

SAFETY TRACKER PTY LTD ABN 65 169 314 363 t/a DIGI CLIP MOBILE FORMS SOFTWARE SERVICE AGREEMENT

TERMS AND CONDITIONS

1. ACCEPTANCE

- 1.1 These Terms and Conditions (Terms) form the agreement (Agreement) between Safety Tracker Pty Ltd ABN 65 169 314 363 trading as Digi Clip (referred to as “Digi Clip”, “DIGI CLIP”, “DIGI CLIP mobile forms”, “we” or “us”) and the user (referred to as “the User” or “you”), collectively referred to as the Parties or each a Party.
- 1.2 Digi Clip owns the cloud-based software (Software) which is accessible at www.digiclip.io (Site) or www.safetytracker.net.au (Site) and by downloading the Digi Clip application on smart devices (App).
- 1.3 The User wishes to use the Software.
- 1.4 This Agreement sets out the Terms upon which Digi Clip has agreed to grant the User a right to use the Software. These Terms are binding on any use of the Software and apply to the User from the time that Digi Clip provides the User with an account to access and use the Software (Account).
- 1.5 By using our Software and subscribing on our Site or App, you acknowledge that you have read and understood these Terms and you have the authority to act on behalf of any person or entity for whom you are using the Software, and you are deemed to have agreed to these Terms on behalf of any entity for whom you use the Software.
- 1.6 Digi Clip reserves the right to make changes to these Terms at any time, effective upon the posting of modified Terms. Digi Clip will make every effort to communicate these changes to the User via email. It is the User’s obligation to ensure that the User has read, understood and agree to the most recent Terms available on our Site.

2. SOFTWARE AND SERVICES

- 2.1 The Software provides a means for the User to capture, monitor and communicate work health and safety information, and environmental and quality organisational data, as set out in the Software.
- 2.2 The Software is provided to the User via the Site and the App.
- 2.3 The User will only be able access the Software by completing an online subscription.

- 2.4 Digi Clip may, upon request by the User, customise the Software to meet the particular needs of the User. It is at our sole discretion, whether or not we customise the Software for you. If we agree to customise the Software for you, a separate written agreement will be entered into between Digi Clip and you, outlining the terms and conditions for doing so.
- 2.5 The services provided by Digi Clip includes any services relating to application development, application service provider, software development/programming and software sales (Services). This includes, but is not limited to, providing functions, programs, or other services available to the User through the Software whether accessed via the Site or App, technical support provided in relation to the Software, and, if requested, customisation of the Software to meet the particular needs of a User in accordance with clause 2.4 above.

3. ONLINE SUBSCRIPTION AND ACCOUNT

- 3.1 The Software is currently only intended for use in the countries set out on the Site. Organisations which are not registered in these countries will not be able to complete an online subscription.
- 3.2 When you subscribe online, the Site or App will request that you provide personal information for subscription purposes. This personal information that we collect, and how we deal with it, is set out in the Privacy Policy available on our Site.
- 3.3 You acknowledge and agree that we may use storage servers to host the Software through cloud-based services, and potentially other locations outside Australia. We may disclose your information to cloud-providers, contractors and other third parties located inside or outside of Australia. If we do so, we will take reasonable steps to ensure that any overseas recipient deals with such personal information in a manner consistent with how we deal with it.
- 3.4 While we will use our best efforts to select an appropriate hosting provider, we do not guarantee that the hosting services will be free from errors or defects or that User data will be accessible or available at all times.
- 3.5 You will be required to pay a fee for your subscription (Subscription Fee) as set out on our Site. You will not be given an Account to access and use the Software until payment is made.
- 3.6 Upon subscription, the User obtains a valid Account to use the Software. Digi Clip grants the User a royalty-free, revocable, non-exclusive, worldwide and non-transferable right to use the Software, which cannot be sold, loaned or sub-licensed to third parties for its permitted purpose and in compliance with these terms and any other restrictions which may be notified to you in writing from time to time.
- 3.7 You have the option of changing your subscription by adding or reducing the number of users to your Account. This can be activated immediately.

