

TERMS AND CONDITIONS ("Conditions")

THESE CONDITIONS apply to the supply of the System and the Services (as defined below) from Intelligent Ultrasound Limited (registered number 08107443) whose registered office is at Floor 6A, Hodge House, 114-116 St Mary Street, Cardiff CF10 1DY and is trading as Intelligent Ultrasound ("INTELLIGENT ULTRASOUND") to the Customer (as defined below).

1 DEFINITIONS

In these Conditions the following expressions shall have the following meanings unless inconsistent with the context:

"Agreement"	the agreement between INTELLIGENT ULTRASOUND and the Customer for the supply of the System and the Services in accordance with these Conditions, the Purchase Order and the Order Acknowledgement.
"Authorised User"	the Customer's employees, agents, independent contractors, representatives and students who are authorised by the Customer to use the System in accordance with the terms of this Agreement.
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England and Wales.
"Business Hours"	the hours of 9.00am to 5.00pm inclusive UK time on any Business Day.
"Clinical Use"	refers to the fact that a System may be put to Clinical Use (and this will be made clear on the labelling and user interface of the System).
"Consequential Loss"	pure economic loss, loss of profit, loss of business, depletion of goodwill, loss of anticipated savings and like loss, whether direct or indirect.
"Copy"	an individual copy on electromagnetic recording material of one or more of the programs constituting the Software.
"Customer"	the person, partnership, company or other undertaking to whom the Sales Invoice is addressed
"Equipment"	the items of equipment supplied and specified on the Sales Invoice.
"EULA"	(a) in the case of a System which is purchased for Clinical Use, INTELLIGENT ULTRASOUND's standard end user licence agreement (clinical); and (b) in the case of a System which is purchased for Non-Clinical Use, INTELLIGENT ULTRASOUND's standard end user licence agreement (non-clinical).
"Force Majeure Event"	has the meaning given in clause 14.
"Initial Costs"	the System Purchase Price which: (a) in the case of a Perpetual Licence, includes all licence fees; and (b) in the case of a recurring licence, includes that part of the Price for the first year in which the Software is licensed.
"Intellectual Property Rights"	any and all patents, trademarks, trade names, service marks, copyright, moral rights, rights in design, rights in databases, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating thereto.
"Loss of Data"	a loss of or corruption to data or programs held or used by or on behalf of the Customer.
"Non-Clinical Use"	refers to the fact that a System may be put to non-clinical use only (and this will be made clear on the labelling, the user interface of the System and INTELLIGENT ULTRASOUND's invoice).
"Open Source Software"	the open source software incorporated either as a derivative or aggregated work with the System and which is provided to the Customer free of charge on an "as is" basis without warranty in any kind and otherwise under the relevant licence terms detailed in the file c:\medaphor\licence.txt if this is present on the System.
"Order Acknowledgement"	an order acknowledgement issued by INTELLIGENT ULTRASOUND's stock management system.
"Purchase Order"	the Customer's order form for the supply of the System.
"Sales Invoice"	the invoice for the supply of the System.
"Services"	the system maintenance services to be provided to the Customer by INTELLIGENT ULTRASOUND as specified in clause 8.1.

“Site”	the Customer’s premises or address as otherwise agreed with the Customer, as set out in the Purchase Order.
“Software”	the computer software licensed to the Customer by INTELLIGENT ULTRASOUND under the Agreement and excluding, for the avoidance of doubt, the Open Source Software.
“Support Fee”	the fee set by INTELLIGENT ULTRASOUND from time to time to extend the maintenance period beyond that set out in clause 8.1.
“System”	together the Equipment and the Software.
“System Purchase Price”	the price to be paid for the System as specified in the Sales Invoice.
“Trainer System”	refers to the fact that a System may be put to Non-Clinical Use only for demonstration or evaluation purposes only.
“Warranty Extension Fee”	the fee set by INTELLIGENT ULTRASOUND from time to time to extend the warranty period beyond that set out in clause 12.1.

2 BASIS OF THE AGREEMENT

- 2.1 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Purchase Order constitutes an offer by the Customer to purchase the System in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Purchase Order are complete and accurate.
- 2.3 The Purchase Order will be deemed to have accepted by INTELLIGENT ULTRASOUND on the earlier of:
 - 2.3.1 INTELLIGENT ULTRASOUND issuing an Order Acknowledgement; or
 - 2.3.2 any act by INTELLIGENT ULTRASOUND consistent with fulfilling the Purchase Order, at which point and on which date the Agreement shall come into existence (the "Commencement Date").
- 2.4 Any samples, drawings or advertising produced by INTELLIGENT ULTRASOUND and any descriptions or illustrations contained in INTELLIGENT ULTRASOUND's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the System referred to in them. They shall not form part of the Agreement nor have any contractual force.
- 2.5 A quotation for the System given by INTELLIGENT ULTRASOUND shall not constitute an offer. A quotation shall only be valid for the period of time stated on the quotation.

