

**General Terms and Conditions**  
(as at 20<sup>th</sup> August 2013)

**1. (1) Definitions and Interpretation**

***Definitions***

In this Agreement, the words and phrases in this **clause 1(1)** will, unless the context otherwise requires, have the following meanings:-

- (a) **“Accepted Quotation”** means a Quotation accepted by the Client for a Charter where a Charter Agreement is not entered into by Adagold and the Client;
- (b) **“Adagold”** means Adagold Aviation Pty Ltd A.B.N. 73 102 146 725 of Unit 8, Northport Business Park, 441 Nudgee Road, Hendra, Queensland 4011, Australia (P.O. Box 454, Hamilton, Queensland 4007, Australia) and, where the context requires, its officers, employees, agents and sub-contractors;
- (c) **“this Agreement”** means the Charter Agreement or the Accepted Quotation, as the case may be, and these General Terms and Conditions”
- (d) **“the Aircraft”** means the aircraft whose particulars are set out in **Item 3** of **Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, and any other aircraft replacing the same pursuant to the provisions of this Agreement;
- (e) **“the Aircraft Operator”** means the entity which provides the Aircraft to Adagold to enable Adagold to provide the Services;
- (f) **“the Aircrew”** means the flight and cabin crew provided with the Aircraft and required for the operation of the Aircraft;
- (g) **“the Aircraft’s Base”** means the airport or other place from which the Aircraft embarks to reach the Departure Port;
- (h) **“the Arrival Port”** means the Arrival Port for a Flight identified in **Item 4** of **Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, or any change thereto;
- (i) **“Business Day”** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (j) **“the Cancellation Charge”** means the amount identified in **Item 5** of **Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, or any variations thereto agreed by Adagold and the Client in writing;
- (k) **“Cargo”** means where the carriage of cargo wholly or partially comprises the Services, the goods, merchandise or other items, a brief description of which is set out in **Item 9** of **Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be;
- (l) **“Charter”** means the charter of the Aircraft by Adagold to the Client and the acceptance by the Client of the charter of the Aircraft upon the terms and conditions set out in this Agreement;
- (m) **“Charter Agreement”** means the Aircraft Charter Agreement made between Adagold and the Client and signed by their authorised signatories and under which these General Terms and Conditions are incorporated therein;

- (n) **“the Charter Period”** means the period identified in **Item 1 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, and/or any changes thereto agreed by Adagold and the Client in writing;
- (o) **“the Charter Price”** means the price identified in **Item 2 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, or any other price agreed by Adagold and the Client in writing;
- (p) **“the Charter Schedule”** means the schedule identified in **Item 4 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, and any changes thereto agreed by Adagold and the Client in writing;
- (q) **“the Client”** means the party with whom Adagold contracts under the Charter Agreement or the Accepted Quotation, as the case may be, and identified therein;
- (r) **“Costs and Expenses”** mean all costs, expenses, fees, charges, payments or other expenditure of any description;
- (s) **“the Default Interest Rate”** means 12.00% p.a.;
- (t) **“Demurrage/Standing Charge”** means, where the carriage of cargo wholly or partially comprises the Services, the charge identified in **Item 11 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be;
- (u) **“the Departure Port”** means the Departure Port for a Flight identified in **Item 4 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, or any change thereto;
- (v) **“the Departure Time”** means the Departure Time identified in **Item 4 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, or any changes thereto stipulated by Adagold from time to time;
- (w) **“Flight”** means any flight of the Aircraft as part of the Services;
- (x) **“Force Majeure”** means any circumstances beyond the reasonable control of Adagold including storm, tempest, fire, lightning, above average levels of rainfall, flood, other inclement weather, earthquake, volcanic eruption, acts of God or enemies, declared or undeclared war, piracy, riot, sabotage, terrorism, civil disturbance, power failure, shortage of fuel, labour dispute, strike, lock-out, other industrial disturbance, material change in the law and accident to or failure of the Aircraft, its engines or any other part of the Aircraft or any machinery or apparatus used in connection with the Aircraft or traffic restrictions imposed by any relevant authority;
- (y) **“GST”** means the goods and services tax as provided by the GST law;
- (z) **“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999* as it stands from time to time;
- (aa) **“GST law”** means the GST Act and associated legislation including without limitation delegated legislation;
- (bb) **“Holding Charge”** means any amount payable by Adagold to the Aircraft Operator for additional flying necessitated in waiting for clearance from air traffic control to land at the Arrival Port and additional time on the ground awaiting clearance from air traffic control to depart from the Departure Port;
- (cc) **“Loading Time”** means where the carriage of cargo wholly or partially comprises the Services, the time identified in **Item 10 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be;

