Secunia Inc. Terms & Conditions for CSI 7.0. Version 1.5

1. Definitions

As used in these Terms and Conditions, the following terms shall have the following meaning unless the context requires otherwise:

"Agreement" means the agreement signed by both between Secunia and Customer describing the Product(s) to be provided by Secunia and the relevant Deliverables.

"Deliverables" means the various criteria for calculating the price or limiting the rights to use the Software and services, including, without limitation, the Licence Period; the number and identity of Users and the number of IP-addresses and/or hosts.

"Customer" means the legal entity with whom Secunia has entered into the Agreement with.

"Customer Data" has the meaning ascribed to it in clause 8.4

"Data" relates to the meaning described in clause 8.1.

"Licence Period" means the period of time during which Secunia provides the ordered Product(s) to Customer specified in the Agreement, any renewal period, cf. clause 14.1, or the period of any trial licence.

"Linked Websites" means the websites as defined in clause 13.

"Price List" means Secunia's price list (as amended from time to time).

"Product(s)" means the product set forth in the Agreement and all other Software and Website Services provided to Customer by or on behalf of Secunia.

"Secunia" means Secunia Inc., 3033 Excelsior Boulevard, Suite 420, 55416 Minneapolis, MN, USA.

"Software" means any software provided to Customer by Secunia.

"Terms and Conditions" means (i) these terms and conditions as well as (ii) all other Secunia provided operating rules, policies and procedures and (iii) any additional conditions contained in documents signed by both Secunia and Customer that describe order-specific information (e.g. subscription prices, licence terms, and billing information).

"User" means any natural person authorised by Secunia to use the Product(s) being either an employee of Customer or a third-party consultant working for Customer at Customer's site.

"Website Services" means any online services provided by or on behalf of Secunia on secunia.com, ca.secunia.com, csi.secunia.com, or any other Secunia website, including the use of the information services from the websites

2. Scope of the Agreement and Contract Formation

2.1 These Terms and Conditions apply to the use of the Product(s).

2.2 Any use of the Product(s) is subject to the provisions as outlined in the Agreement and these Terms and Conditions. Any general terms and conditions or standard agreements provided by Customer that have not been agreed upon in writing by Secunia are hereby explicitly rejected. CUSTOMER'S PURCHASE ORDERS THAT HAVE NOT BEEN AGREED UPON IN WRITING BY SECUNIA WILL BE ACCEPTED BY SECUNIA FOR ACCOUNTING CONVENIENCE ONLY AND WILL NOT BE CONSIDERED AN AMENDMENT OR MODIFICATION TO THIS AGREEMENT OR THE TERMS AND CONDITIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY TERMS OR CONDITIONS IN ANY PURCHASE ORDERS OR OTHER DOCUMENTS THAT HAVE NOT BEEN AGREED UPON IN WRITING BY SECUNIA ARE HEREBY REJECTED, SHALL HAVE NO BINDING EFFECT, SHALL NOT AMEND THIS AGREEMENT OR THE TERMS AND CONDITIONS, AND SHALL NOT OTHERWISE CONSTITUTE AN AGREEMENT BETWEEN THE PARTIES.

2.3 These Terms and Conditions describe the terms and conditions for Product(s) for which Customer has purchased a licence, has been granted a trial licence, or has otherwise been provided the rights to use the Product(s) by Secunia.

2.4 Orders concerning Product(s) to be provided by Secunia for a fee shall become binding upon the parties' signing of the Agreement.

2.5 Customer accepts these Terms and Conditions by signing the Agreement.

2.6 Secunia will provide Product(s) and Customer will be entitled to receive Product(s) for which the applicable Product(s)' fees have been invoiced and a valid licence has been granted under the terms of the Agreement and these Terms and Conditions.

2.7 If Customer chooses to upgrade or Customer otherwise accepts new terms for use of the Product(s), the version of the terms and conditions accepted as part of the ordering procedure shall replace the previous versions of the terms and conditions with respect to the upgraded/changed Product(s).

3. Changes to the Product(s)

3.1 Secunia reserves the right to make the changes it deems necessary including limitation to the scope, functionalities, and content of the Product(s), or part thereof, at any time in order to comply with legal requirements and/or ensuring compliance with third-party intellectual property rights. Customer's sole remedy in the event of such changes shall be to terminate the affected Product(s) according to clause 14.1.

