



General Terms and Conditions

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Empowering your information journey

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1. DEFINITIONS

1.1 Definitions: In this Agreement, unless the contrary intention appears or context otherwise requires:

“Affiliate” means a related or associated entity or person of a party relevant to or involved in the matters under this Agreement. Without limitation, a Customer Affiliate includes any network or group that the Customer is part of or can purchase or order goods and services on behalf of, such as a franchise network, industry group or association, co-operative, syndicated or joint buying group; and TIMG Affiliate means all companies in the Freightways Group.

“Agreement” means this Agreement comprising:

Part A: Agreement and Key Details,

Part B: Service Schedule;

Part C: these General Terms and Conditions;

Part D: Attachments including SOW (if any), together with any future SOWs and valid variations agreed between the parties during the Term.

“Applicable Law” means any laws, binding rules, regulations and regulatory requirements, and any form of secondary legislation, resolution, policy, mandatory code, concession or case law of a relevant jurisdiction, or an order or direction of legislature, executive, judicial, regulatory, administrative, government or other public authority having the force of law from time to time, in each case, that are relevant to the supply, receipt or use of the Services.

“Charges” means the fees and charges for supply of the Services; purchase price, rental charges, licence fees for Consumables, Equipment purchased, leased or used under this Agreement and all fees, costs, disbursements, reimbursements and other amounts payable by the Customer under this Agreement.

“Commencement Date” means the date from which the Services will be provided as specified in **Part A** or from the month of the first active service [whichever is the later].

“Confidential Information” means confidential, secret, commercially or security sensitive, information, details or knowledge in any format belonging to or about a party, its business, operations, financial results and affairs; and about or connected with the matters under this Agreement; that is not readily available to the public or that would not be known to the recipient of the information but for this Agreement, whether or not it is marked confidential or specifically disclosed in confidence including relating to or about:

- [a] A party’s operational procedures and systems, know-how, sales and bidding strategies, cost and pricing structures.
- [b] The terms of this Agreement and any SOW including details of the Services and the Charges;
- [c] The party’s Personnel, suppliers and customers;
- [d] The existence and outcome of any dispute or claim between the parties [other than as publicly reported];
- [e] Any other information that by its nature should be known to be confidential or such that it should not be further disclosed or used by the recipient party.

“Consumables” means any goods, items or product sold, to the Customer by TIMG or its Affiliate for the purposes of this Agreement such packaging materials, archive boxes, files.

“Containers” means TIMG bins or other receptacles used for the Services for example for secure collection, disposal and transport of the Customers Records.

“Customer” means the client named in this Agreement; and includes where appropriate or context requires its Personnel, authorised representatives, approved transferees, and Affiliates.

“Data Incident” means an unauthorised or unintended disclosure, theft, loss, alteration or destruction of data, Records, or Personal Information or security incident in relation to the TIMG Environment.

“Early Exit Fee” means the amount payable by the Customer for terminating this Agreement without the required notice, or if this Agreement is terminated by TIMG for Customer breach, as described in clause 3.4.

“End Date” means the date this Agreement ends for any reason including expiry on the End Date specified in Part A [if any] or termination by a party on notice as provided for in this Agreement; or termination for breach or any other reason as provided for in this Agreement or at law.

“Electronic Record” means a Record in electronic or digital form.

“Equipment” means any equipment, device, or machinery including computer and communications hardware; Storage Media; or technology that is required to be owned or used by the Customer and/or located at the Premises for the purposes of this Agreement.

“Force Majeure Event” means any event, circumstance or force beyond the reasonable control of the non-performing party, such as natural or weather event or disaster, fire, war or terrorist act, loss or interruption of access to utilities or essential supplies or services, pandemic or epidemic, or an order or direction of legislature, executive, judicial, regulatory, administrative, government or other public authority.

“General Terms and Conditions” means these general terms and conditions in Part C of the Agreement.

“Goods” means the Consumables, Software, Equipment and any other equipment, deliverables or goods supplied under or in connection with this Agreement.

“GST” means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1999 [Cth], or any replacement thereof.

“Harmful Code” means any computer program virus, worm, ransomware, spyware, drop dead device, trojan horse, time bomb, back door device, or other code that is harmful, destructive, disabling or which assists in or enables unauthorised access to, use or modification of, or exfiltration, deletion or encryption of, associated data or otherwise disrupts or impairs the normal operation of any of systems or the Services.

“Initial Period” means the initial period of the Term as specified in Part A.

“Insolvency Event” means and includes any of: committing an act of bankruptcy or being bankrupted; being deemed or declared insolvent; have judgement entered which is not satisfied within 28 days; an entity is wound up or becomes externally administered or has a liquidator or receiver appointed by any person; entering into a deed of arrangement or composition with its creditors without consent of the other party; a secured party or creditor enforces any rights it has against any property of the party; or in any circumstance a party cannot prove solvency to the other party’s satisfaction on demand.

“Intellectual Property” means intellectual property and proprietary rights including trademarks, confidential information, copyright materials and content, designs, patents, software, code, programs, databases, knowhow, business, operations and technical data processes and systems, and includes all improvements to Intellectual Property by the owner or any other person.

“Jurisdiction” means the jurisdiction listed in Part A of the Agreement.

“KPI” or **“Key Performance Indicators”** has the same meaning as Service Levels.

“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.

“Modern Slavery” has the meaning given in the Modern Slavery Act 2018 [Cth].

“Ordinary Hours of Work” means the hours specified in Part A.

“Personal Information” has the meaning given to that term in the Privacy Act or other Applicable Law.

“Personnel” means any officer, worker, employee, contractor, subcontractor, volunteer, unpaid worker or other person employed or engaged or authorised to work for or carry out services for the business of a party or represent a party in any way associated with the matters under this Agreement.

“Premises” means all or any Customer or Customer Affiliate premises and any part of them related to the Services including offices, warehouses, storage facilities, yards, carparks, loading docks, driveways and, accessways.

“PPSA” means the Personal Property Securities Act 2009 [Cth].

“Privacy Act” means the Privacy Act 1988 [Cth].

“Records” means all Customer physical or electronic or digital records, data and information that are the subject of the Services under this Agreement, including those created or converted by TIMG for the purpose of the Services, in any format; all integrated or associated Storage Media or devices and all archive boxes, packaging, documents, files or folders accompanying or containing the Records as context requires.

“Renewal Period” means an additional or extended period/s of the Term following the Initial Period, as set out in the relevant SOW or Service Schedule, or the same duration as the Initial Period, where no time period is specified.

“Services” means the Services supplied to the Customer by TIMG during the Term as provided for in this Agreement, as set out in a relevant Service Schedule, SOW or Work Order or as otherwise agreed between the parties.

“Service Levels” means, for a Service, the service levels and performance targets which are specified in the relevant Service Schedule or SOW.

“Service Level Failure” means a failure by TIMG to achieve any of the Service Levels.

“Software” means TIMG proprietary software or third party software, apps or programs or system used by either party in connection with the Services and includes any web or mobile based application or portal or cloud based API used by or accessible to the Customer for the Services and any artificial intelligence software agents or other tools used by TIMG in the performance of the Services.

“Special Conditions” means any special conditions that supplement or specifically vary these General Terms agreed by the parties as set out in Part A or in a SOW.

“Statement of Work or SOW” means the Statement of Work in Part B or annexed to this Agreement, if any; and any future Statements of Work signed and dated by both parties for any new, different or materially varied Services agreed to be supplied during the Term of this Agreement, specifying the scope, pricing and other details of the Services, and that once signed becomes part of and governed by this Agreement.

“Storage Media” means the devices or technology on which Customer data and Records are stored such as tapes, discs, drives, USBs or similar.

“Term” means the term of this Agreement commencing on the Commencement Date, comprising the Initial Period and Renewal Period/s if applicable.

“TIMG” means the Freightways Group company identified in Part A of the Agreement and includes where appropriate or context requires its officers, employees, authorised representatives, and transferees.

“TIMG Property” means all Equipment and other goods supplied to or used by the Customer for the purpose of this Agreement owned or supplied by TIMG and where title does not pass to the Customer or that TIMG has a security interest in.

“TIMG Environment” means all online systems owned, controlled or operated by TIMG which are used to provide Services to the Customer.

“TIMG Facility” means any data centre or physical storage facility used by TIMG to provide the Services.

“TIMG Location” means any TIMG Facility located at any of the following locations in Australia: Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Western Australia, Victoria; or any additional locations as may be added by TIMG from time to time.

“Transition Period” means the period commencing immediately after the End Date during which Customer’s Records are removed from TIMG’s possession or control, and the parties’ other post termination obligations are carried out.

“Vehicle” means any vehicle used by TIMG or its Personnel in the supply of the Services.

“Work Order” means a Customer order for the Services or to purchase Consumables made from time to time during the Term.

2. THE SERVICES

- 2.1** In consideration of the Charges, TIMG shall provide the Services to the Customer, [including any Affiliates named in Part A] as detailed in a SOW or Work Order throughout the Term during the Ordinary Hours of Work with reasonable care, diligence, and skill in accordance with good industry practice and standards, Applicable Law, the value of the Charges and nature of the Services. TIMG may provide the Customer with Services [including emergency return of, or access to, Records]

outside of specified times as agreed between the Customer and TIMG and subject to the Customer agreeing to pay any additional charges invoiced by TIMG in respect of such Services.

