

# Standard Service & Supply Agreement for Company Name



{02203137} | Commercial In Confidence

**ting**<sup>®</sup>

# Agreement

Dated DD MONTH YYYY

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**Parties**

**The Information Management Group Pty Ltd (ABN 52 079 782 666)**  
of the address specified in Item 1 of Schedule 1  
**(TIMG)**

The party specified in Item 2 of Schedule 1  
of the address specified in Item 2 of Schedule 1  
**(Client)**

## Introduction

- A. The Client wishes to acquire the Services.
- B. TIMG has agreed to provide the Services to the Client on the terms and conditions of this Agreement.

## It is agreed

### 1 The Agreement

The agreement between TIMG and the Client is set out in the following documents (together, the **Agreement**):

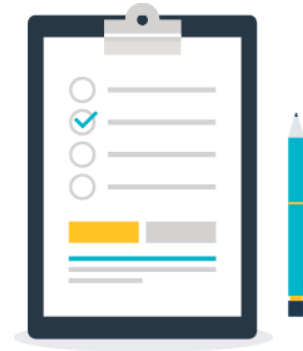
- (1) this document;
- (2) the contract details contained in Schedule 1. (**Reference Schedule**);
- (3) the terms and conditions contained in Schedule 2. (**General Terms**);
- (4) the terms and conditions contained in Schedule 3 (**Special Conditions**);
- (5) the service details and fees contained in Schedule 4. (**Service Schedule**);
- (6) the Client Security Details form contained in Schedule 5. (**CSD Form**); and
- (7) any other documents attached to, or otherwise incorporated by reference into, any of the documents mentioned in preceding clauses 1(1) to 1(6) inclusive.

### 2 Interpretation

- 2.1 In this Agreement (unless the context requires otherwise), terms that are defined in the General Terms have the meaning given to them in the General Terms.
- 2.2 If there is any inconsistency between the documents making up this Agreement, the following order of priority will prevail to the extent of any inconsistency between them:
  - (1) the Special Conditions;
  - (2) the General Terms;
  - (3) the Reference Schedule;
  - (4) the Service Schedule;
  - (5) the CSD Form; and
  - (6) any other documents referred to in preceding clause 1(7) in the order in which they appear or are referred to.

# Agreement

Dated DD MONTH YYYY



## Entire Understanding

This Agreement:

- (1) is the entire agreement and understanding between the Client and TIMG on everything connected with the subject matter of the Agreement; and
- (2) supersedes any prior agreement, correspondence, documentation or discussion on anything connected with that subject matter.

This Agreement applies to the exclusion of all other terms and conditions purportedly imposed upon TIMG by the Client or any person on behalf of the Client including any terms and conditions contained in any purchase order of the Client.

## Executed as an Agreement

Signed for and on behalf of The Information Management Group Pty Ltd (ABN 52 079 782 666) by its authorised representative (who warrants that he or she has the authority to sign this Agreement)

.....  
Date  
(DAY/MONTH/YEAR)

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Name of authorised representative  
(BLOCK LETTERS)

.....  
Name of witness  
(BLOCK LETTERS)

Signed for and on behalf of **Client** by its authorised representative (who warrants that he or she has the authority to sign this Agreement):

.....  
Date  
(DAY/MONTH/YEAR)

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Name of authorised representative  
(BLOCK LETTERS)

.....  
Name of witness  
(BLOCK LETTERS)

# Schedule 1

## Reference Schedule

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### Item 1 - TIMG

Legal Entity: The Information Management Group Pty Ltd  
ABN: 52 079 782 666  
Contact: SALES PERSON  
Contact Email: SALES PERSON EMAIL  
Street Address: Level 4, 210 Kings Way, South Melbourne, Victoria 3205  
Mailing / Notices Address: PO Box 21 ENFIELD NSW 2136  
Telephone: 1300 764 954

### Item 2 - Client

Legal Entity: COMPANY NAME  
ABN: COMPANY ABN  
Contact: COMPANY CONTACT  
Contact Email: COMPANY CONTACT EMAIL  
Street Address: COMPANY STREET ADDRESS  
Mailing/Notices Address: COMPANY MAILING ADDRESS  
Telephone: COMPANY TELEPHONE

### Item 3 - Commencement Date

DD/MM/YYYY

### Item 4 - Term

24 months from the Commencement Date

### Item 5 - Records

The material of the Client provided to TIMG, whether in hard or soft copy form.