- (dd) **“Notice”** means a written notice, consent, approval, direction, order or other communication;
- (ee) **“Passenger”** means any person nominated by the Client to be carried on the Aircraft as a passenger in connection with the Services;
- (ff) **“Payload and Capacity Chartered”** means, where the carriage of cargo wholly or partially comprises the Services, the weight and capacity set out in **Item 8 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be;
- (gg) **“Payment Date”** and **“Payment Terms”** mean the date or dates, as the case may be, and the terms for payment identified in **Item 6 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be;
- (hh) **‘Party’** means each of the parties to this Agreement;
- (ii) **“Payment Method”** means the method of payment of the Charter Price by the Client to Adagold identified in **Item 7 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, or such other method as may be stipulated by Adagold to the Client from time to time;
- (jj) **“the Point of Departure”** means, where the Services include the carriage of cargo wholly or partially, the place where the cargo must be delivered for loading, as notified by Adagold to the Client from time to time;
- (kk) **“Quotation”** means a quotation provided by Adagold to a prospective Client for a Charter where a Charter Agreement will not be entered into by Adagold and the Client;
- (ll) **“the Services”** mean the carriage of passengers and their personal luggage and/or the carriage of Cargo in the Aircraft in accordance with the Charter; and
- (mm) **“the Specific Terms and Conditions”** mean the specific terms and conditions identified in **Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be.

**(2) Interpretation and General**

In this Agreement, unless the context otherwise requires:-

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) a reference to writing includes printing, typing, lithography and other modes of reproducing words in a visible form including but not limited to email;
- (c) the singular includes the plural and vice versa;
- (d) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust and vice versa;
- (e) a reference to any gender includes all genders;
- (f) a reference to a recital, clause, Schedule, annexure or exhibit is to a recital, clause, Schedule, annexure, or exhibit of or to this Agreement;

- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any Party to this Agreement, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and assigns;
- (i) any reference to money or dollars is to Australian currency unless otherwise stated in the Charter Agreement or the Accepted Quotation, as the case may be;
- (j) where an expression is defined anywhere in this Agreement, it has the same meaning throughout, unless the context otherwise requires;
- (k) the use of the word "including" does not limit anything else that might be included;
- (l) a provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement;
- (m) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day;
- (n) any reference to time in this Agreement will be of the essence, unless otherwise provided;
- (o) every covenant, agreement or obligation expressed or implied in this Agreement by which two or more persons covenant, agree or are bound binds those persons jointly and each of them severally and every provision expressed or implied in this Agreement which applies to two or more persons applies to those persons jointly and each of them severally; and
- (p) headings in this Agreement are used for convenience only and are to be disregarded in the interpretation of this Agreement.

### **Agreement and Price**

2. In consideration of Adagold procuring the Aircraft and the Aircrew from the Aircraft Operator for the provision of the Services to the Client, the Client agrees to pay Adagold without any abatement, reduction, setoff, defence, counterclaim or recoupment:-
  - (1) the Charter Price on the Payment Date in accordance with the Payment Terms by the Payment Method. In the event of the Payment Terms, the Payment Method or either of them not being given in the Charter Agreement or the Accepted Quotation, as the case may be, in accordance with the terms and conditions stipulated in Adagold's Tax Invoice or Invoice, as the case may be;
  - (2) all additional charges agreed by Adagold and the Client, on demand, for all changes requested by the Client or necessary to enable Adagold to perform its obligations under this Agreement;
  - (3) any Holding Charge, on demand; and
  - (4) any Demurrage/Standing Charge, on demand.

### **The Client's Acknowledgements and Further Agreements**

3. The Client acknowledges each of the following:-
  - (1) that it is aware that Adagold is not the owner or the operator of the Aircraft and that Adagold will merely procure the Aircraft from the Aircraft Operator to enable Adagold to provide the Services to the Client;

- (2) that Adagold has not entered into this Agreement or undertaken to perform the Services as a common carrier;
- (3) that Passengers may embark and disembark only at the Departure Port and the Arrival Port unless otherwise agreed by Adagold and the Aircraft Operator and subject to the payment by the Client of any Costs and Expenses resulting therefrom;
- (4) that this Agreement is subject to and conditional upon the Aircraft Operator holding or obtaining, at all times during the Charter Period, the approval of any government authority or aviation authority (including the Civil Aviation Safety Authority) and all other approvals, authorities and permits including but not limited to landing approvals at the Arrival Port; and
- (5) that all times in respect of the Charter Schedule are local times and are subject to change and subject to availability of slots and compliance with the requirements of the relevant regulatory authorities;

and agrees to enter into this Agreement upon the above bases.