2.2 Statements of Work

- [a] TIMG will provide the Services as set out in the relevant SOW executed by the parties. Each executed SOW will form part of this Agreement and will be subject to these General Terms and Conditions.
- [b] A new SOW or other signed variation must be completed for additional, new, or materially varied Services outside the scope detailed in existing SOWs.
- [c] Varied or additional Services shall be subject to the General Terms and Conditions and then-current Charges in place at the date of variation or addition unless otherwise agreed.

2.3 Work Orders

- [a] TIMG will supply the Services and any goods at the times, volumes and/or frequencies as specified in this Agreement, including each relevant SOW. If the Customer wishes to order additional ad-hoc or unscheduled goods [such as consumables] or to provide ad-hoc or unscheduled information or adjustments related to Services acquired under an SOW [including information related to the transfer of boxes from other providers for storage under an existing SOW, and incidental services to the extent related to such transfers], the Customer will complete a Work Order in accordance with this clause 2.3.
- [b] When logging, making or updating a Work Order, the Customer must follow TIMG's processes and requirements and accurately and promptly provide TIMG with all information and details necessary to accept the Work Order and deliver the Service or goods, including providing a Customer-issued purchase order number for every new Work Order, if required under Part A.
- [c] To the extent that Charges are not fixed in this Agreement, the Services and goods requested by each Work Order shall be charged in accordance the then-current TIMG, or if applicable third party supplier, price list.
- [d] If the Customer does not request cancellation within the cancellation notice periods required under TIMG's processes, as set out in the SOW, Work Order, or as otherwise notified to the Customer by TIMG, TIMG may charge the full amount for the Services requested under any SOW or Work Order that is cancelled.
- [e] TIMG does not warrant that it will have the capacity or ability to supply all Services or goods as requested by Work Order and will notify the Customer reasonably promptly if a Work Order cannot be accepted.

2.4 Suspension of Services

- [a] TIMG may suspend, postpone or delay all or any of the Services [or any part of the Services] at any time during the Term by giving as much notice as reasonable in any of the following circumstances:
 - [i] For a planned outage, or unavailability of the Services for unplanned or emergency operational and/or maintenance reasons;
 - [ii] Due to a Force Majeure Event;

- (iii) where TIMG is entitled to terminate this agreement [in which case such suspension will not constitute a waiver of TIMG's rights including to subsequently terminate];
 - (iv) If a Breach Notice issued under clause 9.1 is not complied with, at the expiry of the timeframe notified for remedy of the breach [if the breach is capable of remedy] or suspension; or
 - (v) It is not, in TIMG's reasonable opinion, practicable or reasonable for the Services to continue in circumstances where a notice of termination or material claim has been served by a party on the other party, or a material Dispute is initiated or ongoing between the parties.
- (b) TIMG will resume all or part of the Services as soon as reasonably practicable after the event or circumstance giving rise to the suspension has ended [unless a party lawfully terminates this Agreement during the period of suspension].
- (c) Any fixed or minimum Charges under this Agreement shall continue to accrue and be payable by the Customer during the period of suspension if the Services have been suspended due to overdue payment or other Customer breach.
- (d) TIMG is not liable to the Customer for any Loss, claim or other consequence to the Customer for a suspension of Services under this clause 2.4.

2.5 Customer Affiliates

- (a) Where the Services will be supplied directly by TIMG to, or for the benefit of, Customer Affiliates [in addition to or instead of the named Customer] and/or at Premises owned, or occupied or controlled by Customer Affiliates, TIMG will provide the Services on the terms and conditions of this Agreement to those Affiliates named or described in Part A or later notified in writing by the Customer, under the terms and conditions of this Agreement as if they were the named Customer and all reference to Customer is deemed to include those Affiliates.
- (b) The Customer will ensure its Affiliates are aware of and comply with all Customer obligations, processes and requirements under this Agreement.
- (c) Customer is responsible for the acts or omissions of its Affiliates in relation to this Agreement as if that Customer was in the place of the Affiliate. All Affiliates named by the Customer that order and receive the Services are deemed to be authorised by the Customer to do so, and TIMG is entitled to rely on any Work Order, request, representation, or communication of an Affiliate as having been made by the Customer.
- (d) The Customer shall pay all Charges incurred by Affiliates unless TIMG specifically agrees to invoice Affiliates individually, in which case the Customer indemnifies TIMG for any non-payment of Charges by Affiliates and any costs incurred in collecting or enforcing payment. Any other breach of Customer obligations by an Affiliate ordering and receiving the Services or any other act or omission under this Agreement shall be deemed a Customer breach.

3. TERM OF AGREEMENT

- 3.1** Unless this Agreement is earlier terminated pursuant to clause 9.2, the Term and supply of Services commence on the Commencement Date and continue for the Initial Period, and any successive Renewal Periods under clauses 3.2 and 3.3.
- 3.2** **Renewal Terms.** This Agreement, [and any current SOWs], will automatically renew for a Renewal Period on expiry of their Initial Period, unless:
- [a] An End Date specified in Part A of this Agreement has passed or, in the case of an SOW, an end date specified in that SOW has passed; or
 - [b] Either party has given written notice to the other at least 90 days prior to expiry date of the Initial Period [or the then current Renewal Period as applicable], stating that they wish this Agreement or the applicable SOW to terminate on expiry of the Initial Period.
- 3.3** Following extension pursuant to clause 3.2 above, this Agreement or the applicable SOW shall continue for the Renewal Period and then for subsequent additional Renewal Periods unless terminated in accordance with clause 3.2 above or otherwise terminated in accordance with this Agreement.
- 3.4** **Early Termination and Early Exit Fee.** If the Customer terminates this Agreement or an SOW at any time during the Term without the required notice, or this Agreement is terminated for Customer breach, the Customer must pay an Early Exit Fee which shall be a sum equivalent to the fixed or minimum Charges, or reasonably anticipated Charges that would have been payable by the Customer to TIMG:
- [a] If terminated during the Initial Period, the Early Exit Fee shall be for the unexpired portion of the Initial Period as at the date of termination; and
 - [b] If terminated during a Renewal Period, the Early Exit Fee shall be for the full required notice period, less the period of notice given [if any].
- 3.5** **SOW Term:** For clarity, the Initial Period and Renewal Period specified in this Agreement apply to the agreed Services as at the date of this Agreement, and each subsequent SOW may specify its own, different, Initial Period and Renewal Period. In the event that this Agreement expires, and the then-current Initial Period or Renewal Period of an SOW extends past such expiry, the SOW will continue until the end of the then-current Initial Period or Renewal Period, incorporating by reference the terms of this Agreement [except for clauses 3.2 and 3.3] for the duration of that period.

4. CHARGES AND PAYMENT

- 4.1** The Customer shall pay all Charges under this Agreement in cleared funds by bank transfer to TIMG's nominated bank account; without set off or deduction, as further set out in this clause 4 below, time being of the essence.
- 4.2** The Customer shall also pay all amounts due to any TIMG Affiliate or third party supplier involved in supplying any part of the Services, or associated Consumables, Equipment, and Software, whether

invoiced directly to the Customer by that person, or included in a TIMG invoice, [for example freight costs and third party software licence fees] on the due dates.

- 4.3** GST is payable by the Customer on all Charges, unless the Charges are specified as GST inclusive.
- 4.4 Invoicing.** TIMG will issue GST invoices to the Customer for any Services provided in a calendar month, following the conclusion of each calendar month. Payment is due within fourteen (14) days from the date of invoice issue.
- 4.5** Subject to clauses 4.6 and 4.7, the Charges invoiced each billing cycle shall be for the actual value of Services carried out in that period, which may be higher or lower than any fixed or regular amount specified in Part A, if for example:
- (a) TIMG provides additional or extra Services pursuant to a Customer Work Order or other request;
 - (b) TIMG incurs extra costs, or additional work is necessary to provide the Services because they are outside the usual or quoted scope at Customer's request, or the Customer has not followed the correct processes, or caused delays or extra costs to TIMG or its Personnel; or
 - (c) TIMG was not able to supply all scheduled or ordered Services during invoice period during a period of suspension or other reason that was no fault of the Customer.
- 4.6** If any fixed or minimum Services are specified in Part A; but a lower volume or value of Services are supplied due to Customer request, breach, or failure to follow TIMG processes and requirements notified to the Customer, TIMG may invoice, and the Customer must pay, the full fixed or minimum Charges for the applicable billing cycle.
- 4.7** If the full amount and value of Services for a billing cycle is not known or finalised by TIMG at the time of issuing the invoice, TIMG may invoice the known or estimated Charges for that period, and TIMG shall in the next practicable invoice charge for those Services supplied but not charged in a prior period; or, as the case may be, credit or refund the Customer for any overcharge for the prior period.
- 4.8** Any invoice query or dispute must be notified to TIMG prior to the payment due date, and TIMG will attempt to resolve the query before the due date. If not resolved by the due date, the Customer must pay the full invoice amount and TIMG shall provide any proven or agreed credit or refund due to the Customer in the next practical invoice period.
- 4.9 Overdue Payments.** If any Charges or amounts due to TIMG or its Affiliates in connection with this Agreement are not paid in full on the due dates; then without limiting any other rights TIMG [or the Affiliate] may have:
- (a) The Customer must pay on demand default interest at a rate equal to 3% above the then current overdraft unsecured rate of TIMG's principal bankers, calculated on a daily basis on the amount unpaid from the due date until the date paid; and all costs and expenses [including costs on a solicitor/client basis and debt collectors' or other enforcement or recovery costs] incurred by TIMG or the Affiliate in collecting any overdue payments or judgement amount.
 - (b) TIMG may terminate this Agreement pursuant to clause 9.2(d)(ii) or suspend the further supply of all or any Services until all amounts due and any applicable default interest and costs are paid in full [and this option shall apply if any amounts due to a TIMG Affiliate or nominated supplier or licensor, are overdue].

