

Timecloud Terms of Use

2020

When registering to use Timecloud Services whether as a Trial User or a Subscriber you agree to be bound by these terms of use (“**Terms**”). The Terms describe what you can expect from us, your responsibilities and generally the terms on which we are providing the Timecloud Services you have subscribed to. The Terms incorporate Timecloud’s Privacy Policy as displayed on the Website.

By clicking “I ACCEPT” or by using or accessing the Timecloud Services you acknowledge that you have read these Terms, understand them and agree to be bound by them.

If you do not agree with any of the Terms, do not access or use the Timecloud Services.

Timecloud Limited may change these Terms at any time by notifying you of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Service from the date on which the Terms are changed, you agree to be bound by the changed Terms.

These Terms were last updated on **28 February 2020**

1 Definitions and interpretation

1.1 Definitions

Additional Services has the meaning given to it in clause 2(d).

Confidential Information means any information of a confidential nature that is obtained from the other party in the course of, or in connection to, the provision of the Timecloud Services to the Customer. Timecloud’s Confidential Information includes Intellectual Property owned by Timecloud (or its licensors) including the Software and Documentation. The Customer’s Confidential Information includes the Data.

Customer means either a Subscriber or a Trial User.

Data means any data, content or information held, used, or created by the Customer or with its express authority using, or inputted into, the Website or Software and includes biometric data supplied by the Customer’s personnel using the Software.

Documentation means all instruction manuals, user guides and other information (online or otherwise) relating to the Software and/or Timecloud Services made available by Timecloud, as may be updated from time to time.

Fees means the amounts payable by the Customer for the right to use the Timecloud Services, together with any establishment and/or hardware fees, as agreed in writing between Timecloud and the Customer.

Force Majeure has the meaning given to it in clause 15.

Integrated Services has the meaning given to it in clause 3.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Maximum Users means five Permitted Users, or as otherwise agreed in writing between Timecloud and the Customer.

Permitted User means those personnel of the Customer who are authorized by the Customer to access and use the Timecloud Services.

Personal Information has the meaning given in the Privacy Act 1993.

Service Data has the meaning given to it in Timecloud's Privacy Policy.

Start Date means the time at which the Customer completes the registration process for access to the Timecloud Services.

Subscriber means an individual, company, partnership or any other person, persons or entity who has completed Timecloud's registration process and is using or intends to use the Timecloud Services.

Support Services means the provision of services to support your use of the Timecloud Services as set out on the Website or as otherwise agreed in writing between Timecloud and the Customer.

Timecloud means Timecloud Limited.

Timecloud Services means:

- (a) employee timesheet and management services;
- (b) related services you have elected to subscribe for;
- (c) Additional Services Timecloud grants you access to;
- (d) the Documentation; and
- (e) the Support Services,

in each case that are made available through the Website and includes any modifications, improvements or upgrades to the same, but does not include any Integrated Services.

Trial User means an individual, company, partnership or any other person or entity who has applied to Timecloud to have temporary access to the Timecloud Services and has been given such temporary access.

Website means www.timecloud.co.nz ; www.timecloud.com.au and www.editmytime.com.

Working Day means a day that is not a Saturday, Sunday or a public holiday in Auckland, New Zealand.

1.2 Interpretation

In these Terms unless the context otherwise requires:

- (a) any reference to any of the parties by their defined terms includes that party's executors, administrators or permitted assigns or both, or being an incorporated company, its successors or permitted assigns or both;
- (b) a reference to:
 - (i) **personnel** includes officers, employees, contractors and agents, but a reference to the Customer's personnel does not include Timecloud or Timecloud's personnel;
 - (ii) a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - (iii) **including** and similar words do not imply any limit; and

- (iv) a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- (c) Timecloud has no responsibility to any person other than the Customer. Nothing in these Terms confers, or purports to confer, a benefit on any person other than the Customer. For the avoidance of doubt, no benefits under section 12 of the Contract and Commercial Law Act 2017 are intended by the parties to be created under these Terms; and
- (d) all references to currency are to New Zealand currency.