#### **Adagold's Obligations**

4. (1) Adagold will use reasonable endeavours to procure the Aircraft and the Aircrew from the Aircraft Operator in order to perform the Services provided that Adagold will not confirm its booking of the Aircraft and the Aircrew with the Aircraft Operator until it receives the Charter Agreement duly signed by the Client or the Accepted Quotation, as the case may be, and any payment required to be made thereunder at the time for payment stipulated therein.
- (2) In the event of the Aircraft and/or Aircrew becoming unavailable at the time of receipt by Adagold of the Charter Agreement duly signed by the Client or the Accepted Quotation, as the case may be, Adagold will use reasonable endeavours to procure another aircraft and aircrew, in which case the Specific Terms and Conditions may change.
- (3) If Adagold is unable to procure another aircraft and aircrew in accordance with **clause 4(2)**, this Agreement will come to an end and Adagold will refund to the Client the Charter Price or any part thereof paid by the Client.
- (4) Notwithstanding the foregoing provisions of this **clause 4**, this Agreement is subject to and conditional upon the Aircraft Operator providing Adagold with the Aircraft and the Aircrew throughout the Charter Period in order to enable Adagold to perform the Services failing which:-
  - (a) Adagold will use reasonable endeavours to procure another aircraft and aircrew, in which case the Specific Terms and Conditions may change; and
  - (b) if Adagold is unable to procure another aircraft, this Agreement will come to an end and Adagold will refund to the Client the Charter Price or any part thereof paid by the Client in respect of any Services which have not been completed.
- (5) Adagold will exercise reasonable skill in performing its duties under this Agreement.

#### **The Client's Other Obligations and agreements**

5. The Client agrees with Adagold as follows:-
  - (1) To make all payments required to be made by the Client to Adagold under this Agreement on the due dates for payment and otherwise in accordance with the provisions of this Agreement.
  - (2) To pay to Adagold the Cancellation Charge in the circumstances identified in **Item 5 of Schedule 1** of the Charter Agreement or the Accepted Quotation, as the case may be, and further agrees to

Adagold deducting and retaining the same from any prepayments of the Charter Price made to Adagold.

- (3) In the event of the Charter Price or any other moneys payable by the Client to Adagold under this Agreement not being paid in accordance with the terms of this Agreement, to pay interest thereon at the Default Interest Rate calculated on a daily basis commencing on the due date of payment and ending on the actual date of payment by way of cleared funds (both before and after judgment), compounded daily.
- (4) That it accepts and agrees that the captain of the Aircraft will make all decisions in the captain's absolute discretion upon all operational matters including the preparation of the Aircraft for flight, the carriage of any Passenger's baggage, the carriage of any Cargo, whether or not a Flight should commence or if commenced be abandoned due to inclement weather, faults in the Aircraft or otherwise, any changes in the route of any Flight and the Arrival Port for any Flight, for any reason.
- (5) That it accepts and agrees that the Aircraft Operator will have the right to refuse carriage in the following cases:-
  - (a) for safety reasons;
  - (b) to prevent being in breach of any applicable laws, regulations or orders of any state or country to, from or over which the Aircraft is or may be flown; or
  - (c) where a Passenger's conduct or mental or physical condition makes it necessary to do so.
- (6) That the Client must comply with all laws and the Aircraft Operator's requirements for the carriage of any prohibited or dangerous goods and provide Adagold with all information requested by Adagold relating to the carriage of such goods within the time frames stipulated by Adagold.
- (7) That it accepts and agrees that the Client cannot give instructions to any ground and operating personnel including any Aircrew and reasonable instructions may only be given by Adagold at the Client's request.
- (8) That in the event of any delay and changes in any Flight arrangements for any reason (apart from where there is a fault with the Aircraft or the unavailability of the Aircrew for any reason not attributable directly or indirectly to any act or omission of the Client), the Client will pay all costs, expenses, losses, damages or liabilities of whatsoever nature incurred or suffered by any Passenger, Aircrew or the Aircraft Operator including but not limited to the provision of accommodation, food, drink and transportation.
- (9) That in the event of any Passenger being refused entry at any Arrival Port for any reason, the Client will pay all costs, expenses, losses, damages or liabilities of whatsoever nature incurred or suffered by such Passenger including the provision of accommodation, food, drink and transportation and any Costs and Expenses including charges, fees, penalties, imposts or other expenses levied upon the Aircraft Operator or Adagold by any authority at the Arrival Port and for any arrangements made by Adagold to return any such Passenger to the Departure Port or any other place requested by the Client.
- (10) To provide Adagold with all necessary information and assistance to comply with any requirements of the Aircraft Operator for the issue of any passenger tickets, baggage checks, air waybills and all other necessary documents relating to the carriage undertaken pursuant to this Agreement.
- (11) To comply and ensure that any Passengers comply with all requirements of Adagold in relation to the performance of all of the Client's obligations under this Agreement.
- (12) To comply and ensure that any Passengers comply in all respects with the conditions of all permits, licences and authorities granted for the Flight.