- (c) TIMG may require payment of an advance deposit and / or authorised direct debit or credit card authority may be required as a condition of continuing supply to the Customer.

- 4.10 Annual Review and Other Variation of Charges.** Subject to the variation process set out in clause 18.3, and without limiting clause 4.11 or 4.12, TIMG may review and propose an increase to the Charges on or around each annual anniversary of this Agreement on 60 days' written notice to the Customer, and the varied rate may be backdated to the anniversary date. Any increase proposal shall be at TIMG's discretion but, for the Customer's information only, reasons for increase may include or be based on all or any of: TIMG's own increasing costs of business including Personnel and supplier costs, updated or new legislative, regulatory and compliance requirements, and capital costs, already incurred or due to take effect in the forthcoming period. In such cases, TIMG will provide reasonable documentation demonstrating the cost increase on request.
- 4.11 CPI Price Increase.** Not more than once in any 12 month period, TIMG may, by giving 30 days' notice to the Customer, increase the Charges in accordance with any percentage increase in the Wage Price Index or Consumer Price Index (CPI) as published by the Australian Bureau of Statistics (or any replacement index) over the preceding 12-month period. Where TIMG increases the Charges under this clause 4.11, clauses 4.10 and 18.3 will not apply.
- 4.12 Fuel and Transport Charges.** TIMG may implement or vary a fuel surcharge, transport charge, or levy by giving 14 days' notice to the Customer. Such charges shall be calculated as a fixed "per visit" rate and invoiced monthly. This fee is intended to offset the costs of fuel, vehicle operation, and transit time associated with the provision of Services. Where TIMG increases the Charges under this clause 4.11, clauses 4.10 and 18.3 will not apply.

5. TIMG WARRANTIES

5.1 Warranties: TIMG warrants that:

- (a) it is suitably qualified and has sufficient expertise to perform the Services;
- (b) it shall not use the Records for any purposes other than carrying out its obligations under this Agreement and as otherwise required by Applicable Law; and
- (c) it shall take reasonable steps to maintain, upgrade and keep current to the extent necessary, all Goods, (including Software and Equipment) supplied to the Customer by TIMG that is in TIMG's possession or control during the Term. Notwithstanding the foregoing, TIMG does not warrant to the Customer or any user that such Software used by Customer, whether licensed from third parties or supplied by TIMG:
 - (i) is or will be free of Harmful Code;
 - (ii) will run properly in all circumstances;
 - (iii) will be free of delays, interruptions, unauthorised access, or failures of service or functionality, ["faults or failure"]; or
 - (iv) is capable of having any faults or failures corrected.

5.2 Excluded warranties and guarantees. To the extent permitted by law, TIMG excludes from this Agreement all terms, conditions, guarantees, representations or warranties (whether express or implied) that are not expressly set out in this Agreement.

5.3 Australian Consumer Law. 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.

6. CUSTOMER WARRANTIES AND ACKNOWLEDGMENTS

6.1 By signing this Agreement and/or proceeding with the Services after being provided with or referred to a copy of this Agreement and in particular these General Terms and Conditions by TIMG; the Customer accepts the terms of the Agreement and acknowledges it has had an opportunity to read and understand the same, and discuss or seek clarification from TIMG of the obligations and rights of the parties, before signing.

The Customer warrants that it has authority and capacity to enter into this Agreement.

6.2 The Customer acknowledges that if it has entered into this Agreement as an agent, trustee or representative of any other person, the Customer shall be deemed to be the owner for the purpose of this Agreement, and the Customer indemnifies TIMG for any claim, action, liability, costs or damages related to any breach or charge or claim related to the Record owner's acts, obligations and liabilities pursuant to this Agreement or any Applicable Law or third party obligation.

6.3 The Customer accepts it is responsible for undertaking its own due diligence before entering this Agreement, and solely relies on its own judgement for ensuring:

- [a] the Services comply with any Applicable Law or other third party or external obligations applicable to the Customer or the Records, for example the processes and periods for preservation, encryption or maintenance of the Records, the form and appropriateness of backup, copying, or other redundancy and record-keeping assurance measures; and
- [b] the Customer is satisfied that TIMG as a supplier, and the scope and nature of the Services, and the Equipment, and Software and Consumables supplied or utilised in connection with the Services are suitable and meet the Customer's needs and specifications; and
- [c] this Agreement contains all terms, conditions, and specifications that the Customer relies on.

6.4 The Customer warrants that it will at all times during the term:

- [a] use the Goods and Services in accordance with the terms of this Agreement and Applicable Law; and
- [b] comply with its obligations set out in this clause 6, and clauses 7 and 8 below.

7. THE CUSTOMERS' RECORDS

7.1 Nature and content of Records. The Customer warrants to TIMG, and shall ensure that the Records and any part of them:

- [a] Are owned by the Customer or that the Customer is the authorised agent, trustee or other representative of the owner of the Records;

- [b] Do not contain any items or material or information other than as described in this Agreement or disclosed to TIMG in writing in advance of TIMG providing the Services in respect of the Records;
- [c] Do not include or contain any:
 - (i) substance, item, material, data, information or content that is unlawful or prohibited under Applicable Law (including Applicable Law of the Jurisdiction and of the jurisdiction of the Customer), or that breaches the rights of any person or any Applicable Law, obligation or restriction;
 - (ii) any substance, item, material, data, information or content for which a licence, permit, authorisation or similar is required to be held but is not held by the Customer or does not name or extend to TIMG while in possession;
 - (iii) Harmful Code (including in any electronic or digital files or data structure or Storage Media containing the Records);
 - (iv) volatile, explosive, toxic, decomposing, hazardous or otherwise dangerous or harmful substance or item; or
 - (v) cash or other legal tender.
- [d] Where TIMG reasonably suspects that Customer is not complying with clauses 7.1[a]-(c) above, TIMG may, on reasonable written notice to the Customer to the extent practicable, but without compensation or liability to the Customer, do any or all of the following:
 - (i) destroy, delete or render harmless, or remove from such Records premises and/or deliver the Records to the Customer's last known address, at the Customer's cost based on TIMG's then standard Charges for those actions;
 - (ii) cease supply of the Services for those Records; or
 - (iii) terminate this Agreement.

7.2 Packaging and Delivery

- [a] For all Records delivered to, or uplifted from, TIMG, the Customer must ensure the Records have been be suitably packed, stored, secured from tampering, and otherwise protected to avoid any loss, damage, impairment or unauthorised access during carriage, receipt and supply of Services; having regard to the nature of the Records and Services. This obligation does not apply to the extent the Services include packaging by or on behalf of TIMG.
- [b] Any Records that would ordinarily be contained in, and collected or delivered in, a Container provided by TIMG will not be collected unless in a Container or otherwise agreed in writing by TIMG. The Customer is solely responsible for any loss or damage to Containers while at the Premises [or that should be at the Premises] and indemnifies TIMG for the actual cost of repair or replacement to any damaged, lost or missing Containers.
- [c] Where supplied or submitted in electronic format, the Customer must follow all reasonable instructions provided by TIMG to upload/transfer the Records, including as to use of electronic / digital formats, Storage Media, upload, encryption, compression and authentication requirements.
- [d] The Customer carries all risk and liability for any loss, damage or impairment to Records or related liability contributed to by, or related to, incorrect or inadequate packaging and

protection; or not using a recommended or supplied Container (even if departure from such recommended or supplied Container use is consented to by TIMG).

- (e) Any delivery or collection of Records to or from the Premises by TIMG or its Affiliate shall be deemed complete at the time the Records are recorded by the third party carrier as delivered to, or uplifted from, the Premises, or if required under this Agreement, upon receiving a Customer signature confirming delivery or collection. TIMG will not be responsible for any loss, damage, fault, error or failure in the Records or any Goods being delivered to or from the Customer throughout the entire period of transit or carriage, including any transit-related storage, except to the extent caused by the negligence or wilful misconduct of TIMG or its Personnel.

7.3 Access to Premises

- (a) The Customer authorises TIMG, its Personnel, Vehicles (including any third party carriers nominated by TIMG to perform collection or delivery Services) to access and enter the Premises during the Term for the purposes of the Services at the agreed, and otherwise reasonable, times and days as necessary to supply the Services.
- (b) The Customer must ensure entry is readily available to the Premises and all applicable parts thereof with unimpeded, suitable access and space for the Services to be carried out in a safe and efficient manner by TIMG's Personnel, including room for Vehicles to enter, manoeuvre, and exit; and for Containers, Records, palleted freight and other items being delivered or collected to be easily located, uplifted or deposited in well defined, clearly accessible spaces suitable for the Vehicle, Containers and any equipment used by TIMG.
- (c) If suitable access is not available, TIMG (or its nominated carrier) may deliver the Records to a reasonably suitable alternative location at the Premises to be notified to the Customer at the time of delivery; or may depart the Premises without delivering the Records, and the Customer shall pay the Charges for all attempted deliveries, re-deliveries, waiting time, and temporary storage.
- (d) The Customer shall supply all necessary keys, access cards and access codes necessary for TIMG Personnel and Vehicle access and entry to the Premises and all applicable parts thereof. TIMG shall take reasonable steps to keep keys, access cards and codes confidential, safe and secure and only available or accessible to authorised persons. The Customer must notify TIMG as soon as practicable if any changes are made to the access ways or entries, and/or locks or codes and supply replacement keys, cards and codes to TIMG at the Customer's cost. TIMG must notify the Customer as soon as practicable if any keys, cards or codes cease to work, are faulty or are lost or stolen.

