



IRON MOUNTAIN INSIGHT® SERVICES- AUSTRALIA

TERMS AND CONDITIONS

These Iron Mountain InSight® Services terms and conditions (these “**Terms and Conditions**”) shall govern any Statements of Work, exhibits and/or addenda which expressly reference these Terms and Conditions, and together all of the foregoing shall be deemed to form a legally binding agreement (the “**Agreement**”) by and between **Iron Mountain Australia Group Pty Ltd (ABN 25 004 270 991)** of 465 Plummer Street, Port Melbourne VIC 3207 (“**Iron Mountain**”) and the legal entity receiving the Services specified in the Statement of Work (together with its divisions and Affiliates, “**Customer**”). Customer and Iron Mountain are each referred to as a “**Party**” and collectively, the “**Parties**.” In consideration of the mutual promises contained herein, the Parties hereby agree to the following:

1. DEFINITIONS. Capitalised terms shall have the meanings set forth in this section, or in the section where they are first used.

“**Access Protocols**” means the usernames, passwords, access codes, encryption keys, service accounts, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer to access the Services.

“**Affiliates**” means those entities controlling, controlled by, under common control with, or having a common parent with, either Iron Mountain or Customer as applicable. For purposes of the foregoing definition, “control” (including “controlling”, “controlled by” and “under common control with”) shall mean direct or indirect ownership of: (a) not less than fifty percent (50%) of the voting stock of a corporation; (b) the right to vote not less than fifty percent (50%) of the voting stock of a corporation; or (c) not less than fifty percent (50%) ownership interest in a partnership or other business entity.

“**AUP**” means the acceptable use policy for Iron Mountain’s hosting provider, currently found at: <https://cloud.google.com/terms/aup>, or <https://aws.amazon.com/aup/> which may be updated from time to time by the Host (as defined in Section 5.6).

“**Authorised User**” means any individual who is an employee of Customer or such other person or entity as may be authorised by Customer to access the InSight Services pursuant to Customer’s rights under these Terms and Conditions. An Authorised User is granted access using the Customer-owned identity provider (“**IDP**”) or through an Iron Mountain-managed IDP.

“**Customer Data**” means all content, data and information provided by, or on behalf of, Customer to Iron Mountain through the Services under the Agreement. For the avoidance of doubt, Customer Data does not include Usage Data or any other information reflecting the access or use of the InSight Services by or on behalf of Customer or any Authorised User.

“**Derivative Data**” means all data deriving and resulting from ML and AI processing of Customer Data, including classification and extracted metadata.

“**Documentation**” means the user manuals, training materials, reference guides, instruction materials, help files and similar documentation provided by Iron Mountain or its suppliers to Customer in hard copy or electronic form or available on Iron Mountain’s online portal describing the use, operations, features, functionalities, user responsibilities, procedures, commands, requirements, limitations and capabilities of and/or similar information about the Services.

“**Encrypted**” or “**encrypted**” shall mean data that has been rendered through algorithmic transformation or any other means available into an unrecognisable form in which meaning cannot be understood without the use of a confidential process or key.



“**GST**” means any consumption tax, goods and services tax, and any similar tax, impost or duty.

“**High Risk Activities**” means uses such as, without limitation, the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

“**Implementation Services**” means the services documented in an SOW relating to the InSight Services, including service details related to IDP integration, security controls and special accommodations, which require Iron Mountain assistance to implement.

“**InSight Services**” means the hosting of the Customer Data on the Iron Mountain InSight platform, the classification and extraction of relevant metadata which may include, without limitation, the use of using machine learning (“**ML**”) and artificial intelligence (“**AI**”) models, integration APIs and the access and search capabilities available through the Iron Mountain InSight platform, and as further set forth in one or more Statement(s) of Work.

“**Intellectual Property Rights**” means any and all now known or hereafter existing: (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

“**Personal Information**” has the meaning assigned to it in the Privacy Act.

“**Privacy Act**” means the Privacy Act 1988 (Cth) as amended, and includes the regulations and any guidelines issued by the Privacy Commissioner from time to time.

“**Privacy Policy**” means Iron Mountain’s Privacy Policy found at <http://www.ironmtn.com.au/Utility/Legal/Privacy-Policy.aspx>.