- (13) To comply and ensure that any Passengers comply in all respects with all laws and all customs, police, public health, immigration and other regulations of any state or country to, from or over which the Aircraft is or may be flown.
- (14) To be liable for any damage caused to the Aircraft by any Passenger, a Passenger's baggage or any Cargo carried on the Aircraft.
- (15) Not to assign its rights and obligations under this Agreement without the prior written consent of Adagold, which consent may be given or withheld, or given on conditions, in the absolute discretion of Adagold.

**Liability and Limitation of Liability**

6. (1) The Client agrees with Adagold, to the extent permitted by law, that Adagold will not be liable to the Client or any Passenger in the event of any Flight not commencing or being cancelled or for any changes made thereto or for Adagold being unable to perform its obligations under this Agreement in any of the following cases:-
- (a) in the circumstances identified in **clauses 4(2), (3) and (4)**;
  - (b) for any decisions made by the captain of the Aircraft in accordance with **clause 5(4)** or the Aircraft Operator under **clause 5(5)** ;
  - (c) in the event of the Aircraft Operator being in breach of its contract for the provision of the Aircraft and Aircrew to Adagold;
  - (d) if any Flight does not commence, is cancelled or delayed or any route is changed due to:-
    - (i) traffic restrictions or other restrictions imposed by any government authority or air traffic controllers; or
    - (ii) any approvals for the Flight not being granted or having been granted are cancelled; or
    - (iii) due the unavailability of fuel at the Aircraft's Base or Departure Port; or
    - (iv) any act or omission of the Client or any Passenger; or
  - (e) as a result of Force Majeure.
- (2) The Client further acknowledges and agrees that as Adagold is not the operator of the Aircraft:-
- (a) that Adagold will not be liable:-
    - (i) for any loss or damage to the property of the Client or any Passenger or the Cargo; and
    - (ii) for any injury to or the death of any Passenger inside or outside the Aircraft;
  - (b) that the Client's and any Passenger's right to claim damages in respect thereof will lie solely against the Aircraft Operator; and
  - (c) that the Client must effect all such insurances as it deems to be necessary to cover the aforesaid matters.
- (3) Notwithstanding the provisions of **clause 6(1)**, Adagold will use reasonable endeavours to complete the transportation of any Passengers, their baggage and any Cargo to the Arrival Port by any available means, subject to the Client paying Adagold its additional Costs and Expenses for doing so (apart from where there is a fault with the Aircraft or the unavailability of the Aircrew for any reason

not attributable directly or indirectly to any act or omission of the Client). The Client's acceptance of such transportation will constitute the Client's agreement to pay the additional Costs and Expenses.

- (4) The Client agrees that in the event of Adagold being held to be liable to the Client for any reason under this Agreement or otherwise, such liability of Adagold will be limited to the Client's actual Costs and Expenses and will not exceed the amount of the Charter Price in respect of the Flight which is the subject of such liability.
- (5) The Client agrees that Adagold will not be liable under this Agreement or otherwise to the Client or to any Passenger for any economic loss, loss of profit, damages for consequential loss or for special, exemplary or punitive damages.