4. Licence

4.1 Secunia grants Customer a non-exclusive and non-transferable licence to use the version of the Software specified in the Agreement, and all upgrades to CSI supplied under the Agreement, solely with and for the operation of Customer's hardware for Customer's internal business for the Licence Period. The licence is limited according to the Deliverables specified in the Agreement. The licence also includes the right to receive copies of the Software together with the necessary documentation in order to load, install, and use the Software on Customer's system as specified in the Agreement and in accordance with these Terms and Conditions.

4.2 Except as permitted by mandatory applicable law, as expressly authorised by the Agreement, by these Terms and Conditions, or by Secunia in writing, Customer shall not in any form or by any means (i) copy, make error corrections, or otherwise modify, decompile, decrypt, reverse engineer, disassemble, adapt or otherwise reduce all or any portion of any Software provided as a result of the Product(s), to human-readable form; (ii) or transfer, assign, store, reproduce, sublicense, publish, rent, lease, distribute, sell, print, display, perform, or create derivative works from any part of the Product(s); or (iii) commercialise any Product(s), information or products obtained from any part of the Product(s). To the extent that any of the foregoing items include any third-party material, Customer must also obtain written permission from the applicable third party owner prior to engaging in any of the activities set forth in this clause.

4.3 Customer shall not, unless expressly authorised in writing by Secunia, reproduce, distribute, display, sell, publish, broadcast, or circulate any information or other material provided by Secunia and/or any information or other material provided as a result of the Product(s) (e.g. advisories and security updates) to any third-party, including Customer's affiliates, nor make such information or material available for any such use.

4.4 The Product(s) may only be used by the legal entity that has purchased a licence, has been granted a trial licence, or has enrolled in a beta program, as applicable, and no shared use with any other legal entity (including Customer's affiliates) is allowed.

4.5 If following the expiration, as applicable, of the trial period, beta program or other initial Licence Period Customer continues to use the Product(s), this will automatically be considered as a renewal for a period equivalent to the original term. Renewals will be in the form of an upgrade to the version of the Product(s) marketed at the time of renewal, at the price of the new version of the Product(s) posted by Secunia at the time of renewal.

4.6 Customer may not remove, conceal, or alter any copyright notices contained in the Product(s), in any information or other material provided by Secunia, and/or any information or other material provided as a result of the Product(s).

4.7 For the avoidance of doubt, Customer and any individual User may not exceed or circumvent the permitted usage as set forth in the Deliverables; e.g. by scanning, patching, or installing the Software on a larger number of hosts than specified in the Agreement or outside the entity(ies) which the Software has been licensed for, or perform any automatic or systematic internal distribution of received advisories and security updates, etc.

4.8 Customer must install and use critical updates within two (2) months of the release date and non-critical updates within twelve (12) months of the release date, subject to reasonable prior notice and availability, in order to ensure that the Product(s) remains functional and to receive support for the Product(s) as set forth in the Agreement.

4.9 PROVIDED THAT SECUNIA GIVES CUSTOMER NOTICE OF THE DETAILS OF CUSTOMER'S BREACH OF THE AGREEMENT OR THESE TERMS AND CONDITIONS, SECUNIA MAY SUSPEND ANY PRODUCT(S) OR SERVICE WITHOUT FURTHER NOTICE OR PENALTY UNTIL SUCH BREACH IS REMEDIED.

5. Prices, Payment, and Invoicing

5.1 Any value-added tax, state sales tax, customs duty, and similar public charges other than taxes based on Secunia's net income shall be paid by Customer. For Customer's information only, the price of the Product(s) comprises a non-refundable initial licensing fee and a subscription fee. The initial licensing fee is fifty per cent (50%) of the total price. If and when any Product(s) is renewed to a newer version at the expiration of the Licence Period or is otherwise upgraded, the price for the new version will include a separate initial licensing fee.

5.2 Customer shall notify Secunia if at any time during the Licence Period one or more of the Deliverables specified in the Agreement are exceeded.

