

SOFTWARE LICENCE AND RELATED SERVICES AGREEMENT

iRekon Product (v.010209)

This Software Licence and Related Services Agreement (the "Agreement") is a binding agreement between Licensee and Innogence Limited ("Licensor") for the purchase of software licences and/or services.

1. DEFINITIONS

- 1.1. "**Documentation**" means the user documentation and/or reference manual(s), in whatever form recorded, supplied by Licensor with the Product.
- 1.2. "**Licensee**" means the specific corporation or division designated in this Agreement, or any permitted successor assignee (whether by change of name, dissolution, merger, consolidation, reorganization or otherwise) to such corporation or division or its business assets.
- 1.3. "**Order Schedule**" means a document entitled "Order Schedule" executed by the parties that refers to this Agreement, and that describes in greater detail Licensee's order specific information, including but not limited to, Licensee's billing information, lists of Products ordered, pricing, payment and shipping information. Such Order Schedule(s) is (are) hereby incorporated into this Agreement by reference. Once executed, the Order Schedule becomes a non-cancelable, non-refundable Licensee order to obtain Products or Support Services.
- 1.4. "**Outsourcer**" means a third party engaged by a Licensee for data processing, consulting, product customization, or internal information management at a designated Licensee or Outsourcer site.
- 1.5. "**Products**" means the machine-readable object code of the software programs specified in an Order Schedule and/or a Purchase Order, together with any Documentation and, if appropriate, Updates thereto; ("iRekon").
- 1.6. "**Purchase Order**" means a non-cancelable, non-refundable Licensee order to obtain Products or Support Services that is signed and/or authorized by Licensee representative. Each such Purchase Order is hereby incorporated into this Agreement.
- 1.7. "**Support Services**" means Product support services described under Section 5 of this Agreement and that may be updated from time to time.
- 1.8. "**Updates**" means any update or enhancement that may be provided under Support Services.
- 1.9. "**Warranty Period**" means thirty (30) days from the date of initial delivery to Licensee of the applicable Product (excluding Updates).

2. LICENCE

- 2.1. **License Grant.** Subject to Licensee's compliance with this Agreement, Licensee is granted a non-exclusive and non-transferable perpetual license to use the Products identified in a Purchase Order and/or Order Schedule accepted under this Agreement for Licensee's internal business purposes in accordance with the product use rights set forth under Section 4 of this agreement and that may be updated from time to time.
- 2.2. **License Restrictions.** Except as expressly permitted by this Agreement, Licensee may not: (i) lease, loan, resell, sublicense, or otherwise distribute a Product; (ii) use a Product to provide or operate Application Service Provider (ASP), service bureau, marketing, training, outsourcing, or consulting services, or any other commercial service related to the Products; (iii) use a Product to develop a product which is competitive with any of the Products; (iv) permit third party access to, or use of, the Products, except as expressly permitted herein; (v) distribute or publish keycode(s) to the Products; or (vi) use unauthorized keycode(s). The Licensee shall notify Licensor if Licensee becomes aware of any unauthorized third party access to, or use of, a Product.
- 2.3. **Outsourcers.** If Licensee contracts with an Outsourcer, Licensee may permit access to, and use of, the Products by the Outsourcer, provided that: (i) the Outsourcer complies with the terms of this Agreement and accesses and uses the Products solely for purposes of rendering services to Licensee; and (ii) the total number of licenses used by the Licensee and Outsourcer must not exceed the number of licences ordered. Licensee shall be responsible for Outsourcer's compliance with the terms of this Agreement. Upon completion of Licensee's services by Outsourcer, Licensee shall certify in writing that Outsourcer has un-installed and destroyed all copies of Products within thirty (30) days of such completion of services.
- 2.4. **Production System.** Shall mean a live Licensee system used for normal business operations and where Licensee's data is recorded.
- 2.5. **Product Territory.** The licences granted hereunder are only valid in Australia and New Zealand (the "Territory"). Licensee shall not ship, transfer or otherwise export the Product outside the Territory without Licensor's prior written consent and Licensee's payment of any additional fees at Licensor's then current rates. When exporting the Products, Licensee shall comply with all applicable export laws and regulations.
- 2.6. **Duplication of Product.** Licensee may make Product copies equal to the number of licensed copies expressly authorized under this Agreement plus a reasonable number of archival copies for inactive backup purposes. All Product copyright, trademark, patent, and related proprietary notices incorporated in or fixed to the Product shall be duplicated by Licensee on all copies or extracts thereof and shall not be altered, removed, or obliterated.