4. PAYMENT

- 4.1 You agree to pay all Subscription Fees required to access and use the Software. Payment of the Subscription Fee is a condition of continued access.
- 4.2 Payments must be made via credit card (we reserve the right to charge credit card surcharges) or, where agreed in writing with DIGI CLIP, by monthly invoicing.
- 4.3 You acknowledge and agree that:
 - (a) To maintain your subscription, payment will be made automatically each month using the credit card details you have provided, or paid via invoice by the due date specified.
 - (b) If we are unable to process a payment, we will notify you within five (5) business days with instructions to update your credit card and an invoice for the failed payment. Until payment is confirmed, your Account may be locked, and access to the Software suspended.
- 4.4 A processing fee will apply to any manually generated invoice, including invoices issued following failed credit card payments. This fee covers the additional administrative costs of manual processing and will be clearly itemised on the invoice.
- 4.5 If payment remains outstanding:
 - (a) for more than sixty (60) days from the last payment date, your Account may be suspended; and
 - (b) if not received within ninety (90) days, your Account and any associated data may be permanently deleted and will not be recoverable.
- 4.6 If you change your subscription by adding or reducing users:
 - (a) **Adding users:** your Subscription Fee will increase accordingly, and the new fee will apply from the next billing date.
 - (b) **Reducing users:** your Subscription Fee will decrease accordingly, effective from the following monthly billing cycle.

4.7 If you change your subscription plan:

- (a) **Upgrading plans:** your Subscription Fee will increase accordingly and apply from the next billing date.
- (b) **Downgrading plans:** your Subscription Fee will decrease accordingly, effective from the following monthly billing cycle.

5. PAYMENT PROCESSING

- 5.1 Payments for the Software and associated services are processed by our third-party payment provider, **Stripe Payments Australia Pty Ltd (ACN 160 180 343)** (the “Payment Gateway Provider”). By using our services, you agree to Stripe’s terms and conditions available at <https://stripe.com/au/legal/ssa>.
- 5.2 The Payment Gateway Provider complies with industry standards for the secure handling of payment information. However, we are not responsible for any breaches, interruptions, or losses resulting from the Payment Gateway Provider’s handling of your payment information.
- 5.3 All credit card fees and charges are processed through the Payment Gateway Provider. Any changes to fees or charges will be communicated in advance.
- 5.4 Payment-related disputes, including chargebacks or refund requests, will be managed in accordance with our **Refund Policy** and the Payment Gateway Provider’s terms. You agree to contact us first regarding any payment-related concerns.
- 5.5 To the fullest extent permitted by law, we disclaim any liability for the actions, omissions, or failures of the Payment Gateway Provider. We are not responsible for any loss or damage resulting from the Payment Gateway Provider’s handling of your payment information.

6. FAIR USE

- 6.1 The User agrees to ensure that each individual accessing the Software has a unique user login account, unless explicitly agreed otherwise by Digi Clip.
- 6.2 The User shall not share a single user login account among multiple individuals unless explicitly agreed upon in writing by both parties.
- 6.3 If Digi Clip discovers that the User is sharing a single login account among multiple individuals without prior written agreement, Digi Clip reserves the right to take the following actions:
 - (a) Notify the User of the violation and request immediate compliance with this Fair Use clause.

- (b) Suspend or terminate the User's access to the Software until compliance is achieved.
- (c) Charge the User additional fees equivalent to the cost of individual subscriptions for each person improperly using the shared login account.

6.4 The User acknowledges that failure to comply with this Fair Use clause may result in termination of the Agreement and forfeiture of any rights to use the Software.

7. TERMINATION

7.1 To terminate an Account, the User must do so manually on the Site.

7.2 Upon termination of the User's Account, the termination will take effect immediately, and you agree to cease use and automatic monthly payments will cease.