5.3 Secunia may monitor Customer's usage of the Product(s) in order to verify that the Deliverables specified in the Agreement are not exceeded.

5.4 Secunia may upon reasonable notice (which shall not be less than two (2) business days), subject to Customer's reasonable security procedures and during reasonable business hours, conduct an audit to verify that the Deliverables specified in the Agreement are complied with.

5.5 If monitoring or an audit reveals that there is more than one User using a password or the Deliverables specified in the Agreement are incorrect, the fees as set forth in the Agreement shall be recalculated accordingly. In the event that any monitoring or audit shows that the Deliverables specified in the Agreement are understated, Customer shall pay Secunia reasonable fees incurred in respect of such monitoring or audit.

5.6 All sales and payments are final. No amount shall be refunded if Secunia finds that one or more of the Deliverables are less than stated in the Agreement or if Customer does not fully utilises the rights according to the Deliverables in the Agreement.

5.7 Payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed by Secunia, all payments shall be made by electronic transfer in the currency used in the Agreement. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of two per cent (2%) per month or the maximum allowed by law. If payment is not made after reminder one and two, Secunia will charge a reminders fee of five per cent (5%) of the outstanding amount for the third reminder.

5.8 The price for Product(s) and renewals shall be invoiced in advance of delivery of Product(s).

6. Changes to the Price List

6.1 Secunia is entitled to change the Price List from time to time, which will apply to renewals and upgrades.

7. Confidentiality

7.1 The parties acknowledge and confirm that during the term of the Agreement and forever following its termination, the parties shall treat as confidential and shall not (other than in the proper provision of the Product(s)) use or disclose to any person, firm, or company, the terms of the Agreement or any confidential information relating to the business of and belonging to the other party, nor permit its use or disclosure.

7.2 Information and materials shall not be considered confidential information for the purpose of these Terms and Conditions where they (i) are rightfully in the public domain at the time of the disclosure to the receiving party; (ii) were in the possession of, or known by, the receiving party prior to receipt from the disclosing party; (iii) are rightfully disclosed to the receiving party by another person not in violation of the proprietary or other rights of the disclosing party; (iv) are independently developed by the receiving party, or; (v) are required to be disclosed by law, provided that the party required to make such disclosure shall be required to make reasonable efforts, consistent with applicable law, to limit the scope and nature of such disclosure.

7.3 Any reference to Customer for marketing purposes is subject to Customer's prior written approval. Other than as described in this clause, no public announcement, press release, or circular (other than those required by law or regulation) concerning the Agreement must be made by either party without the prior consent of the other party.

8. Data protection and security

8.1 As a part of the Product(s), Secunia will initially detect which of the applications covered by the Product(s) Customer has on its devices and then register these applications. The Product(s) only enable Secunia to register information regarding Customer's applications and the operating system on Customer's devices ("Data"), but not Customer's other data. Secunia only store information which is relevant and necessary for providing the functionalities of the purchased Product(s). The Data is non-personal data only and is generic, standardised, and originates from installed applications and the operating system on Customer's devices only, never from their configuration.

8.2 Following the registration of the applications, the registered applications are continuously matched against Secunia's database to determine whether they are up-to-date or not.

8.3 Secunia uses reasonable business efforts to protect any information transmitted between Secunia and Customer, including Data and Customer Data (as defined below) transmitted during use of the Product(s). Secunia use industry standard SSL to encrypt Data and Customer Data (as defined below) transmitted between Secunia and Customer.

8.4 In case Customer in connection with the Agreement provides Secunia with information regarding Customer, its employees, and its customers ("Customer Data"), Customer acknowledge that such information may be processed by Secunia in connection with the Product(s). Customer warrants that Secunia is entitled to process Customer Data and that Secunia will not be subject to any liability in regard to the processing of Customer Data.

8.5 Customer may at any time give written notice to Secunia that it does not wish Secunia to make use of Data and Customer Data pursuant to the Agreement. Where Customer exercises its right to prevent processing of Data and Customer Data which Secunia deems necessary for the proper functioning of the Product(s) or services, Secunia shall have the right to terminate the Agreement forthwith by written notice and the provisions of clause 14 shall apply on such termination.