3. PRODUCT OWNERSHIP AND RESTRICTIONS

All intellectual property rights and title to the Product shall remain with Licensor and no interest or ownership therein is conveyed to Licensee. No right to modify (even for purposes of error correction), adapt, or translate the Product or create derivative works therefrom is granted to Licensee or Outsourcer, except as necessary to configure the Product using any tools provided for such purposes and contained in the Product. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that Licensee or Outsourcer has any right to obtain Product source code. Except as required to be permitted by applicable law, reverse compiling (including reverse compiling to ensure interoperability), reverse engineering and other source code derivation of the Product is prohibited. If Licensee or Outsourcer wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, they shall first provide written notice to Licensor and permit Licensor at its option, to make an offer to provide information and assistance reasonably required to ensure Product interoperability with other Licensee products for a fee to be mutually agreed upon (if any).

4. PRODUCT USE RIGHTS

- 4.1 **License.** iRekon runs on SAP applications and cannot be used on a standalone basis. iRekon is licensed on an "Application" basis. An Application license permits the Licensee to install a single instance of the Software and operate the Software on a single installation. The installation can consist of a single or multi-server environment which allows different users to access the Software however each Application license must be assigned to a single installation and must not be shared amongst different installation. If the term "Deployment" is referred to, then Deployment means a single installation.
- 4.2 **Backup Systems and Development and Test Licenses.** The Licensee is permitted to; (i) install and operate the Software in an active (or hot) backup system for immediate fail over protection in the event the Licensee's Production system ceases to operate due to an emergency; and (ii) install and operate the Software in a Development or Test environment **PROVIDED THAT** each acquired Application license is only installed and operational in one Production system at any given point in time.
- 4.3 **Updates.** If Licensee receives updates to previously acquired and licensed product, Licensee's license to use the Software is limited to the aggregate number of licenses Licensee has acquired for the previous product.

5. SUPPORT AND ADDITIONAL SERVICES

- 5.1. **Support Services.** Licensee may request and Licensor shall provide, Standard Support Services ("Support Services") to an extent that these services are made generally available. Support Services currently include: (i) email and telephone support during New South Wales normal business hours; (ii) two (2) named contacts; and (iii) new software releases (Updates) of the licensed product.

Licensor may suspend or terminate Support Services for all Product(s) in the event that Licensee does not pay fees for Support Services when due. If Licensee purchases Support Services for a Product, then Licensee shall purchase Support Services for all licences of such Product in its possession. Licensor may select qualified subcontractors to perform Support Services. Support Services shall only be provided on a twelve (12) month basis, and shall be automatically renewed each year unless either party gives written notice to the other party thirty (30) days prior to the end of the initial twelve (12) month period or any extension thereof, of its intention to terminate the Support Services. Support Service Fees based on the then current Support Services rates will be invoiced to Licensee at the commencement of the initial twelve (12) month period and at the commencement of each automatic twelve (12) month extension. Support Services Fees will be adjusted at the time of automatic renewals to reflect the then current Support Services rates and will be subject to annual CPI increases.

- 5.2. **Consulting & Education Services.** If Licensee acquires product consulting or other professional services, those services will be governed by this Agreement and any other agreement that may be entered into. Should Licensor agree to provide such services, the payment of the Product licence and Support Services fees under this Agreement shall not be contingent under any circumstances upon the performance of any such services including installation and implementation services.

6. FEES, TAXES, PAYMENT TERMS, PURCHASE ORDER, SHIPPING

- 6.1. **Fees.** Licensor fees or other charges for any Product, Support Services, Documentation, or other service shall be as specified in the Order Schedule and/or Purchase Order. Discounts extended by Licensor under this Agreement shall not apply to fees due when Licensee orders additional Products or services, unless otherwise stated the Order Schedule.
- 6.2. **Taxes.** Licensor fees are exclusive of, and Licensee is responsible for, all applicable sales, use, withholding, goods and services and other taxes and duties (other than tax on Licensor net income), which Licensee will pay in addition to the amounts due and payable hereunder.
- 6.3. **Invoicing and Payment.** All payments of fees or charges under this Agreement shall be made in Australian dollars within thirty (30) days of the date of the applicable Licensor invoice. Any amount payable by Licensee to Licensor hereunder which is past due shall be subject to a late payment charge equal to two percent (2%) per month or the highest rate permitted by law, whichever is less. The receipt or request for payment of such amounts shall not prejudice Licensor's rights with respect to Licensee's failure to pay on the due date.
- 6.4. **Shipping.** Licensor, without liability to Licensee, reserves the right to refuse shipment of Product if the Purchase Orders received are incomplete, improperly completed or contain unacceptable terms. Licensor shall fulfill the Order Schedule / Purchase Orders in accordance with the terms of this Agreement and ship products and documentation FOB origin, Licensor's manufacturing site.