### Item 6 - Wait Fee

\$45.00 Plus GST Per Hour (or part thereof) spent waiting to load or unload at the Client's premises.

### Item 7 - Service

Detail the services of the Business (e.g. LitReview, Document Storage, Backup Media Storage)

# Schedule 2

## General Terms

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### 1. Introduction and Definitions

- 1.1. This document sets out the general terms and conditions for the supply of Services by TIMG to the Client.
- 1.2. The capitalised terms that are used or defined in the Service Schedule have the meaning as set out in that Schedule when used in these General Terms or elsewhere in this document.
- 1.3. In this Agreement:
  - (1) Agreement has the meaning given on the first page of this document.
  - (2) 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.
  - (3) Charges means the fees and other amounts to be charged to the Client by TIMG for the provision of the Services, as set out in the Service Schedule and includes any other amount payable under the General Terms.
  - (4) Commencement Date has the meaning given in Item 3 of the Reference Schedule.
  - (5) Consequential Loss means any indirect or consequential loss or damage, including loss of revenue, loss of profit or anticipated profit, loss of business, loss of business reputation, loss of opportunities, loss of anticipated savings, wasted overheads, damage to goodwill, loss of data or other information, loss of production or business interruptions of any nature.
  - (6) CSD Form means the Client Security Details Form contained in Schedule 5 that is required to be filled out by the Client and returned to TIMG upon acceptance and execution of this Agreement.
  - (7) Encryption Key means the pass phrase used and created by the Client to encrypt the data stored with TIMG. TIMG has no access to the pass phrase.
  - (8) Encumbrance means, in relation to any property:
    - (a) a security interest as defined in the Personal Property Securities Act 2009 (Cth);
    - (b) a mortgage, charge, encumbrance, pledge, lien or other security over the property;
    - (c) a preferential interest, title retention, or other estate, interest, claim or arrangement affecting the property; or
    - (d) an agreement to grant, create, allow or register any of these, and whether the encumbrance is registered or unregistered, statutory, legal or equitable.
  - (9) General Terms means these general terms and conditions and as contained in Schedule 1.
  - (10) Goods means the goods sold or supplied to the Client by TIMG.
  - (11) Loss means any costs (including legal costs), losses, damages and expenses (including those arising out of the terms of any settlement), whether present or future, fixed or unascertained, actual or contingent.
  - (12) Intellectual Property Rights means all intellectual property and industrial rights of any description including without limitation all rights conferred by statute, common law or equity (whether or not registered or registrable and including all applications for registration) in relation to inventions (including patents), trade marks, trade and business names, designs, copyright, circuit layout rights, trade secrets, know-how, moral rights and confidential information and all other rights of a proprietary nature created in any part of the world as a result of intellectual activity in the industrial, scientific, literary and artistic fields.
  - (13) Records has the meaning given in Item 5 of the Reference Schedule.
  - (14) Reference Schedule means the contract details contained in Schedule 1.
  - (15) Service Schedule means the service details and fees contained in Schedule 4.
  - (16) Services means the supply of goods and/or services by TIMG to the Client as identified in Item 7 of the Reference Schedule and as detailed in the Service Schedule.
  - (17) Special Conditions means the terms and conditions contained in Schedule 3; if any.
  - (18) Term has the meaning given in Item 4 of the Reference Schedule. Wait Fee has the meaning given in Item 6 of the Reference Schedule