8.6 If the licence is terminated, Secunia will delete the Data and Customer Data as soon as possible and no later than one month after termination of the licence.

8.7 Secunia shall provide to Customer User IDs and passwords or other secured means to access the Product(s). Both Customer and Secunia shall maintain the confidentiality of User IDs and passwords and Customer shall follow all reasonable instructions relating to the security of the Product(s).

9. Intellectual Property Rights

9.1 All intellectual property rights, including the right to patents, copyright, trademarks, or know-how, including any documents or any other material provided to Customer in association with the performance of the Agreement and/or arising and created under and in connection with the Agreement, shall remain vested in and/or automatically and immediately upon creation be vested in Secunia and/or its licensors as the case may be.

9.2 Information procured from a third-party may be the subject of rights owned by that third-party.

9.3 Customer must not use any of Secunia's trademarks in connection with activities, product(s), or services.

10. Disclaimer and Limitation of Liability

10.1 The Product(s) are intended to detect and disclose potential risks in Customer's system with great accuracy. HOWEVER, THE PRODUCT(S) ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES AND MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF QUALITY OR PERFORMANCE. FOR THE AVOIDANCE OF DOUBT, SECUNIA DOES NOT WARRANT THAT (A) OPERATION OF ANY OF THE PRODUCT(S) SHALL BE UNINTERRUPTED OR ERROR FREE, (B) THAT FUNCTIONS CONTAINED IN THE PRODUCT(S) SHALL OPERATE IN COMBINATIONS WHICH MAY BE SELECTED FOR USE BY CUSTOMER OR MEET CUSTOMER'S REQUIREMENTS, OR (C) THAT THE PRODUCT(S) WILL DETECT ALL VULNERABILITIES.

10.2 Customer accepts that any information provided by Secunia is general information only and is not to be deemed as advice. Secunia will use reasonable business efforts to ensure that any information provided by Secunia is accurate. HOWEVER, SECUNIA DOES NOT WARRANT THE ACCURACY, ADEQUACY, OR COMPLETENESS OF SUCH INFORMATION. ACCORDINGLY, SECUNIA DOES NOT ACCEPT RESPONSIBILITY FOR ANY LOSS SUFFERED AS A RESULT OF CUSTOMER'S USE OF OR RELIANCE ON THE INFORMATION PROVIDED BY SECUNIA WHETHER PROVIDED BY, CONTAINED IN, OR ACCESSED THROUGH THE PRODUCT(S), AS IT REMAINS CUSTOMER'S RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ANY SUCH INFORMATION.

10.3 SECUNIA SHALL IN NO EVENT BE LIABLE TO CUSTOMER (OR ANY OTHER PERSON OR ENTITY) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS AND PRODUCT(S); LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE PRODUCT(S) OR ANY LINKED PRODUCTS INCLUDING CUSTOMER'S USE THEREOF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

10.4 ALL LIABILITY OF SECUNIA, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT, HOWSOEVER ARISING, SHALL BE LIMITED TO TWO TIMES THE TOTAL CONTRACT VALUE, BUT IN NO CASE MORE THAN USD 500.000. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E. THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

10.5 CUSTOMER ACKNOWLEDGE THAT THE LIABILITY LIMITATIONS AND EXCLUSIONS SET FORTH IN THESE TERMS AND CONDITIONS REFLECT THE ALLOCATION OF RISK NEGOTIATED AND AGREED TO BY THE PARTIES AND THAT SECUNIA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS AND EXCLUSIONS ON ITS LIABILITY. THESE LIMITATIONS AND EXCLUSIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10.6 To the extent permitted by law, any condition, warranty or representation which would otherwise be implied into these Terms and Conditions including without limitation, any warranty or merchantability, title, non-infringement or fitness for a particular purpose or use is hereby excluded.

10.7 Nothing in clause 10 shall be construed to limit Secunia's liability under the mandatory provisions of applicable product liability rules. Any product liability is, however, disclaimed to the farthest extent possible.

11. Indemnification

11.1 Subject to the limitation in clause 10.4, Secunia shall indemnify Customer from and against any and all damages awarded by any court holding that any of the Product(s), as delivered by Secunia to Customer, infringes any intellectual property rights of any third party who is not an affiliate of Customer.