7.4 Third Party Request for Records. If TIMG is served with any demand, request, order, warrant or legal requirement to produce, provide or give access to the Records to any person, ("order"):

- (a) TIMG shall if practicable and lawful, promptly notify the Customer before responding to or complying with such order; and shall reasonably comply with any lawful Customer request or directions and assist the Customer to respond to, comply with, defend or oppose such order at the Customer's cost including any retrieval, copying, scanning or delivery Charges.
- (b) Nothing shall prevent TIMG from complying with any order without notifying or seeking consent of the Customer if legally required or if in TIMG's reasonable opinion, failure to comply with the order could cause TIMG to be in breach of any duty or obligation that could lead to any claim, action, liability, costs, damages or penalties against TIMG or any of its Personnel.

- (c) The Customer indemnifies TIMG for any claims or Loss suffered by TIMG in respect of TIMG responding to, complying with or opposing any such order, including TIMG's legal costs in seeking advice on TIMG's obligations, rights and options.

7.5 Location of Records. TIMG and its Affiliates operate and provide the Services at different locations outside the Jurisdiction. Except to the extent otherwise agreed in an applicable SOW, Customer acknowledges and consents to, and will obtain all relevant authorisations and consents in relation to Personal Information in order to facilitate, TIMG transferring, processing and storing the Records at any TIMG Location and providing any part of the Services from any location determined by TIMG. Where TIMG transfers, processes or stores Records or provides services from a jurisdiction other than the Jurisdiction or one of the TIMG Locations, TIMG will use reasonable endeavours to ensure that it has in place substantially comparable or superior privacy, intellectual property and data protection laws as the Jurisdiction.

7.6 Title in Records. Ownership and title of Records remains with the Customer (subject to any security in favour of TIMG); however, if the Records are destroyed or deleted as part of the Services or during the Transition Period, all title and property and rights in the Records of any person shall be deemed extinguished at the time the Customer requests or authorises destruction or deletion, or that TIMG otherwise obtains the right to do so.

7.7 Retrieval of Records. Subject to the limitations and exclusions in clause 14, in the event of the loss, damage, unavailability or destruction of Records, TIMG shall use reasonable endeavours to recover or reinstate such Records.

7.8 Post-Termination Destruction of Records. Following termination or expiry of this Agreement, clause 9.4 will apply.

8. GOODS, SOFTWARE AND EQUIPMENT

8.1 Use of Goods, Software and Equipment. Where TIMG provides Services which include the purchase, lease, supply or use of Goods (including Software and Equipment), the Customer agrees to:

- (a) inspect and test all such Goods and associated Records following delivery, access or installation, and report any loss, damage, fault, error or failure in the Goods or to associated Records to TIMG within 10 working days of such delivery, access or installation;
- (b) after initial inspection and testing, periodically inspect and test all such Goods and associated Records, and report any loss or damage, fault, error or failure in the Goods or to associated Records to TIMG when any such loss, damage, fault, error or failure becomes known to the Customer at any time during the Term;
- (c) follow all reasonable instructions provided by TIMG to upload or transfer electronic or digital Records or other data, including via use of any nominated Media Storage, online platform, data, database or file format, encryption or compression application, format or process, or authentication Software and Equipment;
- (d) ensure Records and any data other transferred to, ingested by, or uploaded to the TIMG Environment is encrypted and compressed in accordance with the technical requirements specified by TIMG and any third party provider of ingestion or transfer services or Software prior to being transferred to TIMG;
- (e) take all necessary steps at its own cost to ensure its own systems and technology interoperate, support and communicate with the Equipment and Software specified by TIMG from time to time;

- (f) pay all subscription and licence Charges to TIMG and any third party licensors for any Software and Equipment specified or supplied by or on behalf of TIMG;
- (g) comply with all licence terms and terms of use applicable to any Software and Equipment supplied by TIMG or a third party, or used in conjunction with, either directly or indirectly, the Services [copies of which can be provided to Customer on request, where the Software or Equipment is supplied by or on behalf of TIMG].
- (h) not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change any Software or Equipment, or attempt to do so;
- (i) have suitable measures in place to detect and prevent hacking, installation or use of Harmful Code or other interference or unauthorised access to, or interference with, the Software, Equipment or TIMG Environment;
- (j) keep secure and confidential any encryption keys, passwords, passcodes and other access details or mechanisms provided by TIMG for the purposes of uploading, transferring, encrypting or accessing the Records and associated Services; and
- (k) ensure that Customer has authorised anyone who accesses the Customer's account or Service using the Customer's encryption keys, passwords, passcodes and other access details or mechanisms [and the Customer agrees that TIMG is entitled to assume such authorisation if anyone does access the Customer's account or Service using such keys, passwords, passcodes or other access details or mechanisms].

8.2 Customer ownership of Goods. Except to the extent otherwise agreed, and subject to clauses 8.3 to 8.8 below, Customer agrees to own, acquire, and use all Goods specified in this Agreement or notified by TIMG from time to time during the Term, as necessary for the purposes of this Agreement; and to the extent set out in the relevant SOW, TIMG agrees to sell, supply or co-ordinate or provide reasonable assistance with the acquisition of the Goods.

8.3 Customer responsibilities in relation to Goods and Services.

- (a) Goods supplied to the Customer by third party suppliers and licensors shall be pursuant to that supplier's own terms of sale, lease or licence and the Customer agrees to comply with the same including, if required, directly entering into purchase, lease, licence, subscription or user agreements with the licensor or supplier, and paying all related amounts and Charges on the due dates.
- (b) When acquiring and using the Goods and Services, the Customer and its Personnel must follow all TIMG, third party supplier and licensor directions and instructions for the proper installation, use, care, maintenance, security, repair, upgrade and other specifications for all such Goods and Services.
- (c) The Customer is responsible for the proper use, care, security and prevention of loss, damage, fault, error or failure in its possession [including under clause 8.4 below] and indemnifies TIMG [or its insurers as the case may be] for any loss, damage, fault, error or failure in TIMG's Goods from any cause while in the use or possession of the Customer [including any use or possession by Customer Personnel].

8.4 Goods under loan, lease or license. Any supply to the Customer by TIMG of Goods by way of lease, license or loan is on the following terms:

- (a) Possession and use is limited to the purpose of the Services, and the Customer must not use the Goods for any purpose other than receiving and using the Services, during the Term;

- [b] The Customer must not sell, sub-lease, grant any security in, or part with possession of any such Goods, or permit any other person to use of or have access to any of them for any other purpose; and must not remove, or cover any serial numbers, QR codes or identifying marks of ownership, and must ensure the Goods are readily identifiable as owned by TIMG; and
- [c] Rights of use and possession shall cease without further notice on the End Date;

8.5 Return of TIMG Property. The Customer shall at its own cost promptly return all Goods owned by or subject to security by TIMG; or co-operatively provide access to its Premises or other relevant location for TIMG or its nominated carrier to uplift and remove the Goods:

- [a] Following termination of this Agreement for any reason;
- [b] At the end of any specific lease, loan, or licence if earlier,
- [c] As provided for pursuant to a PPSR security to TIMG; or
- [d] At any other time as reasonably requested or demanded by TIMG, for example if maintenance or upgrades are required, or the Services are suspended, or pending termination of this Agreement, or TIMG has cause to suspect the Customer is not following requirements or the Goods are at risk of loss, damage, fault, error or failure.

8.6 Title and Risk. Ownership and title in Goods sold to the Customer by TIMG under or in connection with this Agreement does not pass to the Customer until the purchase price has been paid in full to TIMG. Ownership and title of Goods owned by TIMG that are leased, licensed or otherwise supplied [but not sold] to the Customer for use in connection with this Agreement remains with TIMG at all times.

8.7 Transfer of Risk. Risk in Goods sold, leased, licensed or otherwise supplied to the Customer passes to the Customer from the time of dispatch to the Customer by TIMG [or its supplier] including for any loss, damage, fault, error or failure during carriage. If Goods have not been paid for in full prior to dispatch, the Customer must insure the Goods for their full indemnity value plus costs. Risk in Goods leased, licensed or otherwise supplied [but not sold] to the Customer reverts to TIMG upon TIMG's confirm of undamaged receipt by TIMG [at which time the Customer's insurance obligation for those Goods also ceases].