### 2. Services

- 2.1. TIMG will provide the Services at the reasonable request of the Client on Business Days at the times specified in the Service Schedule. TIMG may provide the Client with such Services outside of those specified times (including emergency return of, or access to the Records) as agreed between the Client and TIMG and subject to the Client agreeing to pay any additional charges invoiced by TIMG in respect of such Services.
- 2.2. TIMG agrees, when providing the Services, to take all reasonable steps to keep the Records confidential and in its possession or control, except where TIMG is required by the Client or by law or any court or government authority to do otherwise.
- 2.3. TIMG will:
  - (1) perform and provide the Services in a proper and professional manner and in accordance with good industry practice;
  - (2) use suitably controlled and protected premises to store the Records; and
  - (3) take reasonable precautions to protect the Records against theft or damage by fire or storm.
- 2.4. Without limiting clause 6, the Client agrees to pay the applicable Charges or other fees in connection with any requirement for TIMG to deal with the Records in a particular manner, as required by law including by a court or other government authority. Such Charges or other fees will be payable by the Client in accordance with:
  - (1) TIMG's rates as specified in the Service Schedule for dealing with the Records in such a manner; or
  - (2) where there is not a Charge or other fee specified in this Agreement for doing so, at TIMG's then current rate for doing so, or as otherwise reasonably determined by TIMG.
- 2.5. As part of the provision of the Services to the Client (and where applicable), TIMG will require the Client, after acceptance and execution of this Agreement, to properly fill out and return to TIMG the CSD Form.

# Schedule 2

## General Terms

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2.6. The Client agrees and acknowledges that the processes, marketing, description of the Services, standard operating procedures, use of technology and pricing methodologies relating to the Services, and also these General Terms are proprietary to TIMG. Such information made available to the Client is confidential and may only be used for the purpose it is provided for, and may not be disclosed to any third party without the prior written consent of TIMG.

### 3. Term

- 3.1. This Agreement commences on the Commencement Date and continues for the duration of the Term, unless terminated earlier. At the expiry of the Term, this Agreement will be renewed for successive periods equal to 12 months (each 12 months being a 'Renewal Term'), unless:
- (1) either party provides the other party with written notice no less than 45 days prior to the end of the then current Term or Renewal Term, terminating this Agreement at the end of the Term or Renewal Term (as the case may be); or
  - (2) this Agreement has been earlier terminated in accordance with this Agreement.

### 4. Termination

- 4.1. TIMG may by written notice to the Client immediately terminate this Agreement if:
- (1) the Client breaches any of the terms of this Agreement and, if the breach is capable of remedy, fails to remedy the breach within 30 Business Days after receiving a written notice from TIMG requiring the Client to do so; or
  - (2) an event of insolvency, bankruptcy, administration, receivership, liquidation or compromise of the Client or any other analogous event in relation to the Client has occurred.
- 4.2. The Client may terminate this Agreement by giving written notice of such termination at any time within 30 days of TIMG increasing the Charges under clause 6.3.
- 4.3. On termination of this Agreement for any reason including expiration, the Client must pay, prior to the retrieval or destruction of any Records:
- (1) all Charges including all outstanding Charges incurred to the date of termination or expiration due in respect of those Records, and any Charges or other amounts which accrue in respect of those Records from the date of termination or expiration until such time as those Records are returned, collected or destroyed; and
  - (2) any amounts specified in the Service Schedule for the permanent retrieval of each Record, in addition to any other Charges normally paid for transport and handling of the Records.

4.4. On termination of this Agreement, subject to TIMG's rights under clause 6.5, the Client must immediately (and no later than 15 Business Days after termination) collect or authorise the destruction of all of its Records. If the Client has not collected or authorised destruction of the Records within 15 Business Days or the Client fails to comply with this Agreement, TIMG may at its discretion and at the Client's expense:

- (1) return the Records to the Client at the last known address for the Client; or
- (2) if it is reasonably impractical for TIMG to return the records to the Client due to any action or inaction on the part of the Client, destroy any Records of the Client, in which case the Client will be deemed to have authorised the destruction of such Records.

Prior to any such return or destruction, TIMG may continue to store any Records of the Client at the Client's expense (at the then applicable Charges for such storage) for such period as TIMG determines in its sole discretion. The continuing storage of any Records by TIMG after termination of this Agreement does not derogate from TIMG's rights to subsequently return or destroy those Records under this clause 4.4.