11.2 Secunia's obligations under clause 11.1 are subject to the conditions that (i) Customer provides prompt (but in no event more than 30 days) written notice of such claims, (ii) Customer provides all necessary information and authority requested or required for the defence or settlement of such action or proceeding, and (iii) Secunia has sole control over the defence and settlement of such claims. Notwithstanding anything to the contrary, Secunia shall not be responsible for any cost or expense incurred or compromise made without Secunia's prior written consent.

11.3 Secunia's obligations under clause 11.1 shall not apply to the extent that such damages are related to (i) any modification or alteration of the Product(s) by anyone other than Secunia, (ii) Customer's use of a non-current copy of the Product(s), (iii) any specifications, software, hardware or services provided by or on behalf of Customer, (iv) any combination of the Product(s) with any hardware, software, services or portion thereof that is not (x) supplied by or on behalf of Secunia, or (y) specified by Secunia to be used with the Product(s), or (v) Customer's use of the Product(s) in a manner not specified in the specifications and documentation or otherwise in violation of the Agreement and these Terms and Conditions.

11.4 If the Product(s) or any portion thereof, becomes, or Secunia believe is likely to become, the subject of an intellectual property claim, Secunia shall, at its option and expense, have the right to (i) procure for Customer the right to continue using the Product(s) or the portion so affected, or (ii) modify the Product(s) to avoid the intellectual property claim, (iii) substitute functionality substantially equivalent to the Product(s) at the time of such substitution, or (iv) terminate the Agreement and provide to Customer a refund of any prepaid-portions of the subscription fees under the Agreement.

12. Injunctive Relief

12.1 The parties specifically recognise that any breach of the Agreement and these Terms and Conditions will cause irreparable injury to Secunia and that actual damages may be difficult to ascertain, and in any event, may be inadequate. Accordingly, the parties agree that in the event of any such breach, notwithstanding anything in clause 18, Secunia shall be entitled, without having to post bond, to immediate injunctive relief in addition to such other legal and equitable remedies that may be available.

13. Advertisements and Linked Web Sites

13.1 Secunia's websites may contain links to other websites ("Linked Websites"). Those links are provided for convenience only and may not remain current or maintained

13.2 Secunia is not responsible for the content or privacy practices associated with Linked Websites.

13.3 Secunia's links with Linked Websites should not be construed as an endorsement, approval, or recommendation by Secunia of the owners or operators of those Linked Websites, or of any information, graphics, materials, products, or services referred to or contained on those Linked Websites, unless and to the extent stipulated to the contrary.

13.4 The responsibility for the content of advertisements appearing on Secunia's websites (including hyperlinks to advertisers' own websites) rests solely with the advertisers. The placement of such advertisements does not constitute a recommendation or endorsement by Secunia of the advertisers' products and each advertiser is solely responsible for any representations made in connection with its advertisement.

13.5 When accepting these Terms and Conditions the Customer accepts that Secunia can contact the Customer by email with information about new products, enhancement of existing Product(s), and newsletters regarding products from Secunia. If the Customer does not wish to receive the abovementioned information, the Customer can unsubscribe via the email sent to the Customer after the acceptance of these Terms and Conditions.

14. Term and Termination

14.1 The term of the Agreement shall commence on the date of first availability of the Product(s) for use by Customer and shall continue for the Licence Period. Thereafter the term shall automatically renew for successive Licence Period(s) of the same duration as the original Licence Period, unless rightfully terminated under this clause 14.1 – except for trial licences which shall terminate at the end of the trial period. Renewals will be in the form of an upgrade to the version of the Product(s) marketed at the time of renewal at the price of the new version of the Product(s). Either party may terminate any or all of the Product(s) with written notice to the other no less than three (3) months before the end of the then-current Licence Period. To be valid, any termination notice from Customer to Secunia must comply with clause 15.2 of these Terms and Conditions.