“**Professional Services**” means the training, customisation, Implementation Services, data ingestion, consulting or other services Iron Mountain or its suppliers may perform for the benefit of Customer in connection with the InSight Services as described as Professional Services in a Statement of Work.

“**Services**” means the InSight Services, Professional Services and Support Services, as may be set forth in one or more Statement(s) of Work.

“**Services Technology**” means the software, databases, platforms and other technologies used by or on behalf of Iron Mountain in performing the Services, whether operated directly by Iron Mountain or through the use of third-party services.

“**Statement of Work**” or “**SOW**” means a document that: (a) contains details regarding the Services to be performed or provided, including pricing and other specifics, (b) is mutually agreed upon and executed by the Parties, and (c) incorporates these Terms and Conditions to form the Agreement.

“**Support Services**” means the support services and related maintenance for the InSight Services purchased by Customer as described in a Statement of Work.

“**Usage Data**” means the data and information related to Customer’s use, patterns, trends, and other statistical data derived from the InSight Services that is used by Iron Mountain in an aggregated and anonymised manner to provide, operate, maintain, and improve Iron Mountain products and services.



2. PROVISION OF SERVICES

2.1 Services Use. Subject to and conditioned on Customer's and its Authorised Users' compliance with these Terms and Conditions, Iron Mountain hereby grants Customer a non-exclusive, non-transferable right, during the term of the Agreement, solely for Customer's internal business purposes and in accordance with the limitations and restrictions contained herein, to: (a) access and use the Services in accordance with these Terms and Conditions and the Documentation; and (b) use the Documentation solely to support Customer's use of the Services. Iron Mountain may change or modify the Documentation and Services, including adding or removing features and functions, from time to time, provided that in no event will such modifications materially reduce the functionality provided to Customer during the term of the Agreement.

2.2 Access Protocols. Iron Mountain will provide the Services to Customer at the rates and charges set forth in the applicable Statement(s) of Work. Iron Mountain will work with the Customer to provide access through the Access Protocol implementation process, including providing Customer with training on user account setup and access control implementation with the applicable IDP. Customer is solely responsible for obtaining and maintaining its equipment, computers, networks, and communications, including Internet access, required to access and utilise the Services and for all expenses related thereto. Iron Mountain is not responsible for any issues relating to access attributable to Customer or any third party. Customer agrees to maintain and update an industry standard anti-virus program within its computer systems that are used in connection with the Services.

2.3 Authorised Users. Customer may designate its Authorised Users and grant their access rights to the features and functions of the InSight Services. Usernames and passwords ("**User IDs**") cannot be shared or used by more than one Authorised User at a time. Depending on the agreed login and authorisation implementation, Iron Mountain may assist the Customer with establishing User IDs for Customer's Authorised User who has been designated as a "User Manager" and provide such User Manager with rights to create, control and manage its portfolio of Authorised Users, including, but not limited to, the number of Authorised Users and all User IDs, in accordance with the Access Protocols. Customer shall not disclose or make available User IDs or other Access Protocols other than to Customer's Authorised Users and shall prevent unauthorised access to, or use of, the InSight Services, and will notify Iron Mountain promptly of any actual or suspected unauthorised use. Customer is solely responsible for management of the User IDs and access rights of its Authorised Users, including, but not limited to, terminating an Authorised User's access if such individual is no longer employed or engaged by Customer or otherwise authorised to have access. Customer is responsible for ensuring all Authorised Users comply with Customer's obligations under these Terms and Conditions. Iron Mountain reserves the right to: (a) track and review user profiles, access and activity at any time; and (b) terminate any User ID that it reasonably determines may have been used in a way that breaches this Section 2.3.

2.4 Professional Services. Iron Mountain will provide Professional Services as may be mutually agreed to by the Parties from time to time and set forth in one or more Statement(s) of Work. Each Statement of Work will be governed by these Terms and Conditions.

3. INTELLECTUAL PROPERTY

3.1 Ownership. The Services, Documentation, Usage Data and all other materials provided by Iron Mountain hereunder, including but not limited to all manuals, reports, records, programs and data, and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Iron Mountain and its suppliers. To the extent any rights in the Services, Documentation or Usage Data vest in Customer, Customer hereby unconditionally and irrevocably assigns to Iron Mountain any and all such rights, title and/or interest including Intellectual Property Rights relating thereto. All rights in and to the Services, Documentation and Usage Data not expressly granted to Customer under the Agreement are reserved by Iron Mountain and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services, Documentation, Usage Data or any part thereof, including any right to obtain possession of any source code, data or other technical material related to the



Services. Nothing hereunder shall act so as to assign or otherwise transfer Customer's ownership of Customer Data and/or Derivative Data to any other party.