4.5. Termination does not extinguish or otherwise affect:

- (1) any rights which have accrued prior to the time of termination, including TIMG's right to be paid for all Services supplied up to the termination date, including any Charges and any interest payable; or
- (2) those terms and conditions which are expressed to, or which by their nature or context are intended by the parties to, survive termination.

4.6. For the purpose of clause 4.5(2), the parties agree that this clause 4.6 and clauses 4.3, 4.4, 4.5, 5, 6, 7, 8, 9, 12, 13, 14, 16, 17, and 19 will survive the termination of this Agreement.

### 5. Transport of Records

- 5.1. Where the Records are transported, the Client agrees that the Records will be deemed to be delivered in accordance with this Agreement upon the signing of an acknowledgement of receipt (whether in hard or soft copy form):
- (1) by the Client or its representative;
  - (2) where the Records are delivered to the address detailed on any instruction note, any person at that address (who will be deemed to be authorised by the Client to receive the Records); or
  - (3) where the Records are delivered to an alternative address (at the instructions of the Client or its representative), any person who is at the alternative address (who will be deemed to be authorised by the Client to receive the Records).
- 5.2. The Client agrees that such an acknowledgement of receipt under clause 5.1 constitutes conclusive evidence of the delivery of the Records described in the receipt and of the date and time of such delivery.
- 5.3. The Client agrees that TIMG is not a common carrier and TIMG accepts no liability as such and reserves the right, in its sole discretion, to refuse to transport or store any Records.

# Schedule 2

## General Terms

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### 6. Payment and Charges

- 6.1. The Client must pay the Charges set out in the Service Schedule for the Services provided to the Client, as well as any other costs, fees, expenses or other amounts associated with the provision of the Services, or otherwise in relation to the Records, within 14 days of the date of invoice issued by TIMG.
- 6.2. All amounts payable by the Client to TIMG under this Agreement must be paid without set-off or counterclaim of any kind.
- 6.3. TIMG may vary the Charges, including by amending or reissuing the Service Schedule by giving at least 60 days prior written notice to the Client. The variation will take effect on the date specified in the notice.
- 6.4. TIMG is under no obligation to return or destroy any Records until the Client has paid all Charges, and any other outstanding amounts in full (including any permanent retrieval charges and any interest owing). In addition to any other rights of TIMG, the Records collected and stored by TIMG are subject to:
  - (1) any lien available to TIMG under any law or statute; and
  - (2) a general lien at common law over the Records for all Charges (together with any other fees or interest, if applicable) currently or subsequently due to TIMG by the Client.
- 6.5. If the Client fails to make payment of any amount payable to TIMG under clause 6.1, then:
  - (1) TIMG may give the Client a notice in writing that it will destroy the Records that it holds unless such amount is paid within 90 days; and
  - (2) if the Client does not pay the outstanding amount in full within 90 days of the date of the notice given under clause 6.5(1), then TIMG is entitled to destroy the Records.
- 6.6. Where TIMG destroys any of the Client's Records for failure to pay amounts outstanding in accordance with clause 6.5(2), the Client releases TIMG, its directors, officers, employees, agents and subcontractors from all sums of money, accounts, claims, actions, proceedings, demands and expenses which the Client at any time had, may have had or has against TIMG and its directors, officers, employees, agents and subcontractors (or any of them) for or by reason or in respect of any such destruction of Records.

### 7. Goods and Services Tax

- 7.1. If GST (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and as amended) is payable on any supply, under or in connection with this Agreement:
  - (1) the consideration payable by the Client for such supply is the amount otherwise payable for that supply plus the GST payable on that supply;
  - (2) the Client must pay to TIMG the GST payable on such supply at the same time any other amount otherwise payable for that supply is due; and
  - (3) TIMG must provide a valid Tax Invoice to the Client in respect of such supply.