### **Indemnities**

7. (1) The Client agrees to indemnify and keep indemnified Adagold against all actions, claims, demands, losses, damages, costs (including legal costs on a solicitor and own client basis) and expenses of any kind whatsoever which Adagold may sustain or incur or for which Adagold may become liable in the following cases:-
  - (a) If notwithstanding the provisions of **clause 6**, Adagold incurs any liability to the Client or to any Passenger except where Adagold acts unlawfully or negligently;
  - (b) In respect of or arising from any loss, damage or injury from any cause to the Aircraft or to any property or person inside or outside the Aircraft occasioned or contributed to by any act or omission of the Client and any Passenger or either of them or by the carriage of the Cargo;
  - (c) If this Agreement is terminated pursuant to any provision in this Agreement;
  - (d) In respect of any claim by any Passenger as a result of the termination of this Agreement for any reason; and
  - (e) Arising from any default on the part of the Client or any Passenger in complying with any of their obligations contained in this Agreement.
- (2) The indemnities contained in this **clause 7** will survive the completion or the termination of this Agreement for any reason.

### **Termination and its Effect**

8. (1) This Agreement may be terminated by Adagold giving written notice of the termination to the Client, on the date of such notice, and without prejudice to Adagold's other rights under this Agreement or at law, in any of the following cases:-
  - (a) where the Client fails to pay any amount payable to Adagold under this Agreement on the due date for payment;
  - (b) where the Client breaches any of its other obligations under this Agreement, which are capable of being remedied, and has failed to remedy any such breach after receiving a written notice from Adagold requiring it to remedy such breach within the time specified in such written notice;
  - (c) where the Client is unable or is deemed to be unable to pay its debts as and when they fall due;
  - (d) where the Client, being a corporation has an administrator appointed to it, enters into provisional liquidation or liquidation whether voluntary or otherwise (except for the purpose of reconstruction or amalgamation) or has a receiver and/or manager appointed over all or any of its property;

- (e) where the Client, being an individual, commits an act of bankruptcy;
  - (f) where in the opinion of Adagold, a material adverse change occurs in the business, assets, condition, operation or prospects of the Client; or
  - (g) where any of the events identified in **clauses 8(1)(c) to (f)** inclusive occur in relation to the Aircraft Operator, those clauses being construed as if the word "Client" therein was replaced with the words "Aircraft Operator".
- (2) In the event of this Agreement being terminated by Adagold under **clause 8(1)**, the Client must pay to Adagold all amounts due and unpaid under this Agreement at the date of such termination together with interest thereon at the Default Interest Rate on a daily basis commencing on the due date of payment and ending on the actual date of payment by way of cleared funds (both before and after judgment), compounded daily.
- (3) Termination of this Agreement will not affect any rights of either Party against the other Party:-
- (a) which have accrued prior to the time at which such termination occurs; and
  - (b) which would otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which occurred prior to the time at which such termination occurs.

### **GST**

9. (1) A recipient of a taxable supply made under this Agreement must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply. The recipient must pay the GST to the supplier:-
- (a) if there is a due date for the consideration for the taxable supply, on the same day as the due date for the consideration in respect of the relevant taxable supply; or
  - (b) if there is no due date, within seven (7) days of receiving a written request or a tax invoice from the supplier.
- (2) A Party's obligation to reimburse another Party for an amount paid or payable to a third party (e.g. a Party's obligation to pay another Party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the Party being reimbursed is entitled to claim an input tax credit for that GST.
- (3) Each Party making a taxable supply under this Agreement must issue a tax invoice to the other Party for each taxable supply at or before the time it makes the taxable supply.
- (4) Adagold must issue an adjustment note to the Client as soon as it becomes aware of an adjustment event relating to a taxable supply by Adagold under this Agreement.
- (5) (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay and indemnify the payee against the amount of that GST.
- (b) If a Party has an indemnity for a cost on which that Party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that Party can obtain an input tax credit).
- (c) A Party may recover payment of GST under an indemnity before it makes the payment in respect of which the indemnity is given.

### **Competition and Consumer Act**

10. (1) If the Services constitute a supply of goods and/or services to a consumer as defined in the *Competition and Consumer Act 2010* ("the Act"), any provision in this Agreement which would exclude, restrict or modify any condition, warranty, right or remedy available to the Client under the Act will not apply.
- (2) However, to the extent that the Act permits Adagold to limit its liability for a breach of condition or warranty implied by the Act, Adagold's liability for any such breach including any consequential loss which the Client and/or any Passenger may sustain will be limited as follows:-
  - (a) in the case of goods, to the replacement of such goods or the supply of equivalent goods or payment for the cost of replacing such goods or acquiring equivalent goods; and
  - (b) in the case of services, to the payment of the cost of having such services supplied again.