14.2 Without prejudice to any rights of either party, the Agreement may be terminated:

14.2.1 in the event of a party committing any breach of the Agreement or these Terms and Conditions (including non-payment of fees) which is remediable and not remedied within twenty-one (21) days (7 days in case on non-payment of fees) of written notice from the other party requiring such remedy; or

14.2.2 immediately on written notice being given by a party if the other party commits any irremediable breach of the Agreement or these Terms and Conditions or repeats any breach as has previously been the subject of a notice under clause 14.2.1 or

14.2.3 immediately on written notice being given by a party if the other party commits a material breach of the Agreement or these Terms and Conditions.

14.3 Furthermore, and without prejudice to any rights of either party, the Agreement may be terminated immediately by any party giving written notice to the other party if

14.3.1 the other party enters into any composition with its creditors;

14.3.2 the other party has a receiver, manager, administrative receiver, or administrator appointed in respect of it or substantially all of its assets or property and such appointment is not withdrawn within sixty (60) days of the date of appointment.

14.4 In the event of termination by Customer of the Agreement due to Secunia's material breach of the Agreement or these Terms and Conditions, Customer will be entitled to a refund of an amount equal to the pro rata share of the subscription fee covering the remaining part of the Licence Period after the effective date of termination.

14.5 Except as set out in clauses 11.4 and 14.4, Customer will not be entitled to any refund of amounts already paid in the event of termination of the Agreement for any reason, regardless of whether the Product(s) are available for Customer. For the avoidance of doubt, no amount shall be refunded in case of Customer's termination of the Agreement due to changes in the Product(s), cf. clause 3.1.

14.6 Upon termination of the Agreement for any reason, Customer shall pay Secunia for all Product(s) delivered or ordered under the affected product options up to the effective date of termination at the agreed upon prices, subject only to clause 14.4.

14.7 Upon any termination of the Agreement or rights granted

14.8 hereunder, Customer shall immediately uninstall and discontinue use of the Software affected by such termination and promptly certify to Secunia that it has discontinued use of and returned or destroyed all copies of the affected Software then in its possession, including all related documentation.

15. Notices

15.1 Other than as set out below, all notices shall be in writing, and delivered by courier or registered mail, or by either facsimile or electronic mail with confirmation, to the addresses specified during the ordering/registration procedure or any other address stipulated in writing by one party to the other. Notice shall be deemed received on the date three (3) business days after being sent, if by courier or registered mail, or on the date actually received, if by facsimile or electronic mail.

15.2 Any notice from Customer to Secunia in relation to either termination of the Agreement or cancellation of a licence (or part of a licence) must be sent to Secunia using electronic mail (including Customer's account number and contract details) to cancellation@secunia.com. If such notice is sent by any other means it will not be considered valid notice under these Terms and Conditions.

16. Force Majeure and other Events Outside of Secunia´s Control

16.1 Secunia will not be liable for any failure to perform its obligations hereunder due to reasons beyond Secunia's immediate internal control, including e.g. any act of nature, fire, labour dispute, unusually severe weather, delay caused by a government intervention, failure to grant a licence or necessary permission, delay of a subcontractor or supplier in furnishing materials and products, or any other cause beyond Secunia's immediate internal control, whether these conditions make Secunia's performance impossible or merely difficult. The obligations and rights of Secunia shall be extended for a period equal to the period during which such events prevent Secunia's performance. Secunia shall use all commercially reasonable efforts to avoid or remove such cause of non-performance and to minimise the consequences thereof and shall resume performance hereunder forthwith upon removal of such cause.

17. Miscellaneous

17.1 The failure of either party to require performance at any time by the other party of any provision of the Agreement or these Terms and Conditions shall in no way affect the full right to require such performance at any time hereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of such provision.

17.2 The Agreement and these Terms and Conditions are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto and such successors and assigns, any legal or equitable rights hereunder.

17.3 References in the singular shall include the plural and references in the plural shall include the singular. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation" or "but not limited to". The descriptive headings of sections are inserted for convenience only, do not constitute a part of these Terms and Conditions and the Agreement and shall not affect in any way the meaning or interpretation of these Terms and Conditions and the Agreement. The terms "hereof," "herein," "hereby" and derivative or similar words refer to these entire Terms and Conditions. References to "party" or "parties" means the parties to the Agreement, unless otherwise provided.

