has the right to be paid interest by the Customer (after as well as before any judgment) on any sum payable by the Customer under the Agreement, and not paid to the Company in cleared funds on the due date, accruing from day to day (on the basis of a 365-day year) at a yearly rate equal to 3% over the ninety-day bank bill rate of ANZ Banking Corporation from time to time in force.

## 8. GST

- 8.1. Any sum payable under the Agreement which under applicable legislation is properly subject to GST shall be increased by the addition of GST at the prevailing rate. The Party from which payment is due shall make payment accordingly. The other Party shall promptly issue and deliver to that Party an invoice valid for GST purposes to enable the applicable GST to be reclaimed without delay as an input tax credit by the Party making payment.

## 9. Confidentiality

- 9.1. A Party shall not, without the prior written approval of the other Party, disclose any of the other Party's Confidential Information provided that:
- (1) A Party shall not be in breach of sub-clause 9.1 in circumstances where it is compelled by law to disclose the other Party's Confidential Information; and
  - (2) The Company may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- 9.2. Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub- contractors engaged for the purposes of the Agreement, comply with sub-clause 9.1 as if they were themselves party to the Agreement.

9.3. On termination, expiry, or performance of the Agreement each of the Parties shall promptly upon request by the other confirm to the other that it has destroyed all documents and records (including computer files) insofar as they may contain any Confidential Information belonging to the other.

9.4. This clause 9 shall survive the termination, expiry, or performance of the Agreement.

## 10. Warranties – Equipment & Services

### Equipment

10.1. The Company shall not be liable for the repair or supply of spare parts for any Computer Systems of the Customer not supplied by the Company.

10.2. The Customer may notify the Company in writing of any defect or suspected defect in any Computer Systems not supplied by the Company. The Company shall, to the extent necessary, and as soon as practicable after receiving notice from the Customer, inspect, replace or manage the repair of the Computer Systems concerned and may charge the Customer for doing so.

10.3. The Company warrants as follows:

- (1) All Equipment is newly purchased from the manufacturer; and
- (2) It believes the Equipment to be free from defects in materials and workmanship.

10.4. The Customer may, during the manufacturer's warranty period, notify the Company in writing of any defect or suspected defect in the Equipment. The Company shall, to the extent necessary, and as soon as practicable after receiving notice from the Customer pursuant to this subclause, inspect, replace, or manage the repair of the Equipment.

10.5. The Company shall not be liable under sub-clause 10.3 or sub-clause 10.4 if the defect is the result of:

- (1) improper use or mismanagement by the Customer;
- (2) operation of the Equipment other than in accordance with the Operating Manual;



- (3) use of the Equipment in a manner not reasonably contemplated by the Company;
- (4) modification of the Equipment not authorized by the Company;
- (5) use of the Equipment in a manner contrary to law;
- (6) subjection of the Equipment to unusual or unrecommended physical, environmental or electrical stress;
- (7) reinstallation or moving of the Equipment by a person other than the Company;
- (8) use of the Equipment other than the Customer;
- (9) the Customer's failure to comply with any terms of the Agreement; or
- (10) the Customer's failure or refusal to install engineering changes or enhancements recommended by the Company.

10.6. The Company shall have no obligation under this clause 10 in respect of Equipment designated by the Company in writing as being excluded from warranty coverage.

### **Services**

10.7. The Company shall perform the Services in accordance with all relevant legislation (including subordinate legislation) and with Australian Standards in a professional and efficient manner and shall exercise due care, skill and diligence and judgement in the performance of the Services.

10.8. In the event that any part of the Services performed by the Company does not, in the reasonable opinion of the Parties, comply with sub-clause 10.7, then the Customer may require that the Company re-perform the work at its own cost and without delay.

## **11. Implied Terms**

11.1. Subject to sub-clause 11.2, any condition or warranty which would otherwise be implied is excluded.

11.2. Where legislation implies any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty,

the condition or warranty shall be deemed to be included in the Agreement. However the liability of the Company for any breach of such condition or warranty shall be limited, at the option of the Company, to the following:

- (1) if the breach relates to Equipment:
  - (a) the replacement or the supply of equivalent equipment;
  - (b) repair;
  - (c) payment of the cost of replacement or of acquiring equivalent equipment;  
or
  - (d) payment of the cost of repair; and
  
- (2) if the breach relates to Services:
  - (a) supplying of the Services again; or
  - (b) payment of the cost of having the Services supplied again.

## 12. Liability

12.1. The Company shall not be liable for loss of any software or data loaded onto or held on any of the Customer's hardware.