8.8 Personal Property Securities Act 2009 [Cth].

- [a] Capitalised terms used in this clause 8.8 terms that are not defined in clause 1.1 of this Agreement have the meaning given in the *Personal Property Securities Act 2009* [Cth] [PPSA].
- [b] The Customer hereby grants to TIMG a purchase money security interest under the PPSA in all goods purchased from TIMG until the purchase price has been paid in full. The Customer also grants a security interest in all TIMG property leased, loaned, or otherwise supplied to the Customer for a period of 12 months or longer, for the duration of such lease, loan, or possession. TIMG may register its security interests on the Personal Property Securities Register, and the Customer agrees to do all things necessary to enable TIMG to perfect and maintain its security interests, including executing any documents and providing relevant information.
- [c] To the extent permissible at law, the Customer:
 - [i] waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change

Statement relating to a Security Interest granted by the Customer as Grantor to TIMG;

- (i) indemnifies TIMG for all costs and expenses incurred by TIMG, including legal costs and expenses on a solicitor / client basis, in connection with enforcement or attempted enforcement of any Security Interest granted to TIMG by the Customer;
- (ii) agrees that for the purposes of sections 115[1] and 115[7] of the PPSA:
 - (A) TIMG as secured party need not comply with sections 95, 118, 121[4], 125, 130, 132[3][d] or 132[4]; and
 - (B) sections 142 and 143 are excluded;
- (iii) agrees that for the purposes of section 115[7] of the PPSA, TIMG as secured party need not comply with sections 132 and 137[3]; and
- (iv) agrees that TIMG may, at the Customer's cost, take all steps as TIMG considers advisable to register, amend or remove the registration of its security interest in the Collateral, or to protect, perfect or record its security interest in the Collateral, or to better secure its position as secured party in respect of this Agreement under the PPSA.

8.9 Use of Artificial Intelligence.

- (a) Customer acknowledges and agrees that:
 - (i) TIMG may use artificial intelligence and machine learning tools and systems [AI], including through the integration of third-party AI application programming interfaces, for the purposes of providing, securing and optimising the Services;
 - (ii) Records and data may be transmitted to, ingested by and processed by AI; and
 - (iii) All third-party AI providers will be deemed permitted sub-processors under this Agreement.
- (b) TIMG will use reasonable endeavours to ensure that its agreements with third-party AI providers prohibit the use of the content of Customer's Intellectual Property or data in the Records to train their public or foundation models. TIMG may also use anonymised or aggregated telemetry data to improve its own systems, and will retain all Intellectual Property rights in respect of such improvements.
- (c) TIMG's liability regarding the use of AI is subject to the general limitations of liability and third-party service provisions set out in this Agreement.

9. BREACH AND TERMINATION

9.1 Breach Notice. If either party ["the first party"] requires the other party ["the defaulting party"] to remedy or resolve any alleged breach of the defaulting party's obligations under this Agreement [including any SOW] or wishes to rely on the breach as a ground for termination of this Agreement, the first party or its lawyers must serve a written notice ["Breach Notice"] on the defaulting party setting out the:

- (a) Details of the alleged breach;
- (b) Action the first party requires to remedy the breach [if the breach can be remedied];

- [c] Timeframe for remedying the breach, which shall be reasonable and ordinarily not exceed 30 days;
- [d] Consequences of not remedying the breach;
- [e] Consequences of continuing or repeated breaches; and
- [f] Other relevant matters.

9.2 Termination. This Agreement shall terminate on the earliest to occur of the following:

- [a] The end of the Term pursuant to clauses 3.1 and 3.2;
- [b] If a Breach Notice issued under clause 9.1 is not complied with, at the expiry of the timeframe notified for remedy of the breach (if the breach is capable of remedy);
- [c] Upon issue of a Breach Notice issued under clause 9.1 if it specifies that the breach is incapable of remedy and is a breach of material provision of this Agreement;
- [d] the effective End Date specified in a notice by one party to the other party, which notice identifies the occurrence of the following (regardless of whether a Breach Notice has been issued):
 - [i] An Insolvency Event suffered by the recipient party and there is a material risk it will be unable or unreasonably delayed in performing its obligations under this Agreement (such risk being assessed by the notifying party, acting reasonably);
 - [ii] In the case where the Customer is the recipient party, failure by the Customer to pay any undisputed amount more than 30 days after the due date if notice of overdue payment has been given at any time after the due date, including a regular account statement or arrears notice;
 - [iii] In the case where the Customer is the recipient party, the Customer has failed to satisfy a written request by TIMG for evidence of solvency or creditworthiness within 14 days of such request, and TIMG, acting reasonably (including due to any failure by Customer to provide evidence on request), determines that the Customer presents a material credit risk;
 - [iv] The recipient party is convicted or found liable for any criminal offence, regulatory offence or civil claim or action that in the sending party's reasonable opinion is relevant to the Services;
 - [v] The recipient party does anything that the sending party reasonably believes could negatively impact on the reputation of the sending party or jeopardise operation of the sending party's business;
 - [vi] The recipient party enters into or participates in any agreement, arrangement or understanding with any competitor or attempts to do the same, including with the sending party; that in the sending party's reasonable opinion is connected to or relevant with this Agreement and could constitute cartel behaviour or otherwise be unlawful;
 - [vii] The recipient party discloses, copies or uses any Confidential Information or Intellectual Property or Personal Information of any person in connection with the Services, other than as permitted under this Agreement or by Applicable Law;

- (viii) The recipient party is fraudulent, dishonest, or materially misleading or has acted unlawfully in connection with the matters under this Agreement; or
- (ix) The recipient party has received two or more Breach Notices under this Agreement within any 12 month period, or three or more Breach Notices at any time during the Term; or is in continuing or recurring default of any of its obligations under this Agreement; whether or not any prior breaches or defaults have been rectified by the recipient party.
- (x) Has breached or is in default of any other material obligation that cannot be remedied; or that causes [in the first party's reasonable opinion] the continued performance of this Agreement to no longer be reasonably feasible.
- (e) A termination occurs pursuant to the Force Majeure provisions of this Agreement;
- (f) No current Services are being provided, and no SOWs are in place or have been in place for more than six months, and one party provides a notice of termination to the other party.

9.3 Consequences of Termination

- (a) The termination or expiry of this Agreement for any reason shall be without prejudice to any rights, remedies or obligations of a party accrued or events occurring prior to the End Date.
- (b) All Services and any current or pending SOWs under this Agreement shall terminate on the End Date of this Agreement. If the parties wish to continue or re-commence any Services, a replacement Agreement must be entered.
- (c) Except as strictly necessary during the Transition Period, on the End Date, the Customer shall immediately cease accessing or using the Services or any Goods in which title has not passed to the Customer as at the End Date.
- (d) Subject to clause 9.4 below, each party shall promptly following the End Date, return, or permanently delete or destroy, all Confidential Information, Intellectual Property and any Goods or other property belonging to the other party. For clarity, nothing in this clause prevents a party from retaining Confidential Information in business records to the extent required for the purposes of complying with Applicable Law (and such party must continue to comply with all confidentiality restrictions under this Agreement with respect to such retained business records).
- (e) TIMG shall cease supplying the Services on the End Date and the Transition Period shall commence.

9.4 Post Termination Transition and Return of Records

- (a) **Transition:** Within 30 Business Days after the End Date (regardless of the reason for termination or expiry), the Customer must notify TIMG in writing of:
 - (i) a requested period for the return and removal or destruction of Records and transitioning out of any other Services (of not more than 6 months); and
 - (ii) requested method for transition, from the options in clause 9.4(c).
- (b) Upon receipt of the Customer's requests under clause 9.4(a), TIMG will, acting reasonably, confirm the details of:

- (i) the period for the return and removal or destruction of Records and transitioning out of any other Services [**Transition Period**]; and
 - (ii) the methods to be used for transition [**Transition Plan**].
- (c) By the end of the Transition Period, all Records will be permanently retrieved and removed from TIMG's possession or control by way of one, or a mix, of the following methods, as specified in the Transition Plan:
 - (i) TIMG delivering the Records to the Customer or its agent or new supplier; and/or
 - (ii) TIMG providing reasonable ongoing access to the Customer's account or TIMG website portal, API or similar resource to enable the Customer to download or copy all electronic or digital Records required by the Customer;
 - (iii) TIMG scanning the Records and delivering or transferring the resulting Electronic Records to the Customer, agent or new supplier; and
 - (iv) TIMG securely destroying or disposing of the Records.
- (d) **Retention of Records.** If no notice is given under clause 9.4(a) within the 30 days specified, for a period of a further 30 days, TIMG will retain the Records while making reasonable attempts to contact the Customer to seek to finalise a Transition Period and Transition Plan. The Customer acknowledges and agrees that, at the conclusion of these 60 days, TIMG has no obligation to retain the Records or continue access for the Customer to download or copy its Records, and TIMG may take all or any of the following actions:
 - (i) deliver the Records to the Customer's or its representative's last known physical or email address [to the extent feasible]; or
 - (ii) securely destroy or dispose of the Records.
- (e) **Transition Charges.** The Customer shall pay the Charges for all Services provided up to the End Date, plus TIMG's then current Charges for all Services and actions and expenses undertaken and incurred by TIMG during the Transition Period or any period in which TIMG is seeking to finalise a Transition Period and Transition Plan with the Customer; including retrieval, packaging, transfer, delivery, destruction, deletion or other secure disposal, scanning, ongoing storage or backup pursuant to clauses 9.4(a) to 9.4(d); until the date all Records are fully and finally removed from TIMG's possession and control.
- (f) The parties will consult and co-operate on all matters relating to the end of this Agreement pending and following the End Date and during the Transition Period, and TIMG shall provide reasonable time and resources at the Customer's cost to assist with handover to any new supplier of the Services.

10. CONFIDENTIALITY

- 10.1 Confidential Information:** Each party may be given access to Confidential Information from the other party to perform its obligations under this Agreement. No party will at any time, directly or indirectly disclose or permit any Confidential Information to be disclosed to any other person; or

use, retain, or copy such Confidential Information other than for the purpose for which it was provided or obtained, and as is strictly necessary to give effect to this Agreement.