7.3 It is the User's responsibility to retrieve all necessary data from their Account at Digi Clip prior to termination.

7.4 We may terminate the Terms immediately, in our sole discretion, if:

- (a) you breach any of these Terms and do not remedy the breach within 5 days after receiving notice of the breach if the breach is capable of being remedied;
- (b) if we reasonably suspect that you are attempting to reverse engineer the Software that is provided to you;
- (c) we consider that a request for a License is in appropriate, improper or unlawful;
- (d) if you fail to provide us with clear or timely instructions to enable us to provide you with a License;
- (e) we consider that our working relationship has broken down including a loss of confidence and trust; or
- (f) for any other reason outside our control which has the effect of compromising our ability to provide you with the required Software or License within a required timeframe.

7.5 On completion of the Services, we will retain your documents and information (including copies) as required by law or regulatory requirements. Your express or implied agreement to the Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms. We will not be liable to you or any third party for compensation, reimbursement, or damages for any termination of access to the services, or

for deletion of your information or account data, except to the extent arising from our breach of a material term under these Terms or fraud, negligence or wilful misconduct of our officers or directors.

8. USER OBLIGATIONS

8.1 The User warrants that all information provided to Digi Clip is true, accurate and complete.

8.2 You acknowledge and agree that:

- (a) you are authorised to use the Software and to access any information or data that you input (Data) into the Software, including any Data which has been inputted into the Software by any person you have authorised to do so;
- (b) the Software must only be used for your own lawful internal business purposes, in accordance with these Terms;
- (c) all usernames and passwords required to access the Software are kept secure and confidential;
- (d) if there is any unauthorised use of your passwords or any other breach of security, you will immediately notify Digi Clip of such activity;
- (e) the Software operates within the User's computing or smart device system (End User System);
- (f) the reliability of the Software is dependent upon the User's configuration and implementation of the Software; and
- (g) it is the responsibility of the User to determine that the Software meets the needs of the User and their business, and is suitable for the purposes for which the Software is used.

8.3 You may use the Software on behalf of others or in order to provide services to others but if you do so you must ensure that you are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to you.

8.4 Digi Clip has no responsibility to any person or entity other than you and nothing in this Agreement confers, or purports to confer, a benefit on any person or entity other than you. If you use the Software on behalf of or for the benefit of anyone other than yourself, you agree that:

- (a) you are responsible for ensuring that you have the right to do so;

- (b) you are responsible for authorising any person who is given access to your Data, and you agree that Digi Clip has no obligation to provide any person or entity with access to such Data without authorisation from you and may refer any requests for access to the Data to you to address; and
- (c) you will indemnify Digi Clip against any claims or loss relating to Digi Clip's refusal to provide any persons with access to your Data in accordance with these Terms and Digi Clip making Data available to any person with authorisation from you.

8.5 The use of the Software is at the User's own risk.

8.6 You remain solely responsible for complying with all applicable laws. It is your responsibility to ensure that the storage of and access to your Data via the Software, the Site and the App comply with laws which are applicable to you, including any laws requiring you to retain records of your Data.

8.7 Each User must have their own safeguards and back up processes in place to recover from any failures or loss of Data which might occur whilst using the Software.

9. PROHIBITED USE

9.1 You acknowledge and agree that you will not:

- (a) attempt to circumvent or disable the Software or any technology features or measures in the Software by any means or in any manner;
- (b) attempt to modify, copy, adapt or reproduce the Software except as necessary to use it for normal operation;
- (c) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software;
- (d) distribute, encumber, sell, rent, lease, sub-license, or otherwise transfer, publish or disclose the Software to any third party (except as permitted under this Agreement);
- (e) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or used in connection with the Software;
- (f) use the Software in any manner to aid in the violation of any third party Intellectual Property, including but not limited to another's copyrights, trade secrets, and patents;
- (g) take any action that interferes, in any manner, with Digi Clip's rights with respect to the Software;

- (h) attempt to undermine the security or integrity of Digi Clip's computing systems or where the Software is hosted by a third party, that third party's computing systems and networks;
- (i) use, or misuse, the Software in any way which may impair the functionality of the Software, Site, App, or other systems used to deliver the Software or impair the ability of any other user to use the Software, Site or App;
- (j) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the License for the Software is executed; and
- (k) transmit, or input into the Software, Site or App, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including any content protected by copyright or trade secrets which you do not have the right to use).