7. GST

- 7.1. **"GST"** means the GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST Act**). Words used in this clause which have a defined meaning in the GST Act and associated acts and legislative instruments (collectively, GST law) have the same meaning as in the **GST law**, unless the context otherwise requires.
- 7.2. Any consideration or amount payable under this Agreement, including any non-monetary consideration (**Consideration**) is exclusive of GST.
- 7.3. If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- 7.4. The Additional Amount payable under clause 7.3 is payable, without set off, demand or deduction, at the same time and in the same manner as the Consideration for the Supply and the Supplier must provide the Recipient with a Tax Invoice within fourteen (14) days after the time of payment of the Additional Amount.
- 7.5. If, for any reason (including, without limitation, the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 7.3: (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate; (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and (iii) the Supplier must notify the Recipient of the refund, credit or further amount within fourteen (14) days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within seven (7) days after receiving such notification as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within fourteen (14) days after becoming aware of the occurrence of the Adjustment Event.

- 7.6. Despite any other provision in this Agreement: (i) if an amount payable under or in connection with this Agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (Amount Incurred), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred; and (ii) no Additional Amount is payable under clause 7.3 in respect of a Supply to which S84-5 of the GST Act applies.

8. LIMITED WARRANTIES

- 8.1. Licensor warrants that during the Warranty Period, the Products will operate substantially in conformity with the applicable Documentation provided by the Licensor.
- 8.2. Within the Warranty Period, if Licensee detects a defect in a Product's physical media, Licensee may return the defective media to Licensor and Licensor will replace it free of charge.
- 8.3. Provided that Licensor is notified in writing of a Product's nonconformance with the warranty set forth in clause 8.1 within the applicable Warranty Period, Licensor shall at its option: (i) repair or replace the defective product; (ii) refund the License Fees paid for the Product in exchange for a return of the defective Product. This clause 8.3 is Licensee's exclusive remedy for breach of the limited warranty in clause 8.1. The above warranty specifically excludes defects resulting from accident, abuse, misapplication or unauthorized repair, modifications, or enhancements. Licensor does not warrant that the use of the Products will be uninterrupted or error free.
- 8.4. To the extent permitted by law, the liability of Licensor for any breach of a condition or warranty, implied into this Agreement under the Trade Practices Act, 1974 (Cth) or any equivalent State or Territory legislation which cannot be excluded, is limited to one or more of the following at Licensor's sole election: (i) in the case of goods: (a) replacement of the goods or supply of equivalent goods; (b) the repair of the goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods or (d) the payment of the cost of having the goods repaired or (ii) in the case of services: (a) the supply of the services again or (b) the payment of the cost of having the services supplied again.

EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS CLAUSE 8 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR AND ITS SUPPLIES DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS, WHETHER BASED ON CONTRACT, STATUTE, COMMON LAW, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

9. LIMITATION OF LIABILITY

SUBJECT TO LICENSOR'S OBLIGATION UNDER CLAUSE 10 OR FOR ANY OBLIGATION WHICH BY LAW CANNOT BE LIMITED, THE MAXIMUM AGGREGATE LIABILITY OF THE LICENSOR AND ITS SUPPLIES FOR ANY CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION, BREACH OF THIS AGREEMENT, NEGLIGENCE, TORT, OR FOR ANY OTHER COMMON LAW OR STATUTORY CAUSE OF ACTION ARISING FROM OR IN RELATION TO THIS AGREEMENT OR OTHERWISE IS LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY THE LICENSEE TO LICENSOR FOR THE EFFECTIVE PRODUCT UNDER THIS AGREEMENT. IN CALCULATING LICENSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, THE AMOUNTS PAID OR THE VALUE OF ANY GOODS OR SERVICES REPLACED, REPAIRED, OR SUPPLIED BY LICENSOR PURSUANT TO CLAUSE 8 SHALL BE INCLUDED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS SUPPLIES BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOST PROFITS OR REVENUES, GOODWILL, BARGAIN, ECONOMIC LOSS, ANTICIPATED SAVINGS, LOSS OR INACCURACY OF ANY DATA, OR COST OF SUBSTITUTE GOODS, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSEE RAISE ANY CLAIM UNDER THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER WHICHEVER OF THE FOLLOWING DATES OCCURS FIRST: (I) THE DISCOVERY OF THE CIRCUMSTANCES GIVING RISE TO SUCH CLAIM; OR (II) THE EFFECTIVE DATE OF THE TERMINATION OF THIS AGREEMENT. NOTWITHSTANDING THIS CLAUSE 9 AND CLAUSE 8.4, LICENSOR WILL ONLY BE LIABLE TO THE EXTENT THAT SUCH LIABILITY IS CAUSED OR CONTRIBUTED TO, BY LICENSOR. THE PARTIES ACKNOWLEDGE THAT THE FORGOING LIMITATIONS AND FAIR AND REASONABLE AND REFLECT THE PRICE PAID FOR THE PRODUCTS AND SERVICES HEREUNDER.