### 8. Records

- 8.1. TIMG has no, and will not be deemed to have any, knowledge of the Records for the purposes of the provision of the Services.
- 8.2. The Client must ensure that the Records are acceptable and suitable for storage and transport, including ensuring that the Records are appropriately boxed, packed, and labelled. TIMG may:
  - (1) refuse to provide any Services in respect of any Records for whatever reason, including a determination by TIMG that it is not suitable or not appropriate to provide the Services in respect of such Records; or
  - (2) at the Client's expense, re-box, re-package or re-label to TIMG's standards, any Records which, in the reasonable opinion of TIMG, are inappropriately or unsuitably boxed, packaged or labelled.
- 8.3. Each time that the Client provides to, arranges the pick-up of, or otherwise gives up possession of any Records to TIMG, the Client warrants to TIMG that:
  - (1) the Client is the sole owner, or is entitled to unconditional possession, of the Records and has full power and authority to deal with the Records;
  - (2) that the Records are free from any Encumbrances or claims of any third party;
  - (3) the representative providing the Records to TIMG is authorised to do so, and to sign any document on behalf of the Client, and the Client or its representatives have accurately and fully provided, and will accurately and fully provide, all information requested by TIMG;
  - (4) the Records are not of a nature that requires highly secure or specialised storage beyond the agreed Services, and do not include documents or instruments of value, documents evidencing title to, or an interest in, real or personal property, cash, jewellery, gems, precious metals or other similar valuable items;
  - (5) the Records (including any packaging) comply with the requirements of any applicable law or code, including rules and standards of TIMG as notified to the Client; and the Records do not comprise explosive, flammable, volatile, radioactive, offensive or dangerous goods, including, without limitation, dangerous goods within the meaning of any applicable legislation or any applicable codes;
  - (6) the Records are not of a nature which is liable to damage any property owned by TIMG, or any other person. If, in TIMG's absolute discretion, the Records are of such a nature, TIMG may, without prejudice to any other rights, destroy or render them harmless without compensation to the Client; and
  - (7) the provision of the Services by TIMG does not and will not give rise to a breach by the Client of any agreement, infringe the Intellectual Property Rights of any third party or infringe or contravene any law.

# Schedule 2

## General Terms

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### 9. Supply of Goods

- (1) This clause applies where TIMG supplies Goods to the Client as part of the Services.

#### 9.2. Order for Goods

- (1) An order given to TIMG is binding on TIMG and the Client,
- (2) if a written acceptance is signed for or on behalf of TIMG;
- (3) the Goods are supplied by TIMG in accordance with the order.
- (4) An acceptance of the order by TIMG is then to be an acceptance of the General Terms by TIMG and the Client, and the General Terms will override any conditions contained in the Client's order.
- (5) TIMG reserves the right to accept a part only of any order by notifying the Client in writing or by delivering the Goods to the Client. No order is binding on TIMG until such time it is accepted by TIMG.
- (6) An order that has been accepted in whole or in part by TIMG, cannot be cancelled by the Client without obtaining the prior written approval of TIMG, which it may refuse in its absolute discretion.

#### 9.3. Delivery

- (1) The times quoted on the order for delivery of the Goods are estimated times only, and TIMG accepts no liability for the failure of or delay in the delivery of the Goods. The Client is not released from any obligations to accept or pay for Goods by reason of any delay in delivery of the Goods.
- (2) The Goods may be delivered by instalments at the sole discretion of TIMG.

#### 9.4. Retention of Title

- (1) Ownership, title and property of the Goods remains with TIMG until payment in full for the Goods and all sums due and owing by the Client to TIMG on any account have been made. Until the date of payment:
  - (a) the Client has the right to sell the Goods in the ordinary course of the Client's business;
  - (b) until the Goods have been sold by the Client in the ordinary course of the Client's business, the Client holds the Goods as Bailee for TIMG;
  - (c) the Goods are always at the risk of the Client.
- (2) The Client is deemed to be in default immediately upon the happening of any of the following events:
  - (a) if any payment to TIMG is not made promptly by the due date for payment;
  - (b) if the Client ceases to carry on business, or stops or suspends payment, or states its intention of so doing, or is unable to pay its debts as they fall due, or if any cheque or bill of exchange drawn by the Client payable to TIMG is dishonoured.
- (3) In the event of a default by the Client, then without prejudice to any other rights which TIMG may have at law or under this contract:
  - (a) TIMG or its agents may without notice to the Client enter the Client's premises or any premises under the control of the Client for the purposes of recovering the Goods;
  - (b) TIMG may recover and resell the Goods;