10.2 A party's Confidential Information does not include information that:

- (a) Is or becomes publicly known other than through any lawful act or omission of the receiving party.
- (b) Was in the other party's lawful possession before the disclosure.
- (c) Is lawfully disclosed to the receiving party by a third party without restriction on disclosure.

10.3 A party may disclose the other party's Confidential Information where:

- (a) Disclosure is mandatorily required by Applicable Law;
- (b) Disclosure is made to the party's legal, financial or other professional advisors, provided that such advisors are bound by confidentiality obligations no less protective than those set out in this Agreement; and
- (c) Disclosure is authorised in writing by the other party.

11. PRIVACY AND DATA

11.1 Personal Information:

- (a) To facilitate the administration, communications and efficient supply of the Services, and other purposes in connection with this Agreement, the parties may from time to time collect or acquire Personal Information from each other or legitimate external sources; and each party shall comply with all related obligations pursuant to the Privacy Act and all related codes and standards.
- (b) In the course of providing the Services and Goods, TIMG will process, store, use or disclose any Personal Information in accordance with the TIMG Privacy Notice. The TIMG Privacy Notice is available on TIMG's website or such other website address as may be notified to the Customer from time to time, and may be amended from time to time by TIMG in its sole discretion. By entering into this Agreement, the Customer hereby consents to, and authorises, the collection, use, processing, storage and transfer by TIMG and TIMG Affiliates of Personal Information and other data in accordance with the TIMG Privacy Notice.
- (c) The Customer shall ensure that the Customer has obtained all consents and authorisations needed to ensure it is entitled to collect, use, process, store and transfer the relevant Personal Information and to consent to, and authorise, TIMG so that TIMG may lawfully collect, use, store, process store and transfer the Personal Information in accordance with this Agreement (including without limitation clause 7.4 and 7.5) and the TIMG Privacy Notice on the Customer's behalf.

11.2 Personal Information in Records. Without limiting clause 11.1, if the Records comprise of, incorporate or include any Personal Information:

- (a) the Customer shall, subject to clauses 11.3 to 11.5, be solely responsible and liable for compliance with the Privacy Act and other Applicable Laws in respect of Customer's obligations to third parties in all regards, including receiving and responding to any requests or demands related to updating, amending, destroying, de-identifying or providing access to authorised persons of such Personal Information, and any claim or action or

liability for breach of privacy, interference with privacy, contravention of privacy principles, or similar.

- [b] TIMG will take reasonable measures to prevent unauthorised use, disclosure, destruction, amendment or access to any Personal Information contained in any Records in TIMG's possession, and shall if practicable, retrieve and provide access to Personal Information to the Customer on request.
- [c] The Customer shall pay TIMG's then current Charges for retrieval or other attendances in connection with the Personal Information.

11.3 Cross-Border Disclosure of Personal Information. In providing the Services to the Customer, TIMG may use products and services from third parties which may result in TIMG disclosing data including Personal Information outside Australia. In such cases, TIMG will either:

- [a] inform the Customer (which may be done through specifying the transfer in the TIMG Privacy Notice), in which case, the Customer ensure that the disclosure of data to a recipient outside Australia is consented to and authorised in accordance with clauses 11.1[b] and 11.1[c]; or
- [b] make that disclosure where an exception to Australian Privacy Principle 8 [Cross-border disclosure of personal information] applies.

11.4 Data Incidents. If TIMG becomes aware of a Data Incident affecting the Records, TIMG will:

- [a] notify the Customer as soon as practicable and in any event not later than 72 hours after becoming aware of such Data Incident;
- [b] provide relevant information and documentation regarding the Data Incident including the nature, scope, and impact; and steps being taken to mitigate the effects;
- [c] cooperate in good faith with the Customer to investigate the breach and mitigate its effects; and
- [d] implement reasonable remedial actions to prevent recurrence and strengthen data security controls.

11.5 Eligible Data Breaches. If a Data Incident referred to in clause 11.4 involves or is reasonably suspected to involve the unauthorised disclosure or access of Personal Information and requires the Customer to assess whether the breach is an "eligible data breach" for the purposes of the Privacy Act, TIMG will provide reasonable assistance to the Customer for the purposes of preparing any required notifications to affected individuals and the Office of the Australian Information Commissioner. TIMG will not disclose any information about the breach without the Customer's prior written consent, unless required by Applicable Law.

12. INFORMATION SECURITY

12.1 Information Security Controls. TIMG will, during the Term:

- [a] Establish, implement and maintain an information security controls program in relation to the TIMG Environment and TIMG Facilities which is consistent with good industry practice for the purposes of protecting the security, integrity and availability of the Records;
- [b] Without limiting clause 7.5, store Customer's Records:
 - [i] securely at the TIMG Facilities;

- (ii) where specified in a relevant SOW or where otherwise agreed in writing between the parties, at agreed TIMG Locations; and
 - (iii) in accordance with its information security policies and the terms of this clause 12.1.
- (c) conduct regular testing of its information security controls applicable to the TIMG Environment and TIMG Facilities [including where agreed, in the form of independent assurance and certification];
- (d) maintain applicable accreditations compliance and certifications in relation to the TIMG Environment and the TIMG Facilities consistent with good industry practice, including as further described in <https://www.timg.com/accreditations-standards>;
- (e) implement measures consistent with good industry practice, for the purposes of preventing the introduction of Harmful Code in the TIMG Environment or any Software provided by TIMG, and for the purposes of preventing other interference or unauthorised access to, amendment of, or destruction of, the Records;
- (f) maintain an operational resilience program for the TIMG Facilities consistent with good industry practice, including with respect to cooling and humidity levels, 24x7 monitoring of security, air-conditioning, and fire suppression systems, failover generator and UPS backup and maintenance, including appropriate business continuity and disaster recovery programs; and
- (g) to the extent the certifications referred to in clause 12.1[d] are in the Customer's reasonable opinion insufficient to demonstrate compliance with the requirements of this clause 12, cooperate with Customer's reasonable request to conduct audits and assessments, including by providing reasonable access to relevant Records, information and Personnel for the purposes of demonstrating compliance with this clause 12, provided such requests do not occur more than once per year and are conducted at Customer's cost.

13. INTELLECTUAL PROPERTY

- (a) Each party warrants to the other, that any Intellectual Property used or introduced or connected with this Agreement owned by that party, does not to the best of the warranting party's knowledge infringe on the rights of any other person.
- (b) No Intellectual Property that is owned, licensed to, used, improved or developed by a party in any way connected with this Agreement shall be assigned, licensed or sub-licensed or deemed assigned or licensed to the other party; unless specifically provided for in this Agreement or a future SOW and/or an intellectual property licence or deed of assignment entered by the parties in connection with this Agreement.
- (c) If it comes to the notice of a party during the Term that use of any of the other party's Intellectual Property in connection with this Agreement party infringes or allegedly infringes the rights of others, the first party shall not make any admissions or enter any settlement or take any substantive step in connection with the other party's Intellectual Property but shall promptly notify that party and promptly take any steps as requested by the other party.

14. LIABILITY AND INDEMNITY

14.1 TIMG Indemnity. TIMG indemnifies the Customer, its Affiliates and their respective Personnel from and against any and all Loss or claims they suffer, incur or sustain which arises from:

- (a) negligence by TIMG, its Affiliates or their respective Personnel causing personal injury [including death];
- (b) fraudulent, wilful, unlawful, or wrongful acts or omissions of TIMG its Affiliates or their respective Personnel; or
- (c) third party claims of infringement of Intellectual Property through use of the Goods and Services.

14.2 Customer Indemnity. The Customer indemnifies TIMG, its Affiliates and their respective Personnel from and against any and all Loss or claims they suffer, incur or sustain which arises from, or in connection with:

- (a) negligence by the Customer, its Affiliates or their respective Personnel causing personal injury [including death];
- (b) any damage to TIMG's Goods or other property due to the acts or omissions of the Customer, its Affiliates or their respective Personnel;
- (c) third party claims of infringement of Intellectual Property or other rights through TIMG's receipt, storage, processing, transfer or other actions in respect of the Records or any misrepresentation by the Customer, its Affiliates or their respective Personnel in connection with this Agreement;
- (d) third party claims in relation to the destruction of Records by TIMG in accordance with this Agreement, including under clauses 7.1(d), 7.7 or 9.4; and
- (e) complying with or opposing any order described in clause 7.4 (Third Party Requests for Records), including TIMG's legal costs in seeking advice on TIMG's obligations, rights and options.

14.3 TIMG Excluded Liability. TIMG excludes all obligations, warranties and liability to the Customer or any third party for:

- (a) Except to the extent caused by negligence of TIMG, all Loss, claims and any loss, damage, fault, error or failure in relation to the Records or other Customer property at any location, by any cause while in TIMG's possession or control or in transit with TIMG Personnel or a third party, including due to any TIMG act or omission, during or after the Term;
- (b) Any liability arising from, or in connection with:
 - (i) A modification of the Services or Goods by anyone other than TIMG or TIMG Personnel; or
 - (ii) The Customer's acts or omissions, including use or accessing of the Records, TIMG Environment, Services or Goods, in a way contrary to the terms of this Agreement, or any notices or instructions from TIMG.
- (c) Any other matter for which TIMG responsibility, warranties or liability is specifically excluded, or the Customer specifically has sole responsibility, risk or liability specified elsewhere in this Agreement; and

- [d] All other implied or deemed warranties or liability or obligation under any law, custom, or convention or practice [to the extent that they can be lawfully excluded].

14.4 TIMG Maximum Liability. Where liability is not excluded or otherwise specifically limited by this Agreement, the maximum aggregate liability or indemnity TIMG shall have to the Customer in respect of any and all Loss or claims against or suffered by the Customer, under or in connection with this Agreement from any breach, negligence, misrepresentation, exercise of discretion, or other act or omission of TIMG, shall not exceed:

- [a] For any failure to deliver or achieve any specified Service Levels or other obligation as to performance, delivery, timeliness, errors, functionality or quality of the Services, at TIMG's discretion:
 - [i] TIMG repeating or re-supplying the applicable Services at no further Charge; or
 - [ii] TIMG providing the agreed Service Credits.
- [b] If TIMG is satisfied, acting reasonably, that a loss, damage, fault, error or failure has occurred or was present prior to delivery, access and installation of any Goods sold or supplied by TIMG:
 - [i] For third party products; TIMG shall pass on the benefit of any warranty or guarantee from the third party able to be transferred to the Customer; and
 - [ii] For TIMG proprietary products or third party products for which TIMG is the deemed manufacturer under Applicable Law; TIMG shall replace, or at its option repair the items, or refund or credit the Customer any Charges for Goods that cannot be reasonably replaced or repaired.
- [c] For any other claim, and subject to clause 14.5 below, including Loss, claims, damage, fault, error or failure in the Records, data or other Customer property by any cause while in TIMG's possession or control under this Agreement, whether due to any TIMG act or omission pursuant to clause 7.1[d], 7.7 or 9.4 or otherwise, during or after the Term, TIMG's liability to the Customer will be limited to the greater of:
 - [i] \$10,000 AUD;
 - [ii] the amount paid or payable by the Customer to TIMG in the 12 months preceding the date in which the incident occurred; or
 - [iii] any amounts recovered by TIMG under any insurance policy required to be effected by TIMG under this Agreement.

14.5 The Customer agrees that, for the purpose of any Loss or claims regarding the Records or any component or part of them, and subject to the cap in clause 14.4:

- [a] each unit of physical Records and all data, information, property and rights therein consisting of a standard archive carton or its equivalent in space or volume, is \$1.00 including GST;
- [b] Storage Media are valued at their depreciated or market value, whichever is lower with no value attributed to any data, information, content, works or material or their organisation within the Storage Media;
- [c] Electronic Records, and any digital data, and all data information, property and rights [excluding the Storage Media referred to in clause 14.5(b)] will, for the purposes of any

Loss or claim arising from loss of or damage to such Electronic Records or data, be deemed to have no recoverable value other than the reasonable costs actually incurred by the Customer in reconstructing and restoring them from the Customer's most recent backup. Where no backup is available, the recoverable value will be no more than a reasonable estimate of the cost of re-creating or replacing the affected Electronic Records; and

- (d) any reinstatement or recovery of Records or attempt to carry out the same by TIMG, including under clause 7.7, shall be charged to the Customer at TIMG's then standard Charges, except to the extent such reinstatement or recovery is required as a result of negligence by, or fraudulent, wilful, unlawful, or wrongful acts or omissions of, TIMG its Affiliates or their respective Personnel.

14.6 Consequential Loss. Except as provided otherwise in this Agreement, neither party shall be liable to the other for any indirect, incidental, special, exemplary, punitive or consequential loss or damage, including loss of profit, revenue, goodwill, business opportunity, or anticipated savings, of any kind suffered or incurred by the other party in connection with this Agreement (including in contract, tort (including negligence), statute, common law, equity, or otherwise).

14.7 Nothing in this Agreement excludes or limits the liability of either party for:

- (a) negligence of that party or its representatives causing personal injury (including death); or
- (b) fraudulent, wilful, unlawful, or wrongful acts or omissions of that party or its representatives.

14.8 Proportionate liability. A party's liability to the other party for any Loss arising in connection with this Agreement (including under an indemnity) will be reduced to the extent that any breach of this Agreement by, or unlawful or negligent act by, the other party or its Personnel caused or contributed to that Loss.

15. TIMG CONTRACTORS AND PERSONNEL

15.1 Personnel

- (a) TIMG shall take all reasonable steps to ensure that all Personnel assigned or engaged to provide the Services in any capacity or that have any access to the Records, are suitably trained and qualified, have passed appropriate background checks and hold any necessary experience, qualifications and certifications; and are aware of their lawful obligations and any requirements under this Agreement and are reasonably supervised while carrying out their duties under this Agreement.
- (b) **Subcontractors.** The Customer acknowledges and agrees that the Services or parts thereof may be performed by Personnel who are independent contractors, sub-contractors, or third party suppliers or TIMG Affiliates. TIMG is not obliged to further notify or obtain the consent of the Customer for the use of such Personnel. TIMG retains responsibility to the Customer for TIMG's obligations under this Agreement except to the extent such Personnel enter into a direct contract with the Customer, or to the extent Goods are supplied which are subject to supplier provided warranties and terms of use.
- (c) **Non solicitation.** In recognition of the costs of recruitment, training, licensing and retention of Personnel of TIMG and their knowledge of TIMG Confidential Information, the Customer agrees not to solicit or engage any TIMG Personnel involved with providing the Service or who otherwise become known to the Customer in connection with this Agreement; to work for or supply the same Services or any part of them to the Customer or their Affiliate during the Term or for a period of six months after the End Date, if the individual remains

employed or engaged by TIMG or would likely remain so, but for the Customer solicitation or employment. The Customer agrees that this restriction is reasonable and necessary to protect TIMG's proprietary rights.

- (d) TIMG shall ensure that all TIMG Personnel carry photo identification issued by TIMG [or by their employer or principal where not direct employees or contractors of TIMG] and, if relevant, their current Certificate of Approval. All Vehicles used in the Services shall be reasonably identified as belonging to or operated by TIMG or its Personnel or Affiliate [unless a temporary Vehicle is used on a short term basis].
- (e) TIMG shall have no liability to the Customer or any other person for any act or omission of any Personnel that occurs without TIMG's actual, deemed or ostensible authorisation, or that is outside the scope of the Personnel's authority, rights and duties, or is otherwise outside of the scope of this Agreement, or that could not have been reasonably foreseen and prevented by TIMG whether or not it occurs in the course of supplying the Services or any part of them.
- (f) Every right, exemption or limitation from liability and defence to which TIMG is entitled in accordance with this Agreement shall also be available and shall extend to protect all TIMG's Affiliates and their respective Personnel.

15.2 Modern Slavery

- (a) TIMG warrants that it has reviewed its practices and is satisfied, to the best of its knowledge and belief having made reasonable enquiries, that there are no instances of Modern Slavery in its business, operations or supply chain.
- (b) TIMG will continue to take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and Services.
- (c) If at any time TIMG becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement, TIMG will, as soon as reasonably practicable, take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- (d) TIMG will keep and maintain records in relation to its policies, procedures and compliance with Modern Slavery obligations in relation to its supply chains and will provide relevant information to the Customer on request.

15.3 Workplace Health and Safety

- (a) Each party undertakes to meet its duties and obligations in connection with the Services, the Premises, TIMG Facilities, Vehicles, Personnel and any other matter in connection with this Agreement as a person conducting a business undertaking in accordance with the Workers Health and Safety Act 2011 [NSW] or equivalent legislation in the relevant location at which the Services are performed.
- (b) Without limitation, it is the Customer's responsibility to ensure that the health and safety of TIMG Personnel is not at risk at any Premises or from any Records or Storage Media; and the Customer must take all reasonable steps to be aware of, and notify TIMG in writing of any hazards or risks of any nature on or around any Premises or in relation Records and Storage Media.
- (c) TIMG shall take reasonable steps to ensure its Personnel are aware of and comply with any Customer health and safety policy, procedures or risk management steps notified to TIMG

by the Customer, provided that they are reasonable and consistent with TIMG's own health and safety policies and Personnel requirements and obligations to TIMG.

15.4 Anti-Bribery and Corruption

- [a] Each party must comply with all Applicable Laws in relation to anti-bribery and corruption.
- [b] Each party warrants that it will not, and will take reasonable steps to ensure that its Personnel do not, to the extent it would breach an Applicable Law:
 - [i] offer, promise, give or authorise any bribe, kickback, facilitation payment or other improper benefit to any public official or private individual;
 - [ii] solicit or accept any such benefit in connection with this Agreement.
- [c] Each party will:
 - [i] maintain and enforce adequate policies and procedures designed to prevent bribery and corruption;
 - [ii] cooperate fully with any investigation or audit relating to compliance with this clause; and
 - [iii] take reasonable steps to impose equivalent obligations on all Personnel engaged in connection with this Agreement.

16. SERVICE LEVELS

16.1 Service Levels. Where Service Levels are set out in a relevant Service Schedule or SOW, TIMG will use reasonable endeavours to provide the Services in a manner which will meet or exceed the applicable Service Levels, and to implement appropriate measurement, monitoring and management tools and procedures to:

- [a] detect, prevent or minimise Service Level Failures; and
- [b] report on the achievement of the Service Levels on a regular basis.