2 Access to Timecloud services

- (a) With effect from the Start Date until such time as these Terms are terminated in accordance with their terms, Timecloud grants:
 - (i) to a Trial User, the right to access and use the Timecloud Services for a limited period of two weeks to assess whether the Timecloud Services will meet the Trial User's requirements; and
 - (ii) to a Subscriber, the right access and use the Timecloud Services for the Subscriber's own internal business purposes.
- (b) Timecloud will use reasonable endeavours to ensure that the Timecloud Services and Website remain available to the Customer for the duration of the Customer's right to use the Timecloud Services. However, it is possible that on occasion the Timecloud Services and Website may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. To the maximum extent permitted by law Timecloud accepts no responsibility or liability whatsoever for any loss suffered by the Customer that arises due to unavailability of the Timecloud Services or the Website.
- (c) Timecloud will provide the Customer access to the Documentation and Support Services .
- (d) The Customer acknowledges that the provision of, access to, and use of, the Timecloud Services is on an "as is" basis and at the Customer's own risk.
- (e) Timecloud may from time to time need to remove features, or certain functionality within the Timecloud Services. Timecloud will use reasonable endeavours to provide the Customer with advance notice of any intention to remove features or functionality from the Timecloud Services, but the Customer acknowledges that Timecloud will not be responsible for any failure to do so, and Timecloud will not be responsible for any loss that the Customer may suffer as a result of the removal of that feature or functionality. Unless otherwise agreed in writing, the Customer will not be entitled to any refund of amounts paid or any reduction in the Fees, in respect of the removal of features or functionality.
- (f) Timecloud may, from time to time, make available additional services to supplement the Timecloud Services (**Additional Services**). Subject to the Customer paying the applicable fees for the Additional Services, Timecloud may agree to provide the Customer with access to the Additional Services under these Terms.
- (g) The Customer acknowledges that Timecloud Services may incorporate third party applications. Such third party applications:
 - (i) can be used by the Customer for the purposes of the Customer's use of the Timecloud Services; and
 - (ii) will be subject to the terms and conditions of these Terms and the third party's end user terms and conditions.

3 Integrated Services

- (a) Through the use of web services and Application Programming Interfaces, the Timecloud Services may integrate with service features and applications not provided by Timecloud (**Integrated Services**) provided by third parties (**Integrated Services Provider**). Where the Customer accesses Integrated Services through using the Timecloud Services, the Customer acknowledges and agrees that:
- (i) Timecloud does not make any warranty or representation on the availability of an Integrated Service;
 - (ii) Without limiting subclause (i) above, if an Integrated Service Provider Integrated Service ceases to provide an Integrated Service or ceases to make an Integrated Service available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of an Integrated Service, you are not entitled to any refund, discount or other compensation;
 - (iii) the Integrated Service Provider and Timecloud are not partners, joint ventures, representatives or agents of each other and the inclusion of any link to or integration with any Integrated Service or application does not constitute or imply any affiliation with, or sponsorship, endorsement or approval by Timecloud or the Integrated Service Provider;
 - (iv) the Customer and its Permitted Users must comply with any obligations imposed by any Integrated Service Provider;
 - (v) Timecloud is not liable for any Integrated Service Provider practices, terms, policies and procedures (including those related to privacy and/or data security); and
 - (vi) Timecloud is not responsible for, and has no obligation to provide the Customer with, any assistance or support in relation to the functioning or operation of any Integrated Service or the means of its interoperation with the Timecloud Services.
- (b) If the Customer elects to use an Integrated Service in conjunction with Timecloud Services, the Customer acknowledges that Timecloud may allow the Integrated Service Provider to access the Data as required for the operation of the Integrated Service. To the maximum extent permitted by law, Timecloud shall not be liable for any disclosure, modification or deletion of the Data resulting from any access by Integrated Service Providers.

4 Customer obligations

- (a) The Customer will use the Timecloud Services only for the Customer's lawful internal business purposes in accordance with these Terms and the Documentation.
- (b) The Customer will supervise and control the use of the Timecloud Services by Permitted Users so as to ensure compliance with these Terms at all times. A breach of these Terms by any of the Customer's personnel, whether a Permitted User or otherwise, shall be deemed to be a breach of the Terms by the Customer.
- (c) The Customer is solely responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communications required to access the Timecloud Services, except and to the extent agreed otherwise by Timecloud in writing. Timecloud is not in any way responsible for any interference with or prevention of the Customer's (or any Permitted User's) access and/or use of the Timecloud Services, Software, Support Services and Documentation as a result of deficiencies in the Customer's equipment, computers, software and communications.
- (d) When accessing the Timecloud Services, Software, Support Services and Documentation the Customer and its personnel must not:

- (i) in any way infringe upon, adapt, alter, modify, revise, copy, create derivative works from, reverse engineer, decompile or commercially exploit all or part of the Timecloud Services or Software;
 - (ii) in any way interfere, attempt to interfere or cause or permit interference with the Timecloud Services or Software;
 - (iii) use the Timecloud Services for any unlawful purpose;
 - (iv) send Timecloud or enter into or upload onto the Website anything which infringes the rights of others or which contains a virus, malware or other harmful item or which is unlawful, indecent, threatening or offensive or which could in any way create any liability on or loss to Timecloud or to Timecloud's other customers or users;
 - (v) undermine, or attempt to undermine, the security or integrity of Timecloud's systems or networks, or where the Timecloud Services are hosted by a third party, that third party's computing systems and networks;
 - (vi) attempt to gain access to any materials other than those which the Customer has been given express permission by Timecloud to access;
 - (vii) use the Timecloud Services to facilitate any type of gambling or gaming;
 - (viii) use the Timecloud Services to impersonate any third party; or
 - (ix) use or permit the use of the Timecloud Services for the business of any entity or individual that is not the Customer;
- (e) The Customer may authorise any member of its personnel to be a Permitted User, provided that the Customer does not exceed the Maximum Users. If the Customer authorises a member of its personnel to be a Permitted User, the Customer will provide Timecloud with the Permitted User's name and other information that Timecloud reasonably requires in relation to the Permitted User.
- (f) The Customer must procure that each Permitted User complies with these Terms.
- (g) Timecloud will not be party to any dispute between a Customer and a Permitted User or between a Customer and any other member of the Customer's personnel.
- (h) The Customer must ensure that all passwords, including all Permitted User passwords, required to access the Timecloud Services are kept secure and confidential. The Customer must notify Timecloud immediately if the Customer becomes aware of:
- (i) any unauthorized use of the Customer's or Permitted User's names and passwords; or
 - (ii) any other breach of security (whether physical or electronic),
- and the Customer agrees to be fully responsible and liable for any act or omission of any person who accesses the Website, Software or Timecloud Services using the Customer's or any Permitted User's passwords.
- (i) The Customer's use of the Timecloud Services and any Integrated Service (or means of interoperation between the Integrated Service and the Timecloud Services) must be reasonable and not excessive, and not intended to artificially reduce the per-user charges that would be payable. Timecloud (acting reasonably) may determine the Customer's usage to be unreasonable and excessive if on average it materially exceeds the average level of usage of other users in that same period (**Excessive Use**), or that the Customer is artificially reducing the per-user charges that would be payable (**Unfair Use**). If Timecloud reasonably considers that the Customer's use is Excessive Use or Unfair Use, Timecloud will use reasonable endeavours to notify the Customer of the Excessive Use or Unfair Use, and the Customer will have three days after the date of that notification

to resolve the issue. If the Customer fails to sufficiently resolve the issue after three days, Timecloud may:

- (i) immediately suspend, modify or limit the Customer's use of the Timecloud Services; or
- (ii) charge the Customer for the Excessive Use or in relation to the Unfair Use at a rate determined by Timecloud, which Timecloud will notify to the Customer in writing.

5 Data

5.1 Timecloud access to Data

- (a) The Customer acknowledges that Data entered or uploaded to the Website, Software or otherwise in connection with these Terms may contain Personal Information and include biometric details, and also data for which the Customer may have statutory obligations, including in relation to its retention for a certain period of time.

5.2 Agent

- (a) The Customer acknowledges and agrees that in collecting, holding and processing Service Data through the Timecloud Services and any related services, Timecloud is acting as an agent of the Customer for the purposes of the Privacy Act 1993 and any other applicable privacy law.
- (b) The Customer must obtain all necessary consents from the relevant individual to enable Timecloud to collect, use, hold and process the Service Data in accordance with these Terms.