- (c) If the Goods cannot be distinguished from similar Goods which the Client has or claims to have paid for in full, TIMG may in its absolute discretion seize all Goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of TIMG and the Client may be ascertained. TIMG must promptly return to the Client any Goods that are ascertained to be the property of the Client, and TIMG is in no way liable or responsible for any Loss to the Goods or for any loss, damage or destruction to the Client's business howsoever arising from the seizure of the Goods.
- (d) In the event that the Client uses the Goods in some manufacturing or construction process of its own or some third party, then the Client must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for TIMG. Such part will be an amount equal in dollar terms to the amount owing by the Client to TIMG, at the time of the receipt of such proceeds. The Client will pay TIMG such funds held in trust upon the demand of TIMG.

### 10. Offsite Data Management

This clause applies where TIMG provides offsite data management services to the Client.

#### 10.1. Encryption Key and Password Security

- (1) The Client agrees to keep any Encryption Key and any associated passwords provided by TIMG secure and confidential.
- (2) TIMG is entitled to assume that anyone who accesses the Client's account or service using the Client's password is authorised by the Client to do so.

#### 10.2. Third Party Software Licences

- (1) The Client agrees to comply with all licence terms of all software supplied by, or used in conjunction with, either directly or indirectly, the Services.

#### 10.3. Encryption of Electronic Data

- (1) The software provided by TIMG must be used by the Client to ensure data is encrypted and compressed in size prior to being transmitted to TIMG's storage facility, to enable the data to be transferred via broadband internet to TIMG.
- (2) The Client agrees to acquire the software required to carry out such encryption and compression.
- (3) The Client agrees and acknowledges that under no circumstances is TIMG responsible or liable for the operation of such encryption and compression software.

#### 10.4. Data Recovery After Termination

- (1) After the Service is terminated, TIMG is not responsible or liable for storing or retaining the Client's data.
- (2) It is the sole responsibility of the Client to copy and download any data that it requires, before the termination of the Services.



# Schedule 2

## General Terms

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### 10.5. Intellectual Property

- (1) In relation to any intellectual property that the Client creates, modifies, stores, copies or transmits using the Services:
  - (a) The Client warrants to TIMG that it has the authority to create, modify, store, copy and/or transmit any and all intellectual property that it creates, modifies, stores, copies and/or transmits when using the Services.
  - (b) The Client will indemnify and hold harmless TIMG against any and all breaches of the warranty provided in clause 10.5(1)(a) and against any claim or demand by a third party that its rights have been breached.
  - (c) If a third-party claims that, or TIMG has reasonable belief, that there may be a breach of the warranty in clause 10.5(1)(a), TIMG is not obliged to provide the Services to the Client until the issue has been resolved to the reasonable satisfaction of TIMG.
  - (d) No Intellectual Property Rights transfer from TIMG to the Client as a result of this Agreement or through the provision of the Services.

### 10.6. Suspension of Services

- (1) TIMG may suspend the Services immediately where:
  - (a) it is entitled to terminate under clause 4 but elects to suspend instead;
  - (b) there is a planned outage of the Services for operational and/or maintenance reasons;
  - (c) it is necessary to do so for unscheduled repair, maintenance or service of any part of TIMG's systems.
- (2) TIMG will end a suspension of the Services as soon as reasonably practicable after the event or circumstance giving rise to the suspension has ended.
- (3) Except to the extent that the event caused by the negligent or wrongful act or omission of the person seeking to be released, the Client release TIMG from and agrees that TIMG is not liable for, liability or loss arising from, and costs incurred in connection with, damage or loss as a result of the Services being suspended.