17.4 The Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when each party hereto shall have received counterparts hereof signed by each of the other parties hereto. If any signature is delivered by PDF, such signature shall create a valid and binding obligation of the party executing (or on whose behalf the signature is executed) with the same force and effect as if such PDF signature was an original thereof.

17.5 The Agreement and these Terms and Conditions may not be modified or amended except by a document specifically stating that it is an amendment to the Agreement and these Terms and Conditions which is signed by both parties. CUSTOMER'S PURCHASE ORDERS THAT HAVE NOT BEEN AGREED UPON IN WRITING BY SECUNIA WILL BE ACCEPTED BY SECUNIA FOR ACCOUNTING CONVENIENCE ONLY AND WILL NOT BE CONSIDERED AN AMENDMENT OR MODIFICATION TO THIS AGREEMENT OR THE TERMS AND CONDITIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY TERMS OR CONDITIONS IN ANY PURCHASE ORDERS OR OTHER DOCUMENTS THAT HAVE NOT BEEN AGREED UPON IN WRITING BY SECUNIA ARE HEREBY REJECTED, SHALL HAVE NO BINDING EFFECT, SHALL NOT AMEND THIS AGREEMENT OR THE TERMS AND CONDITIONS, AND SHALL NOT OTHERWISE CONSTITUTE AN AGREEMENT BETWEEN THE PARTIES.

17.6 The Agreement, these Terms and Conditions and any written amendments to the foregoing satisfying the requirements of clause 17.5, constitutes the entire understanding between the parties with respect to the subject matter hereof and thereof, and supersedes all other understandings and negotiations with respect thereto.

17.7 Nothing contained in the Agreement or these Terms and Conditions shall be deemed or construed to create a partnership or joint venture, to create the relationships of employee/employer or principal/agent, or otherwise create any liability whatsoever of any party with respect to the indebtedness, liabilities, obligations or actions of the other party or any of its respective officers, directors, employees, stockholders, agents or representatives, or any other person or entity.

17.8 If any of the provisions in these Terms and Conditions or the provisions in the Agreement are held to be invalid, unenforceable, or illegal for any reason, the remaining provisions shall nevertheless continue in full force.

17.9 The parties hereto have been represented by counsel in the negotiations and preparation of the Agreement and these Terms and Conditions; therefore, the Agreement and these Terms and Conditions will be deemed to be made by each of the parties hereto, and no rule of construction will be invoked respecting the authorship of the Agreement and these Terms and Conditions.

17.10 The provisions of section 2.1, 2.2, 2.3, 2.4, 2.6, 2.5, 2.7, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.9, 5.1, 5.4, 5.5, 5.6, 5.7, 6.1, 7, 9, 10, 11, 12, 13, 14.4, 14.5, 14.6, 14.7, 15, 16, 17 and 18 and shall survive the expiration or termination of this Agreement for any reason whatsoever.

18. Choice of Law and Jurisdiction

18.1 This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Minnesota, without regard to the rules or statutes of any jurisdiction with respect to conflict of laws.

18.2 Any claim or dispute arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavour to resolve disputes by negotiation.

18.3 Claims not resolved by negotiation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the commercial arbitration rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association.

18.4 Any party may commence such arbitration proceeding and the arbitration shall be conducted in the State of Minnesota. The arbitrators shall give due consideration to the general principles of the law of Minnesota in the construction and interpretation of the provisions of this Agreement; provided, however, that the provisions are to be construed in an even-handed fashion as between the parties.

18.5 A demand for arbitration shall be made within a reasonable time after the claim or dispute has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitations. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

18.6 The arbitrators shall be chosen in the manner and within the time frames provided by such rules. If permitted under such rules, the arbitrators shall be three disinterested individuals having knowledge of the legal or industry issues relevant to the matters in dispute.

18.7 The written decision of the arbitrators shall set forth the reasoning, shall be provided simultaneously to both parties and shall be binding on them. The arbitrators' award shall not include attorney's fees or other costs. Judgment on the award may be entered in any court of competent jurisdiction. Each party shall bear equally the expenses of such arbitration. CUSTOMER HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF, BASED ON OR PERTAINING TO THIS AGREEMENT.

18.8 These references to litigation are not to be construed as a waiver of the obligation to arbitrate.