### **Severability**

11. (1) This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal, unenforceable or ambiguous in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid, unenforceable or ambiguous:-
  - (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid, unenforceable or ambiguous and as may be reasonable in all the circumstances so as to give it a valid and unambiguous operation; or
  - (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity, unenforceability or ambiguity.
- (2) Notwithstanding **clause 11(1)**, each Party hereby specifically agrees to the modification of any provision in this Agreement including the deletion of the whole or any part thereof and/or the insertion therein of such additional words as may be necessary to make such provision legal, valid, enforceable or unambiguous ("the Modification") and each Party hereby agrees to the Modifications taking effect forthwith upon being given notice thereof by the other Party whether before, during or after any court proceedings relating to this Agreement.

### **Waiver**

12. (1) In the event of a Party failing or delaying in the exercise of a power or a right such failure or delay shall not operate as a waiver of that power or right.
- (2) The exercise of a power or a right by a Party shall not preclude either its exercise in the future or the exercise of any other power or right.
- (3) Any waiver of a power or right shall be in writing and shall be signed by the Party waiving such power or right.
- (4) Waiver of a power or a right shall be effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

### **Amendment**

13. Any amendment or variation of this Agreement must be in writing and signed by the Parties or their authorised signatories.

### **Survival of Agreement**

14. (1) Subject to any provision to the contrary, this Agreement shall enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns and receivers but shall not enure to the benefit of any other persons.
- (2) The agreements, conditions and provisions of this Agreement which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration of this Agreement.

### **Complete Agreement and Representations**

15. (1) This Agreement:-
  - (a) consists of the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
  - (b) supersedes any prior Agreement or understanding, whether oral or in writing, on anything connected with the subject matter hereof.
- (2) Each Party acknowledges that it has entered into this Agreement without relying upon any representation by any other Party or any person purporting to represent that Party.

### **Further Assurance**

16. Each Party must promptly, at its cost, make, do and execute and cause to be made done and executed all such acts, things, agreements, deeds, instruments, assurances and other documents as may be necessary, desirable or reasonably required by another Party to perfect or give effect to the transactions or agreements contemplated or contained in this Agreement.

### **Confidentiality**

17. The Client must treat the existence and terms of this Agreement confidentially and no announcement or communication relating to the negotiations of the Parties or the existence, subject matter or terms of this Agreement may be made or authorised by the Client unless Adagold has first given its written approval thereto.

### **Costs**

18. Each Party must bear its own costs of and incidental to the preparation and signing of this Agreement.

### **Notices**

19. Any notice or other communication given by a Party under this Agreement:-
  - (1) must be in writing;
  - (2) may, in addition to any other method of service by law, be:-
    - (a) sent by prepaid post to the address of the addressee set out in this Agreement or such other address as may be set out in any communications from the addressee to the other Party from time to time;
    - (b) sent by facsimile to the facsimile number of the addressee set out in this Agreement or such other facsimile number as may be set out in any communications from the addressee to the other Party from time to time;

- (c) sent by email to the email address of the addressee set out in this Agreement or such other email address as may be set out in any communications from the addressee to the other Party from time to time; or
  - (d) delivered to the address of the addressee set out in this Agreement or such other address as may be set out in any communications from the addressee to the other Party from time to time;
- (3) will be treated as given and received:-
- (a) if sent by post, on the second Business Day (at the address to which it is posted) after posting;
  - (b) if sent by facsimile before 4.00 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt provided that at the end of the transmission the sender's facsimile machine issues a report confirming the date of the transmission and the number of pages in the Notice;
  - (c) if sent by email, on the day it is sent if that day is a Business Day and the sender receives notification before 4.00 p.m. that the sender's message was successfully delivered to its final destination ("the Delivery Report") and otherwise on the next Business Day when the sender receives the Delivery Report before 4.00pm; or
  - (d) if otherwise delivered before 4.00 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- (4) Any notice sent or delivered in accordance with **clause 19(2)** will be treated as validly given to and received by the addressee notwithstanding that the addressee has been liquidated or deregistered or is absent from the place at which such notice is delivered or to which it is sent or in the event of the notice being returned unclaimed.
- (5) Any notice by a party hereto may be given and signed by its solicitor and any notice to a party hereto may be given to its solicitor by any of the methods listed in this **clause 19** to the solicitor's business address or facsimile number.

### **Law and Jurisdiction**

20. This Agreement will be governed by and construed in accordance with the laws of the State of Queensland and the Commonwealth of Australia and the parties agree to submit all disputes arising between them to the Brisbane Registry of any such Court as is competent to hear the matter.