### 10.7. Termination of Offsite Data Management Services

- (1) Notwithstanding TIMG's rights to terminate this Agreement under clause 4, the Client agrees and acknowledges that TIMG may terminate the Services immediately where:
  - (a) it is necessary as a result of a force majeure event;
  - (b) TIMG has suspended the Service in accordance with clause 10.6, and such suspension is not lifted within 14 days;
  - (c) TIMG, acting reasonably, suspects that there has been fraudulent or illegal use of the Services;
  - (d) TIMG reasonably believes that the Client is jeopardising the operation or quality of our systems, or the Services that TIMG supplies to other Clients; and
  - (e) the Client becomes, or is deemed by TIMG to be, an unacceptable credit risk.

### 11. Exclusion of Warranties

- 11.1. To the maximum extent permitted by law, TIMG excludes all representations, warranties, conditions, consumer guarantees and undertakings in respect of the supply of any Goods or Services (including any software) other than as expressly set out in this Agreement.
- 11.2. Nothing in this Agreement excludes or limits the application of the provisions of any statute (including the Competition and Consumer Act 2010 (Cth)), where to do so would contravene that statute or cause any part of this Agreement to be void or voidable.
- 11.3. To the fullest extent permitted by law, liability under any condition or warranty or consumer guarantee which cannot legally be excluded or which is expressly included in this Agreement is, at the option of TIMG, limited to, in the case of Goods, replacement of the Goods or the supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or of acquiring equivalent Goods, or the payment of the cost of having the Goods repaired, and, in the case of Services, supplying the Services again or paying the cost of having the Services supplied again.

### 12. Limitation on Liability

- 12.1. To the fullest extent permitted by law, the aggregate liability of TIMG to the Client in respect of any one incident or series of related incidents relating to this Agreement or the provision of the Services or the Records, and whether arising in contract, tort (including negligence), under legislation or in any other way, is limited to the lesser amount of:
  - (1) the amount paid or payable by the Client to TIMG in the 12 months preceding the date in which the incident occurred, where such loss or damage is a result of, or related to, the act or omission of the Client or any other third party; or
  - (2) any amounts recovered by TIMG under any insurance policy required to be effected by TIMG under this Agreement.
- 12.2. To the fullest extent permitted by law, TIMG is not liable to the Client for:
  - (1) any Consequential Loss; or
  - (2) Loss to the Records, where such Loss is a result of, or related to, the act or omission of the Client or any other third party.

# Schedule 2

## General Terms

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### 13. Indemnification

- 13.1. In addition to any express indemnifications stated under this Agreement, the Client agrees to indemnify, defend, release and hold harmless TIMG and each of its respective directors, employees and representatives from and against any and all Loss suffered, incurred or sustained by TIMG arising as a result or in connection with any action, claim or proceeding by a third party against TIMG arising as a result of or in connection with or relating to:
- (1) the Client's violation or breach of any term, condition, representation or warranty under the terms of this Agreement;
  - (2) any breach or violation of a warranty given by the Client in clause 8.3;
  - (3) the destruction of Records as set out in clause 4.4, clause 6.5 and clause 6.6 of this Agreement, including but not limited to in connection with such destruction of Records causing the Client to be in breach of any law, regulation or other binding requirement to retain any Records for any particular period; or
  - (4) the Client's infringement or misappropriation of any third party's rights, including any Intellectual Property Rights or any misrepresentation by the Client in connection with this Agreement.
- 13.2. The liability of the Client under clause 13.1 to TIMG for any Loss will be reduced to the extent that TIMG's breaches of this Agreement or unlawful or negligent act caused to that Loss.

### 14. Insurance

- (1) All Services in respect of the Records are provided at the risk of the Client. Notwithstanding TIMG's undertaking and maintenance of its own insurances, the Client is responsible for appropriately insuring the Records, including insuring against Loss to the Records as a result of fire, theft or any other cause.

### 15. Dispute Resolution

- 15.1. If any dispute arises under or in connection with this Agreement (Dispute) which Dispute is not able to be resolved by the parties within 14 days, the nominated senior officer (or equivalent) of each of TIMG (on the one hand) and the Client (on the other hand) will promptly meet and discuss in good faith with a view to resolving such Dispute within 30 days.
- 15.2. If any Dispute is unable to be resolved in accordance with clause 15.1 within 14 days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.
- 15.3. The mediation will be conducted in accordance with the mediation guidelines of ACDC (Guidelines) which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.