16.2 Service Level Failure. In the event of a Service Level Failure, TIMG will:

- [a] reflect Service Level Failure in its reporting;
- [b] take measures to prevent the recurrence of the Service Level Failure;
- [c] use reasonable endeavours to minimise any disruption to the Services; and
- [d] where determined by TIMG acting reasonably, provide a partial refund of fees paid in the relation to the affected services in the form of a discount or credit redeemable against the next month's fees.

- 16.3 Sole Remedy.** Despite any other provision, remedies provided under clause 16.2 for a Service Level Failure will be the sole remedy available to the Customer in connection with any act or omission that gives rise to the Service Level Failure.

17. INSURANCE

- 17.1** TIMG will maintain, with reputable insurers, the following insurance throughout the Term:

- [a] Professional Indemnity insurance [not less than \$10M per occurrence and \$20M in the aggregate];
- [b] Public and product liability insurance [not less than \$20M per occurrence and in the aggregate];
- [c] Cyber security insurance at levels it considers appropriate having regard to the nature, scope and risks of the Services, covering unauthorised access to or use of data stored or transmitted in electronic form, network security breaches, viruses, malware, cyber-attacks and cyber extortion and fraud; and
- [d] Workers compensation insurance as required by law.

- 17.2** Upon reasonable written request, TIMG will provide evidence of the insurance maintained under clause 17.1, including certificates of currency or other reasonable evidence of cover.

- 17.3** Notwithstanding clause 17.2, details of the limits, structure, terms and conditions of TIMG's cyber liability and cyber security insurance are confidential and commercially sensitive. TIMG may disclose such information to Customer during a procurement, due diligence or audit process where reasonably required and subject to appropriate confidentiality obligations.

18. GENERAL

- 18.1 Interpretation and Application.** In this Agreement, unless the context otherwise specifies or requires:

- [a] The singular includes the plural and vice versa.
- [b] Reference to a company or other entity includes reference to a person and vice versa.
- [c] A reference to a person includes a reference to the person's executors, administrators, successors, substitutes, assigns, employees, agents, representatives and contractors.
- [d] Reference to a statute or regulation will include all amendments and re-enactments thereof and any subordinate legislation, mandatory code and regulations made thereunder.
- [e] Reference to a clause, schedule or annexure is reference to a clause of these General Terms and Conditions or a schedule or annexure of this Agreement.
- [f] All approvals, consents and waivers by a party must be in writing to be valid and enforceable.
- [g] An obligation not to do anything will be deemed to include an obligation not to permit or authorise that thing to be done and an obligation to take reasonable steps to prevent that thing to be done.
- [h] The word "including" will be read as "including but not limited to".

- 18.2 Priority.** The provisions of these General Terms and Conditions shall apply to all Services supplied during the Term and have priority over any Schedule, Annexure or Statement of Work, unless otherwise expressly varied, waived or otherwise provided for in those parts of this Agreement.
- 18.3 Variation.** TIMG may vary, amend, or update the operational, administrative, pricing or any other terms of this Agreement [including any SOW] by providing the Customer with at least 60 days' prior notice of the proposed changes and proposed effective date. On receipt of such notice the Customer may:
- (a) accept the proposed changes, in which case the varied terms will take effect on the proposed effective date; or
 - (b) reject the proposed change by giving written notice to TIMG within 30 days, in which case, the parties will enter good faith discussion. If the parties are unable to reach agreement on the proposed changes or alternative changes by the proposed effective date [or such later date as agreed by the parties], the Customer may terminate this Agreement [and any affected SOW]. Such termination will not be subject to Early Exit Fees, but will be subject to transition Charges under clause 9.4[e].

If the Customer does not respond to a notice of proposed changes, TIMG will issue a second notice on or around 30 days later. If the Customer does not respond to the second notice, the Customer will be deemed to have accepted the proposed changes and clause 18.3[a] will apply.

- 18.4 Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes or overrides prior or subsequent agreements, representations, arrangements or understandings between the parties in any way relating to its subject matter; and overrides any provisions as may be set out in the Customer's own terms of supply or purchase orders provided to TIMG at any time unless agreed to by valid variation. The Customer does not rely on any specific or implied undertaking, warranty or obligation of TIMG not expressly included in this Agreement.
- 18.5 Severability.** If any part of this Agreement is held to be unlawful, void or unenforceable it shall not impair the enforceability of the remaining parts of this Agreement.
- 18.6 Notices.** Notices must be in writing and delivered in person, by courier or tracked mail, to addresses detailed in Part A. Notices are deemed given on the date and time of receipt or recorded delivery time. A party is entitled to rely on an address being current unless updated by similar notice.
- 18.7 Counterparts.** This Agreement may be signed in any number of counterparts, including facsimile or scanned copies, all of which shall together constitute one and the same instrument and a binding and enforceable agreement between the parties. Any party may execute this Agreement by signing any such counterpart.
- 18.8 Force Majeure.**
- (a) A non-performing party shall not be liable or responsible to, or be required to indemnify the other party for, any breach of this Agreement or failure or delay in performing or complying with any obligation under this Agreement [other than payment of Charges properly due] if:
 - (i) The failure, delay or breach is caused or contributed to by a Force Majeure Event; and
 - (ii) the non-performing party relying on the Force Majeure Event has taken and continues to take reasonable steps to prevent, overcome or minimise or mitigate the occurrence or effect of the Force Majeure Event on its performance.

- [b] If a party is affected by a Force Majeure Event and seeks to rely on clause 18.8[a], it must give the other party notice of the Force Majeure Event and its effect of the affected party's performance of this Agreement [though the other party acknowledges that such notice may be given in arrears and the priority of the affected party will be taking the steps required under clause 18.8[a](ii)].
- [c] If the failure, delay or breach by a party continues for three months or longer after date of notice or to the Force Majeure Event, either party may terminate this Agreement or the affected SOW by written notice to the other.
- [d] No Charges are payable for Services to the extent they are not provided by TIMG during or due to a Force Majeure Event; and the Customer may at its own cost engage a third party to carry out the same or similar services. TIMG shall not be liable to the Customer for any costs payable to a third party even they exceed the Charges that would have been payable for the same under this Agreement. The Customer must pay TIMG's then current Charges for any activities performed by TIMG [such as retrieval and delivery of the Records] to enable the Customer or a third party to carry out substitute services].

18.9 Assignment

- [a] The Customer must notify TIMG in writing of any sale of the Customer's business, change of ownership of the Customer, change of contact details for the Customer, change in the Customer's name, or where the Customer has assigned its rights under this Agreement to a third party. The Customer will not be released from its obligations or liabilities under this Agreement without TIMG's written consent, which will not be unreasonably withheld, but may require the transferee to enter into a deed of novation or new agreement with TIMG, at the Customer's cost.
- [b] TIMG shall notify the Customer of any sale, assignment or transfer of TIMG's rights and obligations under this Agreement to any third party as soon as practicable pending or after the change. The Customer shall, if required by TIMG or the transferee, enter into a deed of novation or new agreement with the transferee at TIMG's or the transferee's cost.

18.10 Claims And Dispute Resolution

- [a] TIMG shall not be liable in respect of any claim by the Customer of Loss unless notice in writing of the claim is given within 90 days of:
 - [i] the occurrence of the alleged event or default, or
 - [ii] the day on which the Customer become aware of the event or default [time being of the essence].

Any notice shall state full details of the claim.

- [b] If any disagreement, dispute or difference arises between the parties in relation to this Agreement or the matters under it; including where liability is denied or disputed after a notice of claim ["**dispute**"] a party may serve a notice of dispute on the other party, and the parties or their authorised representatives will enter into negotiations in good faith to attempt to resolve the dispute within 14 days [or such longer period as the parties may agree] of the date of the Dispute Notice. If the authorised representatives cannot resolve the dispute they will, unless otherwise agreed, each elevate the dispute to the CEOs or legal counsel to attempt resolution.

- [c] If the parties cannot resolve the dispute between them, mediation may then be initiated by notice to the to the other party and unless otherwise agreed, no additional or further claim, proceeding or action may be taken by either party without first attempting mediation.
- [d] Unless otherwise agreed, mediation shall take place in Sydney in accordance with the mediation guidelines of the Australian Commercial Disputes Centre 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.
- [e] The Australian Commercial Disputes Centre will be requested to appoint a mediator if the parties cannot agree on a suitable person to act as mediator. Suitable person shall mean a person with reasonable knowledge of the sector related to the Services, and a background in commercial contractual claims and disputes.
- [f] Nothing in this clause will prevent any party from taking immediate steps to seek urgent interlocutory relief where necessary to protect and preserve their legitimate rights or prevent further Loss, before an appropriate Court.

18.11 No Waiver. The failure or delay of a party to exercise a power or right does not operate as a waiver of that power or right. The exercise by a party 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.

18.12 Survival. Following the End Date, all obligations, rights and restrictions under this Agreement:

- [a] That are specific to the Transition Period and otherwise reasonably necessary during the Transition Period shall survive and apply until all related obligations and actions during the Transition Period are complete; and
- [b] Relating to Intellectual Property, Confidential Information, the Privacy Act, Liability, Indemnities, Disputes Process, recovery of overdue Charges and other provisions that expressly or can be reasonably be implied to apply after termination of an agreement of this nature; shall survive and continue following the End Date.

18.13 Governing law. This Agreement will be governed by, and construed in accordance with, the laws of the jurisdiction specified in Part A and the parties submit to the non-exclusive jurisdiction of the Courts of that jurisdiction.