

Timecloud Terms of Use

09 July 2019

When registering to use Timecloud Services whether as a Trial User or a Subscriber you agree to be bound by the terms set out herein ("**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 Limited'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 **09 July 2019**

1 Definitions and interpretation

1.1 Definitions

Confidential Information means these Terms and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection to, the provision of the TL Services to the Licensee. TL's Confidential Information includes Intellectual Property owned by TL (or its licensors) including the Software and Documentation. The Licensee's Confidential Information includes the Data.

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

Documentation means all instruction manuals, user guides and other information (online or otherwise) which relates to the Software to enable the proper and full use, operation and support of the TL Services.

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.

Licence means any licence granted by Timecloud Limited to a Licensee.

Licensee means either a Subscriber or a Trial User.

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

Permitted User means those personnel of the Licensee who are authorized to access and use the TL Services.

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

Software means the employee timesheet and management system owned by Timecloud Limited that is used to provide the TL Services.

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

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

Fees means the amounts payable by the Licensee for the right to use the Software, as published from time to time by Timecloud Limited or as otherwise agreed in writing between Timecloud Limited and the Licensee.

Fee Schedule means the schedule set out at www.timecloud.co.nz/pricing as may be updated from time to time.

TL Services means the Software and related services you have selected to subscribe for through the registration process and available through the Website and includes any modifications, improvements or upgrades to the Software, and also includes the Documentation and Support Services.

TL means Timecloud Limited.

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

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

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 Licensee's personnel does not include TL;
 - (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) no benefits under section 12 of the Contract and Commercial Law Act 2017 are intended by the parties to be created under these Terms;
- (d) all references to currency are to New Zealand currency.

2 Software license and services

- (a) With effect from the Start Date (clause 5) until such time as these Terms are terminated in accordance with clause 10 hereof, TL grants:
 - (i) to a Trial User a non-exclusive, non-transferable License to use the Software for a limited period of two weeks to assess whether it will meet the Trial User's requirements; and
 - (ii) to a Subscriber a non-exclusive, non-transferable License to access and use the Software for the Subscriber's own internal business purposes.
- (b) TL will use reasonable endeavors to ensure that the TL Services and Website remain available to the Licensee for the term of the License. However, it is possible that on occasion the TL 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 TL accepts no responsibility or liability whatsoever for any loss arising due to unavailability of the TL Services or the Website.

- (c) TL will provide access to Documentation and Support Services that are intended to assist the Licensee in using the Software.
- (d) TL may, from time to time, make available additional services to supplement the TL Services. At the request of the Licensee and subject to the Licensee paying the applicable fees, TL may agree to provide the Licensee an additional related service under these Terms.
- (e) Through the use of web services and Application Programming Interfaces, the TL Services interoperate with a range of third party service features and applications. TL does not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature 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 a third party feature, you are not entitled to any refund, discount or other compensation.
- (f) The Licensee acknowledges that TL Services may use third party applications. Such third party applications:
 - (i) are able to be used by the Licensee for the purposes of these Terms;
 - (ii) will be subject to the terms and conditions of these Terms and the third party's end user terms and conditions;
 - (iii) are only licensed to the Licensee for use with the TL Services and the Software.
- (g) If third party applications are used in conjunction with TL Services, the Licensee acknowledges that TL may allow the providers of those third party applications to access the Data as required for the operation of their application. To the maximum extent permitted by law, TL shall not be liable for any disclosure, modification or deletion of the Data resulting from any access by third party application providers.