- 15.4. If the parties fail to settle any Dispute in accordance with clause 15.2, either party may commence proceedings in a court of law.
- 15.5. The parties to a Dispute will continue to perform their respective obligations under this Agreement, pending the resolution of a Dispute under this clause 15.
- 15.6. Nothing in this clause 15 is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such dispute.

### 16. Subcontractors and Assignment

- 16.1. TIMG may, without any need to seek the prior consent of the Client, arrange for the provision of any or all of the Services by any subcontractor engaged by TIMG. Service will be provided to the same reasonable standard even if subcontractor is used.
- 16.2. The parties must not assign any of their rights or obligations under this Agreement without the written consent of the other party, such consent not to be unreasonably withheld or delayed.

### 17. Special Conditions

- (1) The Client acknowledges that the Special Conditions (if any) set out in Schedule 3 will also form part of this Agreement.

### 18. Notices

- 18.1. Subject to clause 18.3, any notice or other communication in connection with this Agreement must be in writing and delivered or sent by prepaid post or by email to the address of the receiving party as set out in the Reference Schedule.
- 18.2. A notice or other communication is taken to be received:
- (1) in the case of post, on the next Business Day after posting; or
  - (2) in the case of email, on the production of evidence that the email was sent to the relevant email address, provided however that an email message is not treated as given or received if the sender's computer reports that the message has not been delivered.
- 18.3. A notice of a breach of, or the termination of, this Agreement may not be given by email.

# Schedule 2

## General Terms

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### 19. General

- 19.1. Where the Client is required to access any premises of TIMG, the Client must comply with all rules prescribed by TIMG from time to time in relation to the security of, and access to any premises of TIMG, including any requirements relating to the identification of the Client and their authorised agents.
- 19.2. The Client agrees that each exemption, limitation, condition and liberty contained in this Agreement and every right, exemption from liability, defence and immunity of whatever nature applicable to TIMG or to which TIMG is entitled under this Agreement will be available to and extend to protect all subcontractors of TIMG, every employee or agent of TIMG or of a subcontractor, every other person (other than TIMG) by whom the Services or any part of them are provided, and all persons who are or may be vicariously liable for the acts or omissions of those persons.
- 19.3. If TIMG is prevented from, or delayed in complying with any of the terms of this Agreement, by an event or circumstance beyond its reasonable control, performance by it of that obligation is suspended during the time compliance is so prevented or delayed.
- 19.4. If the Client consists of more than 1 person, this Agreement binds them jointly and each of them severally. If the Client is a trustee, this Agreement binds the Client both personally and in its capacity as trustee. This Agreement binds the Client's executors, administrators, successors, substitutes and permitted assigns.
- 19.5. Subject to clause 6.3, this Agreement may not be varied except by a document signed by the Client and TIMG.
- 19.6. Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- 19.7. TIMG's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise by TIMG of a power or right does not preclude its future exercise or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 19.8. If any part of this Agreement is unenforceable, illegal or void then it is severed but the other terms and conditions remain operative.
- 19.9. This Agreement is governed by the laws in force in the State of New South Wales and both parties submit to the non-exclusive jurisdiction of the courts of that State.
- 19.10. 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.
- 19.11. Unless the context otherwise requires:
  - (1) a reference to money is in Australian dollars unless otherwise stated;
  - (2) a reference to a person includes a body corporate, firm, association and any other entity;
  - (3) the singular includes the plural and vice versa; and
  - (4) a reference to one gender includes all genders.

# Schedule 3

Special Conditions

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Section Intentionally Blank.

# Schedule 4

Service Schedule

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Please see attached proposal including details of fees/charges

# Schedule 5

## Client Security Details (CSD)

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Please see attached document 'FRM02 v12 Client Security Details.pdf' at the link below:

<https://www.timg.com/wp-content/uploads/2020/03/frm02-csd-client-security-details-form-v15.pdf>