9.2 In addition, title, ownership rights and intellectual property rights in and to any content displayed on the Site, the App or in the Software, or accessed through the Site, the App or the Software, are the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives you no rights to such content.

9.3 You acknowledge that any breaches of this clause may lead to termination of this Agreement.

10. CONFIDENTIAL INFORMATION

10.1 Subject to clause 9.2, the User agrees:

- (a) not to disclose the Confidential Information to any third party at any time;
- (b) to use its best endeavours to protect the Confidential Information from any unauthorised disclosure;
- (c) only to use the Confidential Information for the purpose for which it was disclosed by Digi Clip and not for any other purpose; and
- (d) to be responsible for and assume liability in relation to all of its employees, agents, consultants and contractors to whom Confidential Information is disclosed and ensure that they maintain the confidentiality of the Confidential Information and otherwise comply with the obligations set out in this Agreement.

10.2 The User's obligations set out in sub-clause 9.1 do not apply to Confidential Information:

- (a) that is already in the public domain, except as a result of the actions of the User in breach of any of the Terms of this Agreement;
- (b) received from a third party, except where there has been a breach of confidence;
- (c) that must be disclosed by law, provided that the Users reveals only so much of the Confidential Information as the User is required by law to disclose and gives sufficient notice to Digi Clip in order to allow Digi Clip to object to, or otherwise prevent, the Confidential Information being disclosed.

10.3 This clause will survive termination of this Agreement.

11. PRIVACY POLICY

11.1 We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines, as set out in our privacy policy which is available on our Site.

11.2 You will be taken to have read the terms of the Privacy Policy when you accept these Terms.

12. INTELLECTUAL PROPERTY

12.1 Title to, and all Intellectual Property rights in the Software, the Site, and the App, and any documentation relating to the Software, remain the property of Digi Clip and its licensors.

12.2 In the event that Digi Clip agrees to customise, modify and/or enhance any Software for the User, or to develop programs, software or materials related to such Software, the User may contract with Digi Clip to provide any such services in a separate agreement. If the Parties contract for any such services:

- (a) the Parties shall do so via a validly executed agreement; and
- (b) all items produced via such customisation, modification and/or enhancement services are software products owned by Digi Clip and all Intellectual Property rights remains with Digi Clip.

12.3 Title to and all Intellectual Property rights in any data you input into the Software remain your property. However, your access to the data and continued use of the Software is contingent on monthly payments of your Subscription Fee.

- 12.4 You grant Digi Clip a non-exclusive, royalty free, transferable, worldwide and irrevocable licence to use, copy, transmit, store, and back-up your information and data for the purposes of enabling you to access and use the Software and for any other purpose related to provision of Services to you.
- 12.5 It is the responsibility of the User to maintain copies of all data which is inputted into the Software. Digi Clip will endeavour to prevent data loss, including backing up data on the system on a regular basis, however, as the Software operates as a cloud-based service, provided through third parties, Digi Clip does not make any guarantees that there will be no loss of data.
- 12.6 If the User enables third-party applications for use in conjunction with the Software, the User acknowledges that Digi Clip may allow the providers of those third-party applications to access any inputted data as required for the interoperation of such third-party applications with the Software. Digi Clip is not responsible for any disclosure, modification or deletion of data resulting from any such access by third-party application providers.

13. UPDATES AND SUPPORT

- 13.1 Digi Clip will provide you with updates to the Software (Updates) for the duration of this Agreement.
- 13.2 You acknowledge that Digi Clip is not obligated to provide support for updates to the Software, as agreed in this Agreement. Digi Clip may periodically update versions of the Software hosted on third-party servers. By using the Software, you consent to such updates and agree that the terms and conditions of this Agreement will apply to all such updates.
- 13.3 The Software may contain automatic communications features which relay certain non-personally identifiable information to Digi Clip in connection with the operation of the Software. This information may include your Software settings and what version of the Software you are using. Digi Clip may use this information for research purposes including statistical analysis of aggregate customer behaviour.
- 13.4 Digi Clip can provide support to the User. If you require technical support, please contact Digi Clip at support@digiclip.io.
- 13.5 Whilst Digi Clip intends that access to the Software via the Site and the App should be available on a full-time basis, it is possible that the Site or the App is unavailable to due to maintenance or other development activity.