10. THIRD PARTY CLAIMS

- 10.1. Licensor shall: (i) defend, or at its option settle, any claim by a third party against Licensee on the basis of the Products infringement of any United States, Australian or New Zealand patent, trademark, copyright or trade secret; (ii) pay any final judgment entered against Licensee on such claim or any settlement entered into by Licensor on Licensee's behalf, PROVIDED THAT: Licensee (i) notifies Licensor promptly of each such claim; (ii) gives a Licensor sole control of the defense and/or settlement of the claim; (iii) fully co-operates with Licensor in the defense or settlement of the claim; and (iv) takes no action that may prejudice Licensor's ability to defend the claim.
- 10.2. If all or any part of the product is, or in the opinion of the Licensee is likely to become, the subject of a claim of infringement, Licensor may at its sole discretion: (i) procure for the Licensee the right to use the Product or the affected part thereof; (ii) replace the Product or affected part with other suitable software; (iii) modify the Product or affected part to make it non-infringing; or (iv) if none of the forgoing remedies is commercially feasible as determined by Licensor in its sole discretion, Licensor shall refund, upon return of the infringing Product, a pro-rated (over a thirty six (36) month period on a straight line basis) portion of the payments paid by the Licensee to Licensor for the Product or the affected part.
- 10.3. Licensee shall have no indemnity or other obligations to the extent a claim is based on: (i) failure to use an update provided by Licensor, if infringement could have been avoided by the use of the updated version; (ii) combination, operation, or use of Products with other products not provided by Licensor, if such infringement would have been avoided in the absence of such combination, operation, or use; (iii) Licensee's use of the Product in any manner inconsistent with the applicable licence terms and conditions; or (iv) modification, alteration, or enhancement to the Product not performed or expressly authorized by Licensor.

THE FORGOING PROVISIONS OF THIS CLAUSE STATE THE ENTIRE LIABILITY AND OBLIGATION OF LICENSOR AND THE EXCLUSIVE REMEDY OF LICENSEE FOR CLAIMS OF INFRINGEMENT OF THIRD PARTY RIGHTS.

11. TERM AND TERMINATION

Except as otherwise specified in an Order Schedule and/or Purchase Order, the Product Licenses granted hereunder shall be perpetual; provided however, Licensor may immediately terminate this Agreement (including, for the avoidance of doubt, the licenses grant hereunder) and any services hereunder if: (i) Licensor notifies in writing of a breach and such breach is not cured within thirty (30) days; or (ii) Licensee makes an assignment for the benefit of creditors or proceedings are commenced by or for Licensee under any bankruptcy, insolvency, or debtor's relief law. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid and shall not limit either party from pursuing other available remedies. Upon termination by Licensor of this Agreement or any party thereof, Licensor shall have no obligation to refund to Licensee any fees paid by Licensee, and

Licensee agrees to waive, in perpetuity and unconditionally, any and all claims for refunds. If a product license is revoked or expired, Licensee must certify in writing to Licensor that Licensee has immediately un-installed and destroyed all copies of the Product within thirty (30) days of such revocation/expiration. The following clauses survive termination of this Agreement: 2.1 subject to clause 11, and clauses 3, 6, 8.4, 9, 11 and 12.