3 PRICE AND PAYMENT

- 3.1 INTELLIGENT ULTRASOUND shall supply the System and the Services, at the System Purchase Price, at the Site subject to these Conditions.
- 3.2 The Customer shall within thirty (30) days of the date of the Sales Invoice or any other invoice issued by INTELLIGENT ULTRASOUND, pay for the System and Services.
- 3.3 If any sum payable under the Agreement is not paid when due then, without prejudice to INTELLIGENT ULTRASOUND’s other rights under the Agreement, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at the interest rate prescribed in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 3.4 If the Customer fails to pay any monies on the due date or does not comply with an obligation imposed upon the Customer under the Agreement then, without prejudice to any other right or remedy available to INTELLIGENT ULTRASOUND, INTELLIGENT ULTRASOUND shall be entitled to:
 - 3.4.1 withhold the supply of any Equipment, Software and/or Services to be provided to the Customer by or on behalf of INTELLIGENT ULTRASOUND until such payment is made;
 - 3.4.2 suspend the performance of any other obligation owed by INTELLIGENT ULTRASOUND under the Agreement until such payment is made;
 - 3.4.3 require payment in full by the Customer for all the Equipment, Software and Services which the Customer has agreed to purchase under the Agreement before supplying the Equipment, Software and Services; and/or
 - 3.4.4 terminate the Agreement under clause 15.,1,1 or clause 15.1.2 as is appropriate in the circumstances.

4 CUSTOMER’S OBLIGATIONS AND RESTRICTIONS ON USE

- 4.1 The Customer shall:
 - 4.1.1 purchase the System subject to these Conditions;

- 4.1.2 pay all sums, fees and other charges due under the Agreement upon the dates provided under these Conditions;
 - 4.1.3 implement any required upgrades to the System notified to it by INTELLIGENT ULTRASOUND within 30 days of such notification and where requested by INTELLIGENT ULTRASOUND allow INTELLIGENT ULTRASOUND's personnel access to the Site or other location of the Customer at which the System is located to implement such upgrades;
 - 4.1.4 take all necessary precautions to protect the health and safety of INTELLIGENT ULTRASOUND's personnel whilst at the Site or any other location of the Customer;
 - 4.1.5 provide INTELLIGENT ULTRASOUND with all reasonably necessary co-operation in relation to the Agreement, and all reasonably necessary access to such information as may be required by INTELLIGENT ULTRASOUND, in order to render the System, including but not limited to User Data (as defined in clause 10), access security credentials and configuration services;
 - 4.1.6 comply with all applicable laws and regulations with respect to the Customer's activities under the Agreement; and
 - 4.1.7 ensure that the Authorised Users use the Software in accordance with the EULA and the Agreement and shall be responsible for any Authorised User's breach of the EULA or the Agreement.
- 4.2 Where the System is provided for Non-Clinical Use, the Customer acknowledges and agrees that the System:
- 4.2.1 is provided for teaching applications and for training purposes only. The System is not sold as a Medical Device as defined in EU directive 93/42/EEC;
 - 4.2.2 may not be used in diagnostic and treatment procedures;
 - 4.2.3 is not offered, sold, promoted, or to be used for diagnosis, treatment or prognosis purposes in humans; and
 - 4.2.4 is used at the Customer's discretion and risk.
- 4.3 Where the System is provided for Non-Clinical Use, the Customer shall ensure that any user of the System (including any medical practitioner) is notified of the restrictions on use set out in clause 4.2 and undertakes to the Customer to use the System strictly in accordance with such restrictions.
- 4.4 Where the Trainer System is provided for Non-Clinical Use, within six months of purchase the Customer shall return the System;
- 4.4.1 in exchange for a replacement with a Clinical-Use System; or
 - 4.4.2 in exchange for a full refund of the System Purchase Price if the System has not received approval as a Medical Device within six months of purchase.
- 4.5 INTELLIGENT ULTRASOUND will be responsible for the return costs of the Trainer System and the costs to ship the replacement System to the Customer Site.
- 4.6 The Trainer System must be cleaned before return and returned in good condition. The System will be inspected for damage upon return following which the replacement or refund will be processed.
- ## 5 SOFTWARE OWNERSHIP
- 5.1 The Customer acknowledges that all Intellectual Property Rights in or relating to the Software and all related documentation and all parts of the Software shall remain the exclusive property of INTELLIGENT ULTRASOUND or its licensors.
- ## 6 SOFTWARE LICENCE
- 6.1 Subject to payment by the Customer to INTELLIGENT ULTRASOUND of the System Purchase Price INTELLIGENT ULTRASOUND hereby grants to the Customer a non-exclusive, non-transferable licence to use the Software upon the terms set out in the EULA.
- ## 7 RISK AND TITLE
- 7.1 Risk in Equipment to be delivered in the UK shall pass to the Customer in accordance with Delivery Duty Paid (DDP) as defined in the Incoterms 2020.
 - 7.2 Risk in Equipment to be exported out of the UK to the European Union shall pass to the Customer in accordance with Delivered At Place (DAP) as defined in the Incoterms 2020.
 - 7.3 Risk in Equipment to be exported out of the UK to any territory other than the European Union shall pass to the Customer in accordance with Delivered At Place (DAP) as defined in the Incoterms 2020.