5.3 Timecloud use of Data

- (a) The Customer acknowledges that:
 - (i) Timecloud may require access to the Data to exercise its rights and perform its obligations under the agreement; and
 - (ii) to the extent that this is necessary, but subject to clause 11, Timecloud may authorise a member or members of its personnel to access the Data for this purpose.
- (b) The Data remains the Customer's property and the Customer grants Timecloud a perpetual worldwide license to use, copy, transmit, store, sublicense and backup the Data for the purposes of enabling the Customer to access and use the Timecloud Services and for third parties to access the Data where permitted under these Terms.
- (c) The Customer warrants that:
 - (i) it has obtained all consents and approvals that are necessary for Timecloud to access the Data;
 - (ii) it has the right to grant Timecloud the license under clause 5.3(b).;
 - (iii) the Data does not infringe or conflict with the rights of third parties;
 - (iv) the Data is true and correct and the Customer will ensure that the Data continues to remain true and correct; and
 - (v) it is authorised to enter or upload the Data to the Website, Software or otherwise in connection with these Terms

5.4 Analytical Data

The Customer acknowledges and agrees that:

- (a) Timecloud may:
 - (i) use Data and information about the Customer (and Permitted Users') use of the Timecloud Services to generate anonymized and aggregated statistical and analytical data (**Analytical Data**);
 - (ii) use Analytical Data for Timecloud's internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - (iii) supply Analytical Data to third parties.
- (b) Timecloud's rights under clause 5.4(a) above will survive termination of expiry of the agreement; and
- (c) Title to, and all Intellectual Property Rights in, Analytical Data is and remains Timecloud's property.

5.5 Backups of Data, and Data deletion

- (a) Without limiting Timecloud's obligations in relation to Personal Information and personal data, as set out at clause 6 and in the Privacy Policy, Timecloud will take reasonable measures to back up all Data stored using the Timecloud Services and Software during the period that the Customer has the right to use the Timecloud Services.
- (b) the Customer agrees to keep a separate back up copy of all Data uploaded by the Customer onto the Software.
- (c) Timecloud may (in addition to its rights under clause 13) delete Data that is not Service Data at any time if in its sole discretion it believes the Data does not comply with these Terms, or otherwise at the express written request of the Customer.

5.6 Indemnity

- (a) The Customer indemnifies Timecloud against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by Timecloud's solicitors') and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights or privacy rights) or that the Data is objectionable, incorrect, or misleading.

5.7 Security

- (a) Without limiting Timecloud's obligations in relation to Personal Information and personal data, as set out at clause 6 and in the Privacy Policy, Timecloud will use reasonable endeavors to ensure the security of the Data. Regardless of this, no data transmission over the internet and no security software or other security feature can be guaranteed as totally secure. The Customer acknowledges this, and further that:
 - (i) Other than as set out at clause 5.7(a), Timecloud makes no warranty or undertaking as to the security of the Data, Timecloud Services, Software, any Application Programming Interface that interoperates with the Timecloud Services, the Website or of its computer system or of any information transmitted by either party or held by Timecloud and similarly Timecloud makes no warranty that its computer system or any electronic communication from Timecloud to the Customer is free of viruses or other harmful content; and
 - (ii) Other than as result of a breach of clause 5.7(a) Timecloud will not be liable for any loss caused by any unauthorized access to, use of, interference with or damage to the Data or the

Customer's computer system arising from the Customer's use of the Software and Timecloud Services.

6 EU Customer privacy terms

If the General Data Protection Regulation (EU) 2016/679 (**GDPR**) applies to any personal data (as defined in the GDPR) made available by the Customer to Timecloud under or in relation to these Terms, or collected by Timecloud on the Customer's behalf, the following provisions will apply:

- (a) The Customer will remain the controller of the personal data. Timecloud will process personal data only on documented processing instructions from the Customer, and will not transfer personal data to a third country or other international organisation, except where agreed between the parties;
- (b) Timecloud will ensure that persons authorised to process the personal data are subject to appropriate confidentiality obligations;
- (c) Timecloud will take appropriate technical and organisational measures to ensure the security of the personal data;
- (d) Timecloud will not, without the Customer's prior consent, engage another processor to process personal data the Customer provides to Timecloud. Where Timecloud uses (with the Customer's consent) another processor to process personal data, Timecloud will have appropriate arrangements in place with that processor to protect the personal data to the same standard that the personal data is protected under these terms and conditions.
- (e) Timecloud will assist the Customer with the Customer's obligations under articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to Timecloud;
- (f) Timecloud will notify the Customer without undue delay after becoming aware of a personal data breach (as that term is defined in the GDPR) and will comply with the provisions of clause 33 of the GDPR applicable to Timecloud as processor of the personal data;
- (g) At the Customer's option, Timecloud will delete or return the personal data (including any copies) to the Customer after the end of the provision of Services, unless European Union law or the law of any country in the European Economic Area requires storage of the personal data;
- (h) The Customer may have an independent auditor audit Timecloud's compliance with the privacy requirements under these Terms, and Timecloud will provide reasonable assistance in relation to such audits, provided that:
 - (i) the Customer clearly identifies the nature and purpose of the audit;
 - (ii) the Customer conducts no more than one audit in each twelve month period unless the Customer has specific reason to believe that these privacy requirements are not being complied with;
 - (iii) audits may only be conducted during normal business hours in Auckland, New Zealand, and will be conducted in such a way as to minimise any disruption to Timecloud's business;
 - (iv) the Customer's auditor must comply with all reasonable health and safety and/or security measures required by Timecloud;
 - (v) the Customer will bear all costs of such an audit; and
 - (vi) the Customer's auditor will only have access to the data and systems necessary to conduct this audit, and such access will not extend to access to and/or inspection of Timecloud intellectual property or internal financial information.