12. GENERAL

- 12.1. **Confidential Information.** Each party receiving Confidential Information (Recipient) shall retain in confidence and require its employees, agents, and contractors to retain in confidence all Confidential Information of the other party (Discloser). "Confidential Information" means (i) the terms and conditions of this Agreement; (ii) all financial terms and conditions contained in Licensor's quotation; (iii) the Products as well as results of any Product benchmark or similar tests (whether performed by Licensor, Licensee, or any third party); and (iv) any information, in written or other tangible form, which has been conspicuously marked by Discloser as "confidential" or "proprietary" or if not so marked, was indicated at the time of disclosure to be confidential and is later summarized and confirmed as confidential in a writing transmitted to Recipient within ten (10) days after disclosure, or which, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential. The Recipient must only use the Confidential Information to perform its obligations under this Agreement and must protect Discloser's Confidential Information in the same manner as the Recipient protects its own Confidential Information of similar importance, but in no event with less than reasonable care. Confidential Information shall remain the sole property of the Discloser and shall not be disclosed to any third party without Discloser's express written consent (except, solely to employees, agents, advisors, attorneys, consultants, and subsidiaries, who need to know and are bound by a written agreement with Recipient to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement). Confidential Information shall not include any information that: (i) is or becomes publicly available without the Recipient's breach of any obligations owed to the Discloser; (ii) is known to the Recipient prior to the Discloser's disclosure of such information to the Recipient; (iii) becomes known to the Recipient from a source other than the Discloser without a breach of an obligation of confidentiality owed to the Discloser; or (iv) is independently developed by the Recipient. Notwithstanding the foregoing, Licensor may disclose that Licensee is a customer of Licensor. In addition, either party may disclose information in compliance with applicable law or a court order, provided the Discloser is given reasonably prompt notice thereof and an opportunity to attempt to preclude or limit such production. This Agreement constitutes the proprietary information of the Licensor.
- 12.2. **Governing Law and Venue.** The governing law for any claim arising under this Agreement shall be the laws of New South Wales, Australia, excluding its conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The venue for any claims arising under this Agreement shall be the courts located in New South Wales, Australia and the parties agree to submit to the exclusive personal jurisdiction of such courts.
- 12.3. **Integration and Amendment.** This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous conditions, agreements or representations, whether oral or written relating to the subject matter hereof. The Licensee acknowledges that it has not relied on any statement or representation by the Licensor or any employee or agent of Licensor in entering into this Agreement. Any additional or different terms in Licensee's documents (including any preprinted terms contained on Purchase Orders) are hereby deemed to be material alterations and notice of objection to, and rejection of, them is hereby given. This Agreement may not be modified or any term or condition waived except in writing signed by a duly authorized representative of each party. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof. Headings are for convenience only and shall not affect the interpretation of any provision hereunder.
- 12.4. **Assignment.** Neither this Agreement nor any right, obligation, or Product licensed hereunder may be assigned by licensee without Licensor's prior written consent. Any purported assignment in violation of the foregoing is void. Subject to the foregoing, the provisions of the Agreement shall be binding upon and inure to the benefit of the parties, their successors, and permitted assigns.
- 12.5. **Severability.** If any provision of this Agreement is declared unlawful, void, or unenforceable, then that provision shall be limited to the extent enforceable, or otherwise severed, and will not affect the validity and enforceability of the remaining provisions.
- 12.6. **Audits.** Licensor, or Licensor's designated agent, may, upon five (5) days written notice to Licensee, inspect any licensee facility where Products are used and audit records for the purpose of confirming Licensee's compliance with this Agreement. Licensor may perform one audit per twelve (12) month period. Licensor's audit shall be performed at Licensor's sole expense; provided however, that if, as a result of Licensor's audit, it is determined that Licensee owes Licensor additional fees, then Licensee shall bear the reasonable cost of Licensor's audit and pay all past due fees in accordance with the terms of this Agreement. This clause survives termination of this Agreement for two (2) years.
- 12.7. **Feedback.** Notwithstanding clause 12.1, Licensor shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know how or techniques contained in information received from Licensee that directly relates to Licensor's products or business. For example, Licensor (and its suppliers) shall be free to incorporate any suggested changes or modifications to the Products into products licensed to other customers. Licensor owns all intellectual property rights, in and in relation to any such changes or modifications to the Products, and no such rights are granted to or vest in Licensee.
- 12.8. **Force Majeure.** Except with respect to the obligation to pay fees when due hereunder, neither party shall be deemed in default of this Agreement because of a delay or failure in performance of its obligation resulting from any cause beyond its reasonable control (a "force majeure"), provided it gives reasonably prompt notice of the force majeure condition and uses reasonable efforts to mitigate the delay or failure.
- 12.9. **Notices.** Notices under this Agreement must be in writing and may be delivered by hand, by mail, by express courier, or by facsimile. A notice or communication is regarded as having been received: (i) in case of hand delivery or by express courier, on receipt by the Recipient; (ii) in the case of posting, three (3) days after dispatch and (iii) in case of facsimile, upon receipt by the sender of any acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Recipient's facsimile number, provided that, if a notice or other communication is served by hand or by facsimile on a day which is not a business day or after 5.00pm on any business day, such notice or communication will be deemed to have been received by the Recipient at 9.00am on the first business day thereafter. All notices or communications will be sent to the Recipient at the address or facsimile number specified in this Agreement or to such other address or facsimile number as a party may from time to time notify to the other party in writing.
- 12.10. **Contra Proferentem Rule.** This Agreement must not be construed adversely to a party just because that party prepared it.
- 12.11. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts or by facsimile, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.