- 7.4 Notwithstanding delivery and passing of risk of the Equipment, ownership of the Equipment shall not pass to the Customer until the System Purchase Price has been paid in full.
- 7.5 Until ownership of the Equipment has passed to the Customer, the Customer shall:
- 7.5.1 not obliterate any identifying mark on the Equipment or its packaging;
 - 7.5.2 store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as INTELLIGENT ULTRASOUND's property;
 - 7.5.3 maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
 - 7.5.4 notify INTELLIGENT ULTRASOUND immediately if it becomes subject to any of the events listed in clause 15.1.4 to clause 15.1.6; and
 - 7.5.5 give INTELLIGENT ULTRASOUND such information as it may reasonably require from time to time relating to the Equipment and the ongoing financial position of the Customer.
- 7.6 INTELLIGENT ULTRASOUND may recover Equipment in which ownership has not passed to the Customer. The Customer irrevocably licenses INTELLIGENT ULTRASOUND, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.5, and to recover any Equipment in which ownership has not passed to the Customer..
- ## 8 MAINTENANCE
- 8.1 Subject to the full payment of the System Purchase Price, INTELLIGENT ULTRASOUND will provide twenty four (24) months of maintenance support on the following basis:
- 8.1.1 telephone or remote online (requiring an internet connection to be available) based System support during Business Hours and on Business Days; and
 - 8.1.2 free provision of any official bug fix releases of the Software. For the avoidance of doubt this does not include any additional software modules or new variants of the System.
- 8.2 The maintenance period may be extended upon payment of the Support Fee by the Customer to Intelligent Ultrasound.
- ## 9 DOCUMENTATION
- 9.1 INTELLIGENT ULTRASOUND shall provide the Customer with the Instructions for Use and such other documentation as it, in its reasonable discretion, considers necessary for the proper use of the System.
- ## 10 USER DATA, STORAGE OF INFORMATION AND ACCESS BY INTELLIGENT ULTRASOUND
- 10.1 The Customer own all right, title and interest in and to all of the data inputted by the Customer, the Authorised Users or INTELLIGENT ULTRASOUND on the Customer's behalf for the purpose of and during the process of using the Software ("User Data") and the Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the User Data.
- 10.2 INTELLIGENT ULTRASOUND shall, in complying with its obligations under the Agreement, comply with its Privacy Policy relating to the privacy and security of data (including the User Data) available at www.intelligentultrasound.com/privacy-policy (or such other website address as may be notified to the Customer from time to time), as such policy may be amended from time to time by INTELLIGENT ULTRASOUND in its sole discretion.
- 10.3 If INTELLIGENT ULTRASOUND processes any personal data on the Customer's behalf when performing its obligations under the Agreement, the parties record their intention that the Customer shall be the data controller and INTELLIGENT ULTRASOUND shall be a data processor and in any such case:
- 10.3.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the UK or the EEA or the country where the Customer or any Authorised Users are located in order to carry out INTELLIGENT ULTRASOUND's obligations under the Agreement. If personal data is transferred and/or stored outside the EEA from the Customer or any Authorised User from locations outside the UK and the EEA, the Customer shall be solely responsible for such transfer;
 - 10.3.2 the Customer shall ensure that it is entitled to transfer the relevant personal data to INTELLIGENT ULTRASOUND so that INTELLIGENT ULTRASOUND may lawfully use, process and transfer the personal data in accordance with the Agreement on the Customer's behalf;
 - 10.3.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

- 10.3.4 INTELLIGENT ULTRASOUND shall process the personal data only in accordance with the provisions of the Agreement and any lawful instructions reasonably given by the Customer from time to time; and
- 10.3.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

11 AUTHORISED USERS, ACCESS AND SECURITY CREDENTIALS

- 11.1 Subject to the Customer complying with the terms of the Agreement, INTELLIGENT ULTRASOUND hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Software solely for the Customer's internal business operations. Any restrictions on the number of Authorised Users who may use Software under this Agreement will be set out in the Order Acknowledgement.
- 11.2 The Customer shall maintain a written, up to date list of current Authorised Users and provide such list to INTELLIGENT ULTRASOUND within 5 days of INTELLIGENT ULTRASOUND's written request at any time.
- 11.3 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify INTELLIGENT ULTRASOUND.

12 WARRANTY

- 12.1 Subject to the remainder of this clause 12, INTELLIGENT ULTRASOUND will remedy a material defect in the System notified to INTELLIGENT ULTRASOUND in a twenty four (24) month period following the date of receipt of the System, provided always that if INTELLIGENT ULTRASOUND is unable to do so INTELLIGENT ULTRASOUND may, at its option, replace the System.
- 12.2 INTELLIGENT ULTRASOUND shall not be liable for the failure of the Equipment to comply with the warranty set out in clause 12.1 if:
 - 12.2.1 the Customer fails to comply with the procedure set out in clause 12.3 or any of its other obligations in the Agreement;
 - 12.2.2 the System is altered or repaired by any person other than INTELLIGENT ULTRASOUND;
 - 12.2.3 any other software is loaded onto the System;
 - 12.2.4 the Customer makes any further use of the System after giving notice of defects in accordance with clause 12.1;
 - 12.2.5 the defect arises because the Customer failed to follow the Instructions for Use or any other oral or written advice given by INTELLIGENT ULTRASOUND as to the storage, commissioning, installation, use and maintenance of the System; or
 - 12.2.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 12.3 The Customer must comply with the following procedure in the event of a claim under the warranty set out in clause 12.1:
 - 12.3.1 the Customer must contact INTELLIGENT ULTRASOUND to report the problem without delay;
 - 12.3.2 if INTELLIGENT ULTRASOUND is unable to resolve the problem over the telephone, INTELLIGENT ULTRASOUND will initiate immediately the replacement process at INTELLIGENT ULTRASOUND's cost;
 - 12.3.3 the Customer shall return the faulty item to INTELLIGENT ULTRASOUND in accordance with the RMA instructions given by INTELLIGENT ULTRASOUND; and
 - 12.3.4 ownership of any replacement Equipment shall not pass to the Customer until the faulty item is received by INTELLIGENT ULTRASOUND at the RMA address specified in INTELLIGENT ULTRASOUND's RMA instructions.
- 12.4 INTELLIGENT ULTRASOUND'S only liability to the Customer if the System fails to comply with the warranty set out in clause 12.1 is as set out in clause 12.1 and the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 12.5 The warranty period in clause 12.1 shall not reset on the provision of any replacement item but it may be extended upon payment of the Warranty Extension Fee by the Customer to INTELLIGENT ULTRASOUND.

13 GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 13.1 Subject to clauses 12 and 13.6 and to the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law into the Agreement or relating to the Equipment, the Software and/or the Services are hereby excluded.

- 13.2 The following provisions in this clause 13 set out INTELLIGENT ULTRASOUND's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:
- 13.2.1 a breach of INTELLIGENT ULTRASOUND's contractual obligations;
 - 13.2.2 a tortious act or omission of INTELLIGENT ULTRASOUND; and
 - 13.2.3 an action arising out of a misrepresentation by or on behalf of INTELLIGENT ULTRASOUND (other than a fraudulent misrepresentation) arising in connection with the performance or contemplated performance of the Agreement.
- 13.3 Subject to clauses 13.4, 13.5 and 13.6, the total liability which INTELLIGENT ULTRASOUND shall owe to the Customer in respect of all claims under the Agreement shall not exceed the aggregate monies paid by the Customer to INTELLIGENT ULTRASOUND.
- 13.4 INTELLIGENT ULTRASOUND shall in no circumstances (whether before or after termination of the Agreement) be liable to the Customer for:
- 13.4.1 any loss or damage to ultrasound or other equipment in conjunction with which the System is used;
 - 13.4.2 any Loss of Data; or
 - 13.4.3 any Consequential Loss.
- 13.5 Notwithstanding anything to the contrary contained in the Agreement INTELLIGENT ULTRASOUND's liability to the Customer for:
- 13.5.1 death or personal injury resulting from the negligence of INTELLIGENT ULTRASOUND, its employees, agents or sub-contractors;
 - 13.5.2 damage suffered by the Customer as a result of a breach by INTELLIGENT ULTRASOUND of the condition as to title or the warranty as to quiet possession implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 13.5.3 damage for which INTELLIGENT ULTRASOUND is liable to the Customer under Part I of the Consumer Protection Act 1987; and
 - 13.5.4 fraud
- shall not be limited.
- 13.6 The exclusions from and limitations of liability set out in this clause 13 shall be considered severable. The validity or unenforceability of any sub-clause of this clause 13 shall not affect the validity or enforceability of any other part of this clause 13.
- 13.7 The provisions of this clause 13 shall survive the termination of the whole or part of the Agreement.
- ## 14 FORCE MAJEURE
- 14.1 Any delay in or failure of performance of any obligation by either party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation, but only to the extent that such a delay or failure is caused by an event which is not within the reasonable control of the party otherwise in default and which such party is unable to prevent or to circumvent by the exercise of reasonable diligence, including without limitation an event such as a strike, lock-out or other industrial action or trade dispute (whether or not involving the workforce or a part of the workforce of the party otherwise in default) (a "Force Majeure Event").
- ## 15 TERMINATION OF THE AGREEMENT
- 15.1 Without limiting its other rights or remedies, a party shall be entitled to terminate the Agreement with immediate effect by giving written notice to the other party if:
- 15.1.1 the other party fails to pay any undisputed amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 15.1.2 the other party commits a material breach of its obligations under the Agreement and (if such a breach is remediable) fails to remedy that breach within 60 days of that party being notified in writing to do so;
 - 15.1.3 the other party commits a series of persistent minor breaches which when taken together amount to a material breach;
 - 15.1.4 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on

- business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 15.1.5 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- 15.1.6 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy; or
- 15.1.7 any Force Majeure Event prevents the other party from performing its obligations under the Agreement for any continuous period of 3 months.
- 15.2 On termination of the Agreement for any reason:
- 15.2.1 all licences granted under the Agreement shall immediately terminate and the Customer you shall immediately cease to use the Software. However, INTELLIGENT ULTRASOUND shall permit the Customer to retain one Copy for 7 days following the date of termination in order to retrieve any data (including User Data) and programs belonging to the Customer which are stored on the System. The Customer shall accept all responsibility for any such retrievals; and
- 15.2.2 if the Software has been provided to the Customer on any storage medium, the Customer shall return all copies (whether authorised or unauthorised) of the Software and any associated documentation and manuals to INTELLIGENT ULTRASOUND.
- 15.3 Termination of the Agreement shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 15.4 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 16 GOVERNING LAW AND JURISDICTION
- 16.1 The Agreement and any disputes of claims arising out of or in connection with it or its subject matter and its formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales.
- 16.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.
- 17 GENERAL
- 17.1 The Customer shall not assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of INTELLIGENT ULTRASOUND. INTELLIGENT ULTRASOUND may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under the Agreement.
- 17.2 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.
- 17.3 No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.4 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- 17.6 No one other than a party to the Agreement and their permitted assignees shall have any right to enforce any of its terms.

18 NOTICES

- 18.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first-class post or other next working day delivery service, commercial courier, or email (provided the email is supported by a valid server delivery receipt).
- 18.2 A notice or other communication shall be deemed to have been received:
- 18.2.1 if delivered by hand, when left at the address referred in clause 18.1;
 - 18.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
 - 18.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - 18.2.4 if sent by email, one Business Day after transmission.
- 18.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19 CONFIDENTIAL INFORMATION

- 19.1 In this clause 19 "Confidential Information" means any information relating to the business of the disclosing party which is not publicly available including, but not limited to any information specifically designated by the disclosing party as confidential, any information supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises and any other information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of the disclosing party.
- 19.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- 19.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 19.2.2 was in the other party's lawful possession before the disclosure;
 - 19.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 19.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 19.2.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 19.3 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, save that each party may disclose the other party's confidential information:
- 19.3.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 19; and
 - 19.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 19.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.
- 19.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 19.6 This clause 19 shall survive expiry or termination of this Agreement, however arising.
- 19.7 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).