- (i) Timecloud shall co-operate as reasonably requested by the Customer to enable the Customer to comply with any exercise of rights by a data subject under Chapter III of the GDPR.

This clause 6 is governed by European Union law and/or the law of a country in the European Economic Area (as applicable).

7 Fees

7.1 Fees

- (a) The Customer must pay Timecloud the Fees.
- (b) The Customer acknowledges that Timecloud may vary the Fees.

7.2 Payment

- (a) The Customer will pay the Fees monthly in advance unless otherwise agreed in writing.
- (b) 5 working days after the Start Date and monthly thereafter (unless a different payment period is expressly agreed with the Customer in writing) the Fees will become due and payable.
- (c) Timecloud's preferred payment method is monthly direct debits.
- (d) The Customer must advise Timecloud in writing if the Customer wishes to be invoiced rather than using the direct debit payment method. The Customer must pay each invoice for Fees within 5 Working Days of the date of invoice and make payment electronically in cleared funds without any set off or deduction.
- (e) If the Customer has not paid in advance for use of the Timecloud Services, the Customer's obligation to pay the Fees will survive termination of the Customer's use of the Timecloud Services.

7.3 Default interest

- (a) Timecloud may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an amount equal to Timecloud's bank's corporate overdraft reference rate plus 2% per annum.

7.4 Suspension of Timecloud Services

- (a) Without limiting any other right or remedy available to Timecloud, Timecloud may, in its sole discretion, restrict or suspend the Customer's (and all Permitted Users') access to the Timecloud Services including Software, Support Services, Website and Documentation if the Customer does not pay the Fees by due date.

8 Support

8.1 Technical Problems

- (a) Before contacting Timecloud, you must make reasonable efforts to investigate and diagnose any technical issue that you have accessing the Timecloud Services. If you still need technical help, please check the support provided online by Timecloud on the Website. Timecloud is entitled to charge you if Timecloud reasonably considers the Customer and/or Permitted Users to have made excessive use of the Support Services or for Support Services that do not relate to technical queries associated with responding and correcting (if possible) any defect, error or bug in the Timecloud Services.

9 Authorised Person

9.1 Warranty

- (a) Where a person (**Authorised Person**) is registering for the Timecloud Services on behalf of the Customer, the Authorised Person warrants that:
 - (i) it has the authority from the Customer to agree to these Terms on behalf of the Customer and to access information and give instructions on the Customer behalf in relation to these Terms;
 - (ii) by registering to use the Timecloud Services on behalf of the Subscriber, the Authorised Person binds the Customer to the performance of any and all obligations (including payment obligations) of the Customer under these Terms, without limiting the Authorised Person's personal obligations under these Terms;
 - (iii) where the Authorised Person pays the Fees on behalf of the Customer, it shall not charge the Subscriber any premium or additional amount for the Services or Software; and
 - (iv) Timecloud may rely upon an act in accordance with any instructions received from the Authorised Person, as if they had been made by the Customer and without checking the authority of the Authorised Person.

9.2 No liability

- (a) Timecloud is not liable in respect of any act or omission of Timecloud in reliance on any notice or instructions given by the Authorised Person.

10 Intellectual property rights

- (a) The Customer's obligations under this clause will survive the termination of the Customer's right to access and use the Timecloud Services.
- (b) As between the parties, Timecloud owns or has the right to use all material provided or licensed to the Customer in relation to the Timecloud Services and Support Services and Documentation, including the copyright in all source and object code, software and screen displays, associated packaging and documentation, trade names or trade marks, patents, registered designs, confidential information and trade secrets (**Timecloud Intellectual Property**).
- (c) The Customer agrees with Timecloud that:
 - (i) the Customer will not at any time question, dispute or challenge Timecloud's ownership of or rights to the Timecloud Intellectual Property or assist any third party to do so;
 - (ii) the Customer's use of the Timecloud Intellectual Property will not create any independent right of the Customer to such Intellectual Property;
 - (iii) the Customer will not do anything to adversely affect Timecloud's rights to the Timecloud Intellectual Property; and
 - (iv) if the Customer provides Timecloud with ideas, comments or suggestions relating to the Timecloud Services:
 - (A) all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works) are owned solely by Timecloud; and
 - (B) Timecloud may use or disclose such feedback for any purpose,

unless otherwise agreed in writing by Timecloud. The Customer agrees to transfer and ensure that any person within its control transfers such rights to the Timecloud upon Timecloud's request but at Timecloud's expense.

11 Confidentiality

11.1 Security

- (a) Except as otherwise expressly provided herein, each party must, unless it has the prior written consent of the other party:
 - (i) use all reasonable endeavors to keep confidential at all times the Confidential Information of the other party;
 - (ii) effect and maintain reasonable security measures to safeguard the other party's Confidential Information from unauthorized access or use; and
 - (iii) disclose the other party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 11.1 and 11.2.

11.2 Permitted disclosure

- (a) The obligation of confidentiality in clause 11.1 does not apply to any disclosure or use of Confidential Information:
 - (i) for the purpose of performing or exercising a party's rights pursuant to these Terms;
 - (ii) required by law;
 - (iii) which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - (iv) (which was rightfully received by the Customer or Timecloud from a third party without restriction and without breach of any obligation of confidentiality; or
 - (v) by Timecloud if required as part of a bona fide sale of its business (assets or shares, whether in whole or in part) to a third party, provided that Timecloud enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 11.

11.3 Promotion and marketing

- (a) The Customer agrees and expressly permits the disclosure of its name and its relationship with Timecloud for any advertising, marketing or other commercial activities which Timecloud may undertake in promoting Timecloud Services. In doing so, the Customer agrees to Timecloud, in its sole discretion, disclosing the nature of any Services that the Customer may subscribe to, from time to time.

12 Warranties and liabilities

12.1 Limitation/exclusion of contract and tort liability

- (a) Except as provided in clause 12.1(c), under no circumstances will Timecloud or its employees or other agents be liable in contract, tort (including negligence) or any other principle of legal liability, or to compensate the Customer for any loss, injury, or damage arising directly or indirectly from:
 - (i) any act, omission, error, default or delay by the Customer, Timecloud or either of their employees, personnel or other agents;

- (ii) any act, omission, error, default or delay in respect of the provision, installation, servicing, use or termination of the Timecloud Services, Support Services, Software, Website or the Documentation;
- (iii) the failure by Timecloud to provide the Timecloud Services, Support Services, Software, Website or the Documentation;
- (iv) any failure of the Timecloud Services, Support Services, Software, Website or the Documentation;
- (v) any failure of anything provided as part of, or in association with Timecloud Services, Support Services, Software, Website or the Documentation; or
- (vi) the interception of any communication using the Timecloud Services, Support Services, Software, Website or the Documentation,

whether the loss, injury or damage is the direct or indirect result of negligence or otherwise.