12.2. The Company shall be liable for and shall indemnify the Customer in respect of all costs, damages and expenses which the Customer may incur in defending or settling any actions, proceedings, claims, demands or prosecutions which may be brought against the Customer arising out of or as a consequence of any negligent act or omission by the Company in performing the Services or supplying or installing the Equipment or any breach of the Agreement on the part of the Company including:

- (3) loss or damage to or destruction of any property; and
- (4) personal injury, disease or death caused to any person.

12.3. The Company's liability and obligation to indemnify the Customer under sub-clause

12.2 is reduced proportionally to the extent that the damage, injury, loss, costs or expense referred to is caused by the negligence act or omission, or any other deliberate or wrongful action on the part of the Customer.

12.4. The liability of the Company to pay or allow money to be paid to the Customer under, or as a result of any breach of, the Agreement on the part of the Company (whether by way of damages or under any indemnity or otherwise) is limited to an amount equal to fifty percent of the total sum invoiced to the Customer by the Company under the Agreement.

## 13. Termination

13.1. Either Party may terminate the Agreement immediately by notice to the other in writing if the other:

- (1) Is in breach of any term of the Agreement:
  - (a) in circumstances where the breach in question is material in the sense of having or being reasonably likely to have a significant adverse effect on the terminating Party or its business; or
  - (b) in circumstances where the breach in question is not material in the sense specified above but has not been remedied within fourteen days of written notice by the terminating Party to the other specifying the breach and requiring it to be remedied;
  - (c) Becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration;
  - (d) Ceases or threatens to cease conducting its business in the normal manner; or
  - (e) Is or becomes unable to pay its debts as they fall due (including within the meaning of the Corporations Act) or is presumed under the Corporations Act to be insolvent.
- (2) The Company may terminate the Agreement immediately by notice in writing to the Customer if the Customer:
  - (a) In the case of a partnership - dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
  - (b) In the case of a natural person - dies.

13.2. The Party terminating the Agreement under sub-clause 13.1 (1) or sub-clause may in addition:

- (1) retain any moneys paid;
- (2) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- (3) be regarded as discharged from any further obligations under the Agreement; and
- (4) pursue any additional or alternative remedies provided under the Agreement or by law.

## 14. Intellectual Property Rights

- 14.1. The title to all Intellectual Property Rights in all documents, materials and information provided by the Customer to the Company for the purpose and in the performance of the Services shall remain at all times with the Customer.
- 14.2. The Customer grants to the Company the right to use such Intellectual Property Rights (on a non-exclusive and non-terminable basis and free of royalty or other payment) to the extent necessary or expedient for it to perform the Services.
- 14.3. The title to all Intellectual Property Rights in all documents, materials and information provided by the Company to the Customer for the purpose and in the performance of the Services shall remain at all times with the Company.
- 14.4. The title to all Intellectual Property Rights in all documents, materials and information created by the Company for the purpose and in the performance of the Services shall (subject to sub-clause 6.1) remain at all times with the Customer subject to a non-exclusive and non-terminable licence (free of royalty or other payment) in favour of the Company (including its successors but otherwise subject to clause 9) for the purpose of its business.
- 14.5. The Customer warrants that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by the Customer to the Company belongs to the Customer. In the event of any breach of this warranty, the Customer will pay all sums due to the Company as if such warranty had not been breached (and regardless of any non-performance of any obligation by the Company on account of or in connection with the breach of such warranty). The Customer indemnifies and holds the Company harmless in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by the Customer.

## 15. Force Majeure

- 15.1. Neither Party shall be liable for any delay or failure to perform its obligations pursuant to the Agreement if such delay or failure is due to Force Majeure.
- 15.2. If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.
- 15.3. If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement by written notice to the other.
- 15.4. If the Agreement is terminated pursuant to subclause 15.3, the Company shall refund moneys previously paid by the Customer pursuant to the agreement for goods and services not provided by the Company to the Customer.

## 16. Sub-Contracting

- 16.1. The Company may sub-contract a third party organisation for the performance of the Agreement or any part of the Agreement upon obtaining the Customer's prior written consent which will not be unreasonably withheld or delayed by the Customer in relation to a reputable third party with demonstrated technical skills and service capability.
- 16.2. The Company may, without the consent of the Customer, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of Services.
- 16.3. The Customer may not sub-contract a third-party organisation for the performance of the Agreement or any part of the Agreement without the Company's prior written consent which may be given or withheld at its sole discretion and subject to any conditions it may think fit.

## 17. Legal Status of Parties

- 17.1. The Company is an independent contractor without the authority to bind the Customer by contract or otherwise. Neither the Company nor any of the Company's personnel is an agent or employee of the Customer by virtue of the Agreement.
- 17.2. The Agreement does not create or evidence any partnership or agency or any relationship of trust between the Parties except to the extent, if any, expressly provided.
- 17.3. The obligations of the Customer under the Agreement are joint and several, as opposed to several, in any case where there is more than one person involved as the Customer.