14. FEEDBACK AND DISPUTE RESOLUTION

- 14.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our Services, please contact any member of our staff.

14.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

(a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (Initial Meeting).

(b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of South Australia to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

14.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

15. LIMITATION OF LIABILITY AND DISCLAIMERS

15.1 Digi Clip and the User agree that Digi Clip's liability for the Services provided via the Site, the App, and the Software is governed solely by the Australian Consumer Law to the extent applicable, and this Agreement.

15.2 Digi Clip has no liability for use of the Software or App in countries other than as specified on the Site.

15.3 Our liability is covered in our insurance policy, Information Technology Liability Policy, which provides a limit of liability of:

(a) up to \$2,000,000 for Professional Indemnity; and

(b) up to \$20,000,000 for Public and Products Liability.

15.4 We will take steps to maintain our Information Technology Policy after the completion of the use of our Services and termination of this Agreement, for as long as we are required to do so by law.

15.5 You acknowledge that whilst Digi Clip will take reasonable steps to ensure that the Software will work for you, Digi Clip gives no guarantees that:

(a) the Software will meet your requirements as the functionality of the Software is dependent upon configuration with the End User System and other components;

(b) the Software will work in each scenario; and

- (c) the Software can be executed on every operating system, as it is impossible to test each variant.
- 15.6 The Software uses third party hosting services which are provided without any sort of warranties, and Digi Clip cannot ensure that these libraries are provided free of defect.
- 15.7 Digi Clip does not warrant that use of the Software will be uninterrupted or error free. The operation of the Software is dependent on public telephone services, computer networks, the Internet, which can be unpredictable and may from time to time interfere with the use of the Software. Digi Clip accepts no responsibility for any such interference or prevention of your use of the Software.
- 15.8 All risk arising out of the use or performance of the Software remains with you. You understand and agree that the use of the Software, material or data downloaded or otherwise obtained through the use of the Software, is at your own discretion and risk and that you will be solely responsible for any infections, contaminations or damage to your computer, system or network. Digi Clip is not responsible or liable for delays, inaccuracies, errors or omissions arising out of your use of the Software, any third party software or operating system.
- 15.9 To the maximum extent permitted by applicable law, Digi Clip disclaim all warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party intellectual property rights or lack of viruses, for the Software. In no event will Digi Clip be liable for any consequential, incidental, indirect, special, punitive, or other damages whatsoever arising out of this Agreement, the use of or inability to use the Software, even if Digi Clip has been advised of the possibility of such damages.
- 15.10 The Software is not intended for use in the operation of medical instruments, water craft, military installations, warfare equipment, industrial control systems and or SCADA systems and or robotic systems, surgical/medical application or equipment, artificial intelligence application or system, gambling/wagering system, and prototype, experimental or single product items, nuclear facilities, aircraft navigation or communications systems or air traffic control machines or any other machines in which case the failure of the Software could lead to death, personal injury or severe physical or environmental damage.
- 15.11 The User acknowledges that Digi Clip may pursue any available equitable or other remedy against you as a result of a breach by the User of any provision of this Agreement.
- 15.12 Digi Clip liability for breach of any of its obligations under this Agreement for the Software, or breach of any warranty implied by law, will be limited, to the extent permitted by law, to the total price paid for the License to execute the Software. Digi Clip's total liability to you for all damages in connection with the Software will not exceed the price paid by you under this agreement for the Software. The foregoing limitations, exclusions and disclaimers will apply to the maximum

extent permitted by applicable law, even if any remedy fails its essential purpose.