- (b) In any event, under no circumstances will Timecloud, its employees, personnel or other agents be liable to the Customer in contract, tort (including negligence) or any other principle of legal liability, for loss (whether direct or indirect) of profits, goodwill, working or anticipated savings or for any indirect or consequential loss, loss or corruption of information, loss or corruption of Data, the cost of recovering such data or information or any reputational damage whatsoever.
- (c) If for any reason Timecloud is liable to the Customer in contract, tort (negligence), or any other principle of legal liability, the maximum aggregate liability of Timecloud to the Customer under or in connection with these Terms or relating to the Timecloud Services, Software, Support Services, Website, Documentation or any other related services will not in any year exceed an amount equal to the Fees paid by the Customer under these Terms in the previous month. This cap includes the cap set out in clause in clause 12.1(e).
- (d) Each limitation or exclusion in this clause and each protection given to Timecloud by any provision of this clause is to be interpreted as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.
- (e) So far as the law permits, all conditions and warranties on the part of Timecloud which might be implied into these Terms by statute or otherwise, and, in relation to Timecloud's provision of Timecloud Services to the Customer, are excluded. To the extent that they cannot be excluded, liability for them is limited to \$500.00.
- (f) Timecloud makes no representation concerning the quality of the Timecloud Services, Software, Support Services, Website or Documentation and does not represent or promise that they will:
 - (i) meet the Customer's requirements or be suitable for a particular purpose;
 - (ii) align with the Customer's internal policies or individual employment agreements or contractor agreements with the Customer's personnel;
 - (iii) fulfil or meet any statutory role or responsibility of the Customer (whether under the Employment Relations Act 2000, Holidays Act 2003, Minimum Wage Act 1983, Privacy Act 1993 or any other statute whatsoever whether employment-related or otherwise); and
 - (iv) be secure, free of viruses or other harmful code, uninterrupted or error free.
- (g) The Customer remains solely responsible for:
 - (i) its use of the Timecloud Services, including in relation to the choice of settings or rules that may impact on the outputs of the Timecloud Services; and

- (ii) complying with all applicable accounting, tax, employment and other laws applicable to the Customer.
- (h) Timecloud and the Customer agree that they are supplying and acquiring goods and services for business purposes and pursuant to s 5D of the Fair Trading Act 1986 (FTA) they contract out of sections 9, 12A, 13 and 14(1) of the FTA and pursuant to s 43 of the Consumer Guarantees Act 1986 (CGA) they agree that the provisions of the CGA do not apply to these Terms.
- (i) To the extent permitted by law, the Customer will indemnify and keep indemnified Timecloud against all expenses, fines, losses (including loss of profit), damages and costs (**Loss**) sustained or incurred by Timecloud arising (directly or indirectly) from:
 - (i) the Customer's breach of any of these Terms, including any costs relating to the recovery of any of the Fees that are due but have not been paid by the Customer;
 - (ii) Timecloud's refusal to provide any person access to the Data (other than Service Data);
 - (iii) Timecloud's making available Data to any person with the Customer's authorisation;
 - (iv) the Customer, its Permitted Users or any other person's use or access of the Timecloud Services;
 - (v) the Customer or its Permitted Users causing or procuring:
 - (A) the upload of any Data into the Timecloud system;
 - (B) the storage of any Data on the Timecloud system; or
 - (C) otherwise using the Timecloud Software or Services,in a way which is contrary to or infringes any applicable law, including privacy law, of any applicable jurisdiction; and/or
 - (vi) any negligent or unlawful acts of the Customer, its related entities or their Permitted Users, employees, officers, contractors or representatives,unless the Loss is a direct result of Timecloud's breach of these Terms or any unlawful act carried out by Timecloud.
- (j) This clause survives termination of the Customer's right to access and use the Timecloud Services.

13 Termination

10.1 Termination for convenience

- (a) Either party may terminate these Terms by giving not less than 20 Working Days' written notice to the other party at any time.

10.2 Termination by Timecloud

- (a) Regardless of any delay, previous neglect or waiver of their respective rights under this clause Timecloud may terminate these Terms by giving written notice of termination to the Customer if any of the following events occur:
 - (i) the Customer breaches these Terms and such breach is incapable of being remedied, or, if capable of being remedied, continues unremedied for 10 Working Days after written notice of such breach has been given to the Customer;

- (ii) if the Customer commits an act of bankruptcy or makes any assignment or composition with its creditors;
- (iii) the Customer is or becomes unable to pay its debts as they fall due or is deemed or is unable to pay such debts as defined in any applicable limited company legislation or suspends payment to its creditors or ceases or threatens to cease to carry on its working or convenes a meeting of its creditors to propose a scheme of arrangement with its creditors;
- (iv) liquidation proceedings are commenced for the Customer;
- (v) the Customer has a receiver or manager or statutory manager appointed; or
- (vi) the Customer does or permits anything that causes significant or material harm to Timecloud, the Timecloud Services, Software or Timecloud's reputation and goodwill.