## 18. Assurances - Capacity of Parties & Accuracy of Customer Information

- 18.1. Each Party represents and warrants to the other that it has the capacity to enter into the Agreement and that the Agreement is binding on it in accordance with its terms.
- 18.2. The Customer represents and warrants to Aryon that all information provided by it to Aryon in writing for the purpose of the Agreement is true and accurate, and not misleading by reason of omission or otherwise, and undertakes with Aryon to ensure that all information that may be provided by it to Aryon in writing for the purpose of the Agreement is true and accurate and not misleading by reason of omission or otherwise.

## 19. Entire Agreement

19.1. The Agreement constitutes the entire Agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether made orally or in writing.

## 20. Assignment

20.1. The benefit of the Agreement may not be assigned by the Customer, in whole or in part, without the Company's prior written consent which may be given or withheld at its sole discretion and subject to any conditions it may think fit.

## 21. Waiver

21.1. No right under the Agreement shall be deemed to be waived except by notice in writing signed by the Party for whose benefit it applies.

21.2. Any waiver by either Party pursuant by sub-clause 21.1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the other.

21.3. Subject to subclause 21.1, any failure by either Party to enforce any clause of the Agreement, or any forbearance, delay or indulgence granted by it to the other, will not be construed as a waiver of any of its rights under the Agreement.

## 22. Variation

22.1. The Agreement shall not be varied except by Agreement in writing signed by both Parties. Aryon may at its sole discretion charge the Customer for agreeing to any variation taking due account of costs (both internal and external) likely to be incurred by it as a result and with the addition of its usual margin for all Equipment or Services concerned.

## 23. Disputes

23.1. Any disputes arising in connection with the Agreement which cannot be settled by negotiation between the Parties or their representatives shall be submitted to arbitration in accordance with the Rules of Conduct of Commercial Arbitration for the time being of the Institute of Arbitration Australia. During such arbitration, both Parties may be legally represented.

23.2. Prior to referring a matter to arbitration pursuant to sub-clause 23.1, the Parties shall:

- (1) formally refer the dispute to their respective contract managers for consideration;

(2) refer the dispute to the respective chief executive officer of each Party if the respective contract managers are unable to resolve the dispute after five days (or such other period as is agreed between the Parties) from the date of referral; and

(3) in good faith explore the prospect of mediation.

23.3. Nothing in this clause 23 shall prevent a Party from seeking urgent equitable relief before an appropriate court.

## 24. Parties' Rights

24.1. An express statement of a right of either Party under the Agreement is without prejudice to any other right of that Party expressly stated in the Agreement or existing at law.

## 25. Further Assurance

25.1. Each Party shall do or cause to be done all things necessary or expedient to give full effect to the Agreement (including execution of documents) and refrain from doing or causing to be done anything that may hinder or delay due performance of the Agreement.

## 26. Solicitation of Employees & Contractors

26.1. Neither Party shall solicit for employment, either directly or indirectly, any person who is employed or contracted by the other Party. This restriction shall apply both during the course of the Agreement and for a period of twelve months after the date of final payment to the Company in cleared funds of all amounts payable by the Customer under the Agreement.

26.2. A Party in breach of sub-clause 26.1 shall pay to the other (as a pre-estimate of liquidated damages and not as a penalty) a sum equal to the aggregate amount paid or payable to the person concerned in respect of the last three complete months of that person's employment or engagement with the Party not in breach at the time of the relevant breach.

26.3. A Party shall promptly advise the other Party if a person who is employed or contracted by the other Party seeks to be employed or contracted by the first mentioned Party.

## 27. Survival of Agreement

27.1. Subject to any provision to the contrary, the Agreement shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assignees and receivers but shall not endure for the benefit of any other persons.

27.2. The provisions of the Agreement which are capable of having effect after its termination, expiry or performance shall remain in full force and effect thereafter. Termination, expiry or performance of this Agreement shall not affect the accrued rights of either Party.

## 28. Severability

28.1. If any provision of the Agreement is held invalid, unenforceable or unlawful for any reason, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Agreement.

## 29. Governing Law & Jurisdiction

29.1. The Agreement will be governed by and construed according to the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the Queensland courts.

## 30. Notices

30.1. Any notice must be given in writing may be delivered by hand, by mail or by facsimile to the addresses specified in the Agreement.

30.2. Notice will be deemed given:

- (1) in the case of hand delivery, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- (2) in the case of posting within Australia, three days after dispatch and otherwise ten days after dispatch; and
- (3) in the case of facsimile, upon receipt of transmission if received before 16:00 (local time in the place of receipt) on a business day or otherwise at the start of business on the first business day following transmission.