- 15.13 The User acknowledges and agrees that Digi Clip will not be liable for any non-compensatory damages including punitive, aggravated, multiple, exemplary, liquated or any other non-compensatory damages or the consequences of non-payment.
- 15.14 Digi Clip shall implement and maintain reasonable security measures to protect against cyber crimes, including data breaches and hacking. However, Digi Clip shall not be liable for any damages resulting from cyber crimes beyond its control.
- 15.15 To the maximum extent permitted by law, Digi Clip does not accept responsibility for loss or damage to computer systems, mobile phones or other electronic devices arising in connection with use of the Software. You should take your own precautions to ensure your mode of accessing the Software does not expose you to risk of viruses, malicious computer code or other forms of interference.
- 15.16 Digi Clip shall make commercially reasonable efforts to ensure continuous service availability. However, the Digi Clip reserves the right to perform scheduled maintenance, which may result in temporary service interruptions. Digi Clip shall provide advance notice of any scheduled maintenance. In the event of an unscheduled interruption, Digi Clip shall endeavour to restore services as promptly as possible.
- 15.17 To the maximum extent permitted by law, Digi Clip shall not be liable for any indirect, incidental, or consequential damages arising from the use or inability to use the services, including but not limited to loss of profits, data, or business opportunities. Digi Clip total cumulative liability under this Agreement shall not exceed the total fees paid by the Client for the services during the twelve (12) months preceding the event giving rise to the claim.

16. AUSTRALIAN CONSUMER LAW

- 16.1 Certain legislation including the Australian Consumer Law (ACL) in the Consumer and Competition Act 2010 (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (Statutory Rights).
- 16.2 Nothing in these Terms removes your Statutory Rights as a consumer under the ACL. You agree that our liability for Services provided to consumers is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 16.3 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and we expressly disclaim all

warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.

- 16.4 If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the services for or for a result which you have told us you wish the services achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our services is limited to us re-supplying the services to you, or, at our option, us refunding to you the amount you have paid us for the services to which your claim relates.

17. INDEMNITY

- 17.1 You will be liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from: (i) any information that is not accurate, up to date or complete or is misleading or a misrepresentation; (ii) any breach of these Terms; (iii) and any misuse of the Software and/or License; from or by you, your employees, contractors or agents.
- 17.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Software and License including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 17.3 The obligations under this clause will survive termination of these Terms.

18. NOTICE

- 18.1 Any notice required or permitted to be given to the User under these Terms will be addressed to the User at the email address provided by the User when requesting a License.

19. RELATIONSHIP OF PARTIES

- 19.1 Neither Party is authorised to bind the other Party in any way without prior written consent of the other Party.
- 19.2 The Parties acknowledge and agree that they will not seek to bind the other Party other than with the prior written consent of the other Party.
- 19.3 Neither Party will be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party will be entitled to a reasonable extension of time for the performance of such obligations.

20. RIGHTS OF THIRD PARTIES

20.1 Any person or entity who is not a party to these Terms has no right to benefit under or to enforce any of these Terms.

21. ASSIGNMENT

21.1 This Agreement is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights and/or obligations under this Agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld).

21.2 Any purported dealing in breach of this clause is of no effect.

22. WAIVER OR VARIATION OF RIGHTS

22.1 Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right.

22.2 A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

23. POWERS, RIGHTS AND REMEDIES

23.1 Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Agreement or any other person.

24. FORCE MAJEURE

24.1 Neither Party will be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party will be entitled to a reasonable extension of time for the performance of such obligations.

25. CONSENTS AND APPROVALS

25.1 Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.

26. FURTHER ASSURANCE

27.1 Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.

27. ENFORCEABILITY

27.1 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provisions in question will not be affected.

28. COUNTERPARTS

28.1 This Agreement may be executed in any number of counterparts and, if so, the counterparts taken together will constitute one and the same Agreement.

29. ENTIRE AGREEMENT AND UNDERSTANDING

29.1 The date of this Agreement is the date that these Terms are accepted by the Licensee.

29.2 In respect of the subject matter of this Agreement:

- (a) this Agreement contains the entire understanding between the Parties; and
- (b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement.

30. GOVERNING LAW AND JURISDICTION

30.1 This Agreement is governed by the laws of South Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia.

31. DEFINITIONS

Confidential Information includes confidential information about the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

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