14 Consequences of termination

- (a) Termination or expiry of these Terms does not affect either party's rights and obligations that accrued before that termination or expiry.
- (b) Clauses which, by their nature, are intended to survive termination or expiry of the agreement continue in force.
- (c) On termination or expiry of these Terms, the Customer must:
 - (i) immediately cease use of the Timecloud Services and shall return all Confidential Information in its possession or control to Timecloud; and
 - (ii) pay all Fees for Timecloud Services provided prior to that termination or expiry.
- (d) All Fees and any other monies due to Timecloud will become immediately due and payable if not already.
- (e) In the event of termination, except in the case of termination by Timecloud for convenience, the Customer will not be entitled to a refund or part refund of any Fees already paid.
- (f) At any time within two months of the date of termination or expiry, the Customer may request:
 - (i) A copy of any Data stored using the Timecloud Services or Software, provided that the Customer pays Timecloud's reasonable costs of providing that copy. On receipt of that request, Timecloud must provide a copy of the Data in a common electronic form. Timecloud does not warrant that the format of the Data will be compatible with any software; and/or
 - (ii) Deletion of the Data stored using the Timecloud Services in which case Timecloud must use reasonable efforts to promptly delete that Data, except to the extent Timecloud is required by law to retain the Data.
- (g) To avoid doubt, Timecloud is not required to comply with clause 14(f) to the extent that the Customer previously requested deletion of the Data.
- (h) Timecloud may in its sole discretion delete all or any of the Data after two months from Termination or expiry of these Terms.

15 Force Majeure

- 15.1** Timecloud will not be liable for any breach of its obligations under these Terms (including any failure to provide the Timecloud Services, Support Services, Software, Documentation or the Website) as a result of any event that is beyond Timecloud's reasonable control (which for the avoidance of doubt includes

communication line failures, equipment failures, and power failures) (**Force Majeure**). In such event, Timecloud will:

- (i) notify the Customer within a reasonable time;
- (ii) use best efforts to overcome the Force Majeure; and
- (iii) continue to perform its obligations to the extent practicable.

16 Severance

If any term of these Terms is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted from these Terms on condition that if either party considers that any such deletion substantially affects or alters the commercial basis of these Terms it may give notice in writing to the other to terminate these Terms immediately in which event clause 16 will apply.

17 Notices

- (a) Any written notice, document, request, demand or other communication (**Notice**) to be given for the purposes of these Terms may be served personally or sent by registered mail or document exchange to the address of the party's address as that party may notify the other party in writing, from time to time or by facsimile or electronic mail to the facsimile or electronic mail number as that party may notify the other party, in writing, from time to time.
- (b) Notices given:
 - (i) personally, are deemed served upon delivery;
 - (ii) by post or document exchange, are deemed served 2 Working Days after posting;
 - (iii) by airmail to an address outside New Zealand, are deemed served 5 Working Days after posting; or
 - (iv) by facsimile or electronic mail, are deemed served upon receipt of the correct answer-back or receipt code in the case of facsimile and transmission in the case of electronic mail.
- (c) Any such notice which has been served on a non-Working Day, is deemed served on the first Working Day after such day.
- (d) A notice may be given by an authorised officer, employee or agent of the party giving the notice.

18 Assignment

- (a) the Customer's rights under these Terms are personal and the Customer shall not be assign, convey, subcontract, sublicense or delegate any of its rights, duties or obligations without Timecloud's express written consent.
- (b) Timecloud may, in its sole discretion, assign or novate all or any of its rights, duties and obligations under these Terms without the Customer's consent. The Customer shall, if so required by Timecloud, execute all documentation necessary to give full effect to any such assignment or novation.

19 General provisions

19.1 Entire agreement

The parties have considered section 50 of the Contract and Commercial Law Act 2017 (Statement, promise, or undertaking during negotiations) and acknowledge that these Terms set forth the entire agreement and understanding of the parties and supersedes all prior to oral or written agreements, understandings or arrangements relating to its subject matter.

19.2 No waiver

No failure or delay on the part of either party to exercise any right or remedy under these Terms is a waiver of such right or remedy nor does any single or partial exercise of any right or remedy under these Terms preclude the exercise of any other right or remedy or preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in these Terms are cumulative and are not exclusive of any rights or remedies provided by law.

20 Governing law

- (a) These Terms are governed by and construed in accordance with the laws of New Zealand for the time being in force, and the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

21 Dispute resolution

- (a) Before taking any Court action, a party must attempt to resolve any dispute under, or in connection with, the Terms through negotiations.
- (b) Each party must, to the extent possible, continue to perform its obligations under the Terms even if there is a dispute.
- (c) This clause 21 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.