3 Licensee obligations

- (a) The Licensee will use the TL Services and Software only for the purpose it is made available including as set out in clause 2(a)(i) and (ii) hereof and in accordance with the Documentation and Support Services provided.
- (b) The Licensee will supervise and control the use of the Software in accordance with these Terms so as to ensure compliance with these Terms at all times. A breach of these Terms by any personnel of the Licensee, whether Permitted Users or otherwise, shall be deemed to be a breach of the Terms by the Licensee.
- (c) The Licensee is solely responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communications required to access the TL Services, Software, Support Services and Documentation. TL is not in any way responsible for any interference with or prevention of the Licensee (or any Permitted User's) access and/or use of the TL Services, Software, Support Services and Documentation as a result of deficiencies in the Licensee's equipment, computers, software and communications.
- (d) When accessing the TL Services, Software, Support Services and Documentation the Licensee and its personnel must not:
 - (i) in any way infringe upon, adapt, alter, modify, revise, copy, create derivative works from, reverse engineer, decompile or profit from the TL Services and Software or any part of it;
 - (ii) in any way interfere, attempt to interfere or cause or permit interference with the TL Services, Software or its normal operational
 - (iii) use the TL Services or Software for any unlawful purpose;
 - (iv) send TL 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 TL or to TL's other customers or users;

- (v) undermine, or attempt to undermine, the security or integrity of TL's systems or networks, or where the TL 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 Licensee has been given express permission by TL to access;
 - (vii) use the TL Services or Software to facilitate any type of gambling or gaming; or
 - (viii) use the TL Services or Software to impersonate any third party.
- (e) The Licensee may authorize any member of its personnel to be a Permitted User, in which case the Licensee will provide TL with the Permitted User's name and other information that TL reasonably requires in relation to the Permitted User, up to the Maximum Users.
 - (f) The Licensee must procure each Permitted User's compliance with these Terms.
 - (g) The Licensee must ensure that all passwords, including all Permitted User passwords, required to access the Software and TL Services are kept secure and confidential. The Licensee must notify TL immediately if it becomes aware of any unauthorized use of the Licensee or Permitted User names and passwords or any other breach of security and the Licensee agrees to be fully responsible and liable for any act or omission of any person who accesses the Website, Software or TL Services using Licensee or Permitted User passwords.

4 Data

4.1 TL access to Data

- (a) The Licensee 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 Licensee may have statutory obligations, including in relation to its retention for a certain period of time.
- (b) The Licensee acknowledges that:
 - (i) TL 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 8 hereof TL may authorize a member or members of its personnel to access the Data for this purpose.
- (c) The Data remains the Licensee's property and the Licensee grants TL a perpetual worldwide license to use, copy, transmit, store, sublicense and backup the Data for the purposes of enabling the Licensee to access and use the TL Services and for third parties to access the Data where permitted to do so under these Terms.
- (d) The Licensee warrants that:
 - (i) it has obtained all consents and approvals that are necessary for TL to access the Data.
 - (ii) it has the right to grant TL the license under clause 4.1(c).
 - (iii) the Data does not infringe or conflict with the rights of third parties.
 - (iv) the Data is true and correct and the Licensee will ensure that the Data continues to remain true and correct.
 - (ii) it is authorized to enter or upload the Data to the Website, Software or otherwise in connection with these Terms.

4.2 Analytical Data

- (a) The Licensee acknowledges and agrees that:

- (a) TL may:
 - (i) use Data and information about the Licensee (and Permitted Users') use of the TL Services to generate anonymized and aggregated statistical and analytical data (**Analytical Data**); and
 - (ii) use Analytical Data for TL'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) TL's rights under clause 4.2(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 TL's property.

4.3 Agent

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

4.4 Backups of Data, and Data deletion

- (a) While TL will take reasonable measures to back up all Data stored using the TL Services and Software during the term of the License, the Licensee agrees to keep a separate back up copy of all Data uploaded by it onto the Software.
- (b) TL may (in addition to its rights under clause 10) delete the 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 Licensee.

4.5 Indemnity

- (a) The Licensee indemnifies TL against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by TL'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.

4.6 Security

- (a) TL 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 Licensee acknowledges this, and further that:
 - (i) Subject to using reasonable endeavors pursuant to clause 4.6(a), TL makes no warranty or undertaking as to the security of the Data, TL Services, Software, Website or of its computer system or of any information transmitted by either party or held by TL and similarly TL makes no warranty that its computer system or any electronic communication from TL to the Licensee is free of viruses or other harmful content; and
 - (ii) TL will not be liable for any loss caused by any unauthorized access to, use of, interference with or damage to the Data or the Licensee's computer system arising from the Licensee's use of the Software and TL Services.

5 Term

5.1 Start Date

- (a) The Start Date shall be upon the Licensee's completion of the registration process.

5.2 End Date

- (a) The End Date shall be the expiry date of the then-current term in line with the termination procedures set out herein.

6 Fees

6.1 Fees

- (a) The Licensee must pay TL the Fees in relation to the TL Services selected by the Licensee at registration.
- (b) The Fees payable for access and use of the Software and Support Services are set out in the Fees Schedule on the Website or as otherwise agreed in writing between TL and the Licensee.
- (c) The Fees Schedule may set out various levels of usage or services and provide for differing fees that are to be paid in relation to each.
- (d) The Licensee acknowledges that TL may vary the Fees and Fee Schedule from time to time.

6.2 Payment

- (a) Payment shall be made, preferably monthly, in advance.
- (b) 5 working days after the Start Date and monthly thereafter (unless a different payment period is expressly agreed with the Licensee in writing) the Fees will become due and payable. For the sake of clarity, the first payment will be due 5 working days following completion of registration.
- (c) TL's preferred payment method is monthly direct debits using the Gocardless direct debit payment platform on the Website.
- (d) The Licensee must advise TL in writing if it wishes to be invoiced rather than using the direct debit payment method. If invoicing, TL will issue the Licensee with an invoice in advance for the Fees payable in relation to the Licensee's selected TL Services. The Licensee must pay the invoiced Fees within 5 working days of the date of invoice and make payment electronically in cleared funds without any set off or deduction.

6.3 Default interest

- (a) TL 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 TL's bank's corporate overdraft reference rate plus 2% per annum.

6.4 Suspension of TL Services

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

7 Intellectual property rights

- (a) The Licensee's obligations under this clause will survive the termination of the License.
- (b) The Licensee acknowledges that, for all purposes throughout the world, TL owns or has the right to use all material provided or licensed to the Licensee in relation to the TL 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 (**Intellectual Property**).
- (c) The Licensee agrees with TL that:
 - (i) The Licensee will not at any time question, dispute or challenge TL's ownership of or rights to the Intellectual Property or assist any third party to do so.

- (ii) The Licensee's use of the Intellectual Property will not create any independent right of the Licensee to such Intellectual Property.
- (iii) The Licensee will not do anything to adversely affect TL's rights to the Intellectual Property.
- (iv) If the Licensee provides TL with ideas, comments or suggestions relating to the TL 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 TL; and
 - (B) TL may use or disclose such feedback for any purpose;
 unless otherwise agreed in writing by TL. The Licensee agrees to transfer and ensure that any person within its control transfers such rights to the TL upon the TL's request but at the TL's expense.

8 Confidentiality

8.1 Security

- (a) Except as otherwise expressly provided herein, each party must, unless it has the prior written consent of the other party:
 - (i) 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 8.1 and 8.2.

8.2 Permitted disclosure

- (a) The obligation of confidentiality in clause 8.1 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 Licensee or TL from a third party without restriction and without breach of any obligation of confidentiality; or
 - (v) by TL 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 TL enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 8.

9 Warranties and liabilities

9.1 Limitation/exclusion of contract and tort liability

- (a) Except as provided in clause 9.1(c), under no circumstances will the TL or its employees or other agents be liable in contract, tort (including negligence) or any other principle of legal liability, or to compensate the Licensee for any loss, injury, or damage arising directly or indirectly from:
 - (i) any act, omission, error, default or delay by the TL or its 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 TL Services, Support Services, Software, Website or the Documentation;
 - (iii) the failure by TL to provide the TL Services, Support Services, Software, Website or the Documentation;
 - (iv) any failure of the TL Services, Support Services, Software, Website or the Documentation;

- (v) any failure of anything provided as part of, or in association with TL Services, Support Services, Software, Website or the Documentation; or
- (vi) the interception of any communication using the TL 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 TL, its employees, personnel or other agents be liable to the Licensee in contract, tort (including negligence) or any other principle of legal liability, for loss (whether direct or indirect) of profits, working or anticipated savings or for any indirect or consequential loss whatsoever.
- (c) If for any reason TL is liable to the Licensee in contract, tort, (negligence) or any other principle of legal liability, the maximum aggregate liability of TL to the Licensee under or in connection with the agreement or relating to the TL 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 Licensee under the agreement in the previous year (which in the first year is deemed to be the total Fees paid by the Licensee from the Start Date to the date of the first event giving rise to liability. This cap includes the cap set out in clause 9.1(e).
- (d) Each limitation or exclusion in this clause and each protection given to TL 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 TL which might be implied into these Terms by statute or otherwise, and, in relation to TL's provision of TL Services to the Licensee, are excluded. To the extent that they cannot be excluded, liability for them is limited to \$500.00.
- (f) TL makes no representation concerning the quality of the TL Services, Software, Support Services, Website or Documentation and does not represent or promise that they will:
 - (i) Meet the Licensee's requirements or be suitable for a particular purpose.
 - (ii) Align with the Licensee's internal policies or individual employment agreements or contractor agreements with the Licensee's personnel.
 - (iii) Fulfil or meet any statutory role or responsibility of the Licensee (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).
 - (iv) Be secure, free of viruses or other harmful code, uninterrupted or error free.
- (g) TL and the Licensee agree that they are supplying and acquiring goods and services for Working 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.
- (h) This clause survives termination of the License.

10 Termination

10.1 Termination by the Licensee

- (a) The Licensee may terminate the License and the associated use of the TL Services, Software and Documentation by giving written notice to TL at any time.

10.2 Termination by TL

- (a) Regardless of any delay, previous neglect or waiver of their respective rights under this clause TL may terminate these Terms by giving written Notice of termination to the Licensee if any of the following events occur:

- (i) the Licensee 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 Licensee;
- (ii) if the Licensee commits an act of bankruptcy or makes any assignment or composition with its creditors;
- (iii) the Licensee 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 Licensee;
- (v) the Licensee has a receiver or manager or statutory manager appointed;
- (vi) the Licensee does or permits anything that causes significant or material harm to TL, the TL Services, Software or TL's reputation and goodwill.

11 Consequences of termination

- (a) Termination or expiry of the agreement 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 the agreement, the Licensee must:
 - (i) Immediately cease use of the TL Services and shall return all Confidential Information in its power or possession to TL;
 - (ii) Pay all Fees for TL Services provided prior to that termination or expiry.
- (d) All Fees and any other monies due to TL under the Terms will become immediately due and payable if not already.
- (e) In the event of termination, the Licensee 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 Licensee may request:
 - (i) A copy of any Data stored using the TL Services or Software, provided that the Licensee pays TL's reasonable costs of providing that copy. On receipt of that request, TL must provide a copy of the Data in a common electronic form. TL 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 TL Services or Software in which case TL must use reasonable efforts to promptly delete that Data.
- (g) To avoid doubt, TL is not required to comply with clause 11(f) to the extent that the Licensee previously requested deletion of the Data.
- (h) TL may in its sole discretion delete all or any of the Data after two months from Termination or expiry of these Terms.

12 Force Majeure

- 12.1 TL will not be liable for any breach of its obligations under these Terms (including any failure to provide the TL Services, Support Services, Software, Documentation or the Website) as a result of any event that is beyond TL's reasonable control (which for the avoidance of doubt includes communication line failures, equipment failures, and power failures) provided that TL:
 - (i) notifies the Licensee within a reasonable time;

- (ii) uses best efforts to overcome the Force Majeure; and
- (iii) continues to perform its obligations to the extent practicable.

13 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 11 will apply.

14 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;
 - (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.
- (e) Time is of the essence.

15 Assignment

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

16 General provisions

16.1 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.

16.2 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.

17 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 that jurisdiction.

18 Dispute resolution

- (a) Before taking any Court action, a party must use best efforts to resolve any dispute under, or in connection with, the Terms through good faith 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 18 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.