3.2 License; Ownership. Customer Data and Derivative Data hosted by Iron Mountain as part of the Services, and all related worldwide Intellectual Property Rights, are the exclusive property of Customer. Customer grants Iron Mountain and its suppliers an irrevocable, non-exclusive, worldwide, royalty-free and fully paid-up license to access, use, reproduce, modify, display, process and store the Customer Data and Derivative Data for purposes of providing the Services to the Customer. In addition, Customer acknowledges and agrees that an integral component of the Insight Services is the use of ML and AI processing: as such, de-identified and anonymised Customer Data and/or Derivative Data may be used to build, train and maintain the machine learning models associated with the Services. Iron Mountain will not retain Customer Data or Derivative Data in ML and AI models after expiration or termination of the Agreement, or otherwise use or share such data with other customers. All rights in and to the Customer Data and any Derivative Data not expressly granted to Iron Mountain in the Agreement are reserved by Customer. Under these Terms and Conditions, the Parties acknowledge and agree that Iron Mountain is a data processor.

3.3 Restrictions on Use. Customer shall not permit any party to access or use the Services, Services Technology or Documentation, other than the Authorised Users. Customer agrees that it will not, and will not permit any or its Authorised Users or other party to: (a) copy, modify, adapt, alter or translate, in whole or in part, the Services Technology, Documentation or any component thereof; (b) license, sublicense, sell, resell, lease, rent, loan, transfer, assign, distribute, or otherwise commercially exploit or make available, in whole or in part, the Services, Services Technology or Documentation to any third party; (c) reverse engineer, decompile, disassemble, decode, adapt or otherwise derive or determine or attempt to derive, determine or gain access to the source code (or the underlying ideas, algorithms, structure or organisation) of or make derivative works based upon the Services Technology, Documentation or any component thereof, in whole or in part; (d) disclose or transmit any information regarding the Services, Services Technology or Documentation to any individual other than an Authorised User, except as expressly allowed herein; (e) use or access the Services, Services Technology or Documentation to build a similar product; (f) use the Services, Services Technology or any component thereof: (I) to send or store infringing, threatening, harassing, defamatory, libelous, obscene, pornographic, indecent or otherwise unlawful or tortious material, including material harmful to children or violating third party privacy rights, (II) to send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs, (III) for High Risk Activities, or (IV) in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other right of any person or that violates any applicable law; (g) disclose the results of any benchmark test of Services, Services Technology or Documentation to any third party; (h) interfere with or disrupt the integrity or performance of the Services, Services Technology or the data contained therein; or (i) bypass or breach any security device or protection used for or contained in the Services or Services Technology or otherwise attempt to gain unauthorised access to the Services, Services Technology or its related systems or networks.

3.4 Open Source Software. Certain software may be provided to Customer with the Services that is subject to "open source" or "free software" licenses ("**Open Source Software**"). Some of the Open Source Software may be owned by third parties. The Open Source Software is not subject to the terms and conditions of the section titled *Indemnification* or the subsection titled *Services Use*. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in these Terms and Conditions limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software.

3.5 Feedback. If Customer provides Iron Mountain any feedback or suggestions about the Services or Documentation (the "**Feedback**"), then Iron Mountain may use such information without obligation to Customer, and Customer hereby irrevocably assigns all rights, title and interest in the Feedback to Iron Mountain.



4. FEES AND EXPENSES; PAYMENTS

4.1 Fees. In consideration for the access rights granted to Customer and the Services performed by Iron Mountain under the Agreement, Customer will pay to Iron Mountain the fees set forth in the applicable Statement(s) of Work. Fees and charges during the Initial Term shall be as set forth in the applicable Statement(s) of Work, and may thereafter be changed at any time by Iron Mountain upon thirty (30) days' written notice.

4.2 Payment Terms. Except as otherwise provided in a Statement of Work, all fees for Services shall be billed monthly in arrears. Payment terms are net fourteen (14) days from the date of invoice. Any amounts not paid when due shall bear interest at the rate of one and a half percent (1.5%) per month, or the maximum legal rate if less, and Customer shall be liable for all expenses incurred in collection, including reasonable attorneys' fees and expenses. In the event that Customer exceeds the total storage volume of the Customer's subscription plan, Customer shall be charged additional fees as set forth in the applicable Statement of Work for any overages during each month such overage occurs.

4.3 Taxes. The fees are exclusive of all applicable GST, sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Iron Mountain's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees and the delivery of the Services to Customer under the Agreement. Customer will make all payments of fees to Iron Mountain free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Iron Mountain will be Customer's sole responsibility, and Customer will provide Iron Mountain with official receipts issued by the appropriate taxing authority, or such other evidence as Iron Mountain may reasonably request, to establish that such taxes have been paid. Customer shall indemnify and defend Iron Mountain in connection with any proceedings brought by any taxing authorities in connection with Customer's breach of this Section 4.3.

5. CUSTOMER RESPONSIBILITIES

5.1 Customer Warranty. Customer represents and warrants that: (a) it is the owner or legal custodian of the Customer Data; (b) it has all necessary consents, authorisations and/or legal permissions required to direct and enable Iron Mountain and its suppliers to access, use and process the Customer Data as set forth in these Terms and Conditions; and (c) any Customer Data hosted by Iron Mountain as part of the Services shall not (i) infringe any copyright, trademark, or patent; (ii) misappropriate any trade secret; (iii) be defamatory, obscene, pornographic or unlawful; (iv) contain any viruses, worms or other malicious computer programming codes intended to damage Iron Mountain's systems or data; or (v) otherwise violate the rights of a third party or violate any applicable law. Iron Mountain is not obligated to back up any Customer Data. Customer agrees that any use of the Services contrary to or in violation of the representations and warranties of Customer in this Section constitutes unauthorised and improper use of the Services. Customer will immediately notify Iron Mountain of any issues of which it becomes aware that could negatively impact Iron Mountain's ability to process the Customer Data in accordance with these Terms and Conditions.

5.2 Customer Responsibility for Data and Security. Customer and its Authorised Users shall have access to the Customer Data and shall be responsible for any and all: (a) changes to and/or deletions of Customer Data, maintaining the security and confidentiality of all User IDs and other Access Protocols required in order to use and access the InSight Services; and (b) activities that occur in connection with such use and access. Iron Mountain and its suppliers are not responsible or liable for the deletion of or failure to store any Customer Data; Customer is responsible for securing and backing up the Customer Data that is provided to Iron Mountain. Iron Mountain shall maintain service accounts and encryption keys on behalf of the Customer necessary to perform the Services. Iron Mountain shall not be liable to Customer for a failure to maintain relevant service accounts and encryption keys if such failure is due to Customer's lack of cooperation or failure to assist in the provision of access to Customer Data. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all



Customer Data, and for ensuring that it complies with the AUP. Iron Mountain and its suppliers reserve the right to review the Customer Data for compliance with the AUP. In no event will Iron Mountain be liable for any loss of Customer Data or other claims arising out of or in connection with the unauthorised acquisition or use of Access Protocols.

5.3 Privacy. Iron Mountain is bound by the Privacy Act that apply to any Personal Information that Iron Mountain may collect directly from any employee, agent or contractor of the Customer in relation to the entry by the Customer into the Agreement. Iron Mountain may use this information for purposes connected to the Agreement or the Services in accordance with Iron Mountain's Privacy Policy.

5.4 Cooperation. Customer agrees to provide Iron Mountain with such cooperation, materials, information, access and support which Iron Mountain deems reasonably required to allow Iron Mountain to successfully provide the Services. Customer understands and agrees that the success of the Services is contingent upon Customer providing such cooperation, materials, information, access and support.

5.5 Data Transmittal. Customer shall transmit any Customer Data to Iron Mountain in accordance with the acceptable methods and requirements for data transmittal set forth in a Statement of Work or Documentation. All Customer Data transmitted must use secure and encrypted protocols. Customer assumes full responsibility to safeguard against unauthorised access and to encrypt its electronic Customer Data prior to and during the transmission and transfer of its electronic Customer Data to Iron Mountain. Customer shall have the ability to export Customer Data hosted by Iron Mountain as part of the Services out of the Host's (as defined below) platform.

5.6 Host. Iron Mountain will store the Customer Data on a hosting service provided by a third party ("**Host**"), which shall be the Google Cloud Platform ("**GCP**") or Amazon Web Services ("**AWS**") (as specified in the Statement of Work), pursuant to Iron Mountain's agreement with such Host, during which time it will be maintained in accordance with Host's service terms which can be found at <https://cloud.google.com/terms> and <https://aws.amazon.com/service-terms/>, for GCP and AWS respectively. Iron Mountain may change the Host upon notice to Customer, at which time it will be maintained in accordance with the then-current terms of the new Host.

6. CONFIDENTIALITY

6.1 Confidential Information. Under the Agreement each Party (the "**Disclosing Party**") may provide the other Party (the "**Receiving Party**") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information, and which is marked as "confidential" or "proprietary" or would normally under the circumstances be considered confidential information (collectively, "**Confidential Information**"). Customer Data will be considered Confidential Information of Customer, and the Services, Services Technology, Documentation, Usage Data and all enhancements and improvements thereto will be considered Confidential Information of Iron Mountain.

6.2 Protection of Confidential Information. The Receiving Party agrees that it will: (a) not disclose to any third party any Confidential Information of the Disclosing Party, except: (i) to its Affiliates, directors, employees, agents, suppliers or subcontractors who have agreed to restrictions similar to those set forth in this Section 6 to the extent such disclosure is necessary for the performance of the Agreement or (ii) as may be required by law; (b) not use any Confidential Information of the Disclosing Party except for the purposes contemplated by these Terms and Conditions; and (c) protect the Disclosing Party's Confidential Information from unauthorised use, access, or disclosure in the same manner that it protects its own confidential and proprietary information of a similar nature, but in no event with less than reasonable care.

6.3 Exceptions. The confidentiality obligations set forth in this section will not apply to any information that: (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the



Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under these Terms and Conditions or is required by law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure or similar process (“**Legal Process**”), provided that the Receiving Party uses commercially reasonable efforts to promptly notify the Disclosing Party in writing of such required disclosure unless the Receiving Party is informed that: (i) it is legally prohibited from giving notice; or (ii) the Legal Process relates to exceptional circumstances involving danger of death or serious physical injury to any person. The Receiving Party will cooperate with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

7. WARRANTIES AND DISCLAIMERS

7.1 Limited Warranty for Professional Services. Iron Mountain warrants to Customer that it will perform the Professional Services using reasonable care and skill.

7.2 Disclaimer. THE LIMITED WARRANTY SET FORTH IN SECTION 7.1 IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND OTHER THAN THE STATUTORY GUARANTEES OUTLINED IN THE AUSTRALIAN CONSUMER LAW (**ACL**), IRON MOUNTAIN AND ITS SUPPLIERS MAKE NO (AND HEREBY DISCLAIM ALL) OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. INSIGHT SERVICES ARE PROVIDED “AS IS” AND NEITHER IRON MOUNTAIN NOR ITS SUPPLIERS WARRANT THAT ALL ERRORS OR DEFECTS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. THE SERVICES ARE NOT DESIGNATED OR INTENDED FOR HIGH RISK ACTIVITIES.

8. LIMITATION OF LIABILITY

8.1 Types of Damages. TO THE MAXIMUM EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY NOR IRON MOUNTAIN’S SUPPLIERS SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR SIMILAR LOSSES OR DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS DUE TO LOSS OF PROFITS, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR THE LOSS OR COST OF RECREATING ANY DATA, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF A PARTY WAS ADVISED OF, KNEW OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

8.2 Amount of Damages. TO THE MAXIMUM EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, THE MAXIMUM LIABILITY OF IRON MOUNTAIN AND ITS SUPPLIERS ARISING OUT OF OR IN ANY WAY CONNECTED TO THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO IRON MOUNTAIN UNDER THESE TERMS AND CONDITIONS DURING THE SIX (6) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY.

8.3 Exceptions to Limitations. NOTHING IN THESE TERMS AND CONDITIONS SHALL LIMIT OR EXCLUDE EITHER PARTY’S LIABILITY FOR: (A) GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT; (B) DEATH OR BODILY INJURY RESULTING FROM ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS EMPLOYEES OR AGENTS; (C) FRAUD OR FRAUDULENT MISREPRESENTATION; (D) MISAPPROPRIATION OR INFRINGEMENT OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS; (E) OBLIGATIONS UNDER SECTION 9; (F) CUSTOMER’S



PAYMENT OBLIGATIONS; OR (G) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

9. INDEMNIFICATION

9.1 By Iron Mountain. If any portion of the Services becomes, or in Iron Mountain's opinion is likely to become, the subject of a claim of infringement, Iron Mountain may, at Iron Mountain's option: (a) procure for Customer the right to continue using the Services; (b) replace the Services with non-infringing services which do not materially impair the functionality of the Services; (c) modify the Services so that it becomes non-infringing; or (d) terminate the Agreement and refund any fees actually paid by Customer to Iron Mountain for the remainder of the term of any SOW then in effect, and upon such termination, Customer will immediately cease all use of the Documentation and Services. Notwithstanding the foregoing, Iron Mountain shall have no obligation under this section or otherwise with respect to any infringement claim based upon: (i) any use of the Services not in accordance with these Terms and Conditions or as specified in the Documentation; (ii) any use of the Services in combination with other products, equipment, software or data not supplied by Iron Mountain; (iii) any modification of the Services by any person other than Iron Mountain or its authorised agents or (iv) Customer's breach of these Terms and Conditions. This subsection states the sole and exclusive remedy of Customer and the entire liability of Iron Mountain, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement or misappropriation claims and actions.

9.2 By Customer. Customer will defend at its expense any suit brought against Iron Mountain by a third party, and will pay any settlement Customer makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim arising out of or relating to Customer Data, Customer's use of the Services in violation of the AUP, or Customer's breach or alleged breach of the subsection titled *Customer Warranty*.

9.3 Procedure. The indemnifying Party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified Party shall promptly notify the indemnifying Party in writing of any threatened or actual claim or suit; (b) the indemnifying Party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified Party shall cooperate with the indemnifying Party to facilitate the settlement or defense of any claim or suit.

10. TERMINATION

10.1 Termination for Cause. Either Party may terminate the Agreement immediately: (a) upon the occurrence of the bankruptcy or insolvency of the other Party, if such bankruptcy or insolvency is not discharged within sixty (60) days of any filing thereof; or (b) upon notice to the other Party if the other Party materially breaches these Terms and Conditions, and such breach remains uncured more than forty-five (45) days after receipt of written notice of such breach, subject to the fees in the applicable Statement of Work.

10.2 Termination for Changes to Applicable Law or Supplier Relationship. Either Party may terminate the Agreement upon written notice to the other Party if: (a) the relationship and/or the transactions contemplated in a Statement of Work would violate any applicable law; or (b) if an agreement between Iron Mountain and a supplier ("**Supplier Agreement**") expires or terminates or a supplier discontinues any portion or feature of the services supplier provides pursuant to a Supplier Agreement, resulting in Iron Mountain's inability to provide the applicable Services to Customer in whole or in part.

10.3 Suspension of Services by Iron Mountain. Iron Mountain may suspend or limit Customer's or any Authorised User's use of the Services provided subject to these Terms and Conditions (including, without limitation, its transmission or retrieval of Customer Data) immediately upon written notice to Customer, without liability, for any one of the following reasons: (a) Customer fails to pay any undisputed fees as and when due pursuant to these Terms and Conditions or the applicable Statement of Work and such failure continues for a period of thirty (30) days; (b) the Services are being used by Customer or any



of its Authorised Users in violation of any applicable federal, state or local law, ordinance or regulation; (c) the Services are being used by Customer or any of its Authorised Users in an unauthorised manner; (d) Customer's or any of its Authorised User's use of the Services violates the AUP, adversely affects Iron Mountain's provision of services to other customers or poses a security risk to Iron Mountain's systems; or (e) a court or other governmental authority having jurisdiction issues an order prohibiting Iron Mountain from furnishing the Services to Customer. During any such suspension, Customer shall remain responsible and liable for all fees due for the suspended Services. If any of the foregoing grounds for suspension continues for more than fifteen (15) days, Iron Mountain shall have the right to terminate the Agreement for cause and without an opportunity to cure by Customer.

10.4 Effect of Termination. If the Agreement expires or is terminated for any reason, then: (a) Customer's rights to access and use the Services shall immediately terminate; (b) all fees owed by Customer to Iron Mountain will be immediately due upon receipt of the final invoice; (c) Iron Mountain and the Customer shall delete all Customer Data from the Host and InSight Services by the termination or expiration date of the Agreement; and (d) upon request and subject to the Host's terms and policies to the extent applicable, each Party will use commercially reasonable efforts to return or delete all Confidential Information of the other Party, provided that, for clarity, Iron Mountain's obligations under this subsection (d) do not apply to any Usage Data. In the event that Customer Data remains on the Host after the expiration or termination of the Agreement, these Terms and Conditions and all fees shall continue to apply until all Customer Data has been removed from the Host. The sections and subsections titled *Definitions, Restrictions on Use, Confidentiality, Warranties and Disclaimers, Limitation of Liability, Indemnification, Effect of Termination, and Miscellaneous* will survive expiration or termination of the Agreement for any reason.

11. MISCELLANEOUS

11.1 Governing Law and Venue. These Terms and Conditions and any action related thereto will be governed and interpreted by and under the laws of New South Wales, Australia. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms and Conditions. Customer shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Documentation or Services hereunder.

11.2 Dispute Resolution. The following procedure will be adhered to by the Parties to resolve any dispute concerning material obligations under these Terms and Conditions. The aggrieved Party shall notify the other Party in writing of the nature of the dispute with as much detail as possible about the nature of the dispute, all in accordance with the terms set forth in Section 11.12 of these Terms and Conditions. The persons identified for purposes of notices set forth in Section 11.12 or their designees, shall meet (in person or by telephone) within fourteen (14) days after the date of the written notification to attempt to resolve the dispute. If those persons are unable to agree on a resolution, then senior management personnel of each of Iron Mountain and Customer having authority to resolve the dispute without the further consent of any other person ("**Management**") shall meet or otherwise act promptly to facilitate an agreement. If Management cannot resolve the dispute within thirty (30) days after their initial meeting or other action (or in case either Party fails to participate in the dispute resolution), the Dispute will be settled by mediation administered by the Australian Commercial Disputes Centre (or other similar body) in accordance with its normal process. If the matter does not settle at mediation, the parties will be at liberty to commence any action or court proceeding in relation to the dispute. The Parties shall maintain as strictly confidential the mediation proceedings and any settlement, except as is otherwise required by court order or as is necessary to confirm, vacate or enforce the settlement and for disclosure in confidence to the Parties' respective attorneys, tax advisors and senior management. Nothing in this clause prevents either party from commencing any action or proceeding at any time for urgent interlocutory relief in any court or tribunal having jurisdiction over such action or proceeding. Iron Mountain and Customer agree that neither of them shall take any legal action unless and until this dispute resolution procedure has been employed or waived.

11.3 Publicity. Upon mutual written agreement Iron Mountain and Customer may issue joint external communications regarding the Services. Upon mutual written agreement, Customer may act as a reference for press and potential Iron Mountain customer queries. Upon Customer's prior written consent, Customer



also agrees to allow Iron Mountain to use its name, trademarks, service marks, and logos in its various marketing communications and materials relating to the Services. Iron Mountain may verbally reference Customer as a customer of the Services.

11.4 Compliance. Each Party shall comply with, and retain responsibility for its compliance with, all applicable export control laws and economic sanctions programs relating to its respective business, facilities, and the provision of services to third parties (collectively, "**Trade Control Laws**"). Iron Mountain shall not be required by the terms of these Terms and Conditions to be directly or indirectly involved in the provision of goods, software, services and/or technical data that may be prohibited by applicable Trade Control Laws if performed by Iron Mountain and it shall be in the sole discretion of Iron Mountain to refrain from being involved in such activities.

(a) **Export Laws.** Applicable Trade Control Laws may include U.S. export control laws such as the Export Administration Regulations ("**EAR**") and the International Traffic in Arms Regulations ("**ITAR**"), and U.S. economic sanctions programs that are or may be maintained by the U.S. Government, including sanctions and other controls currently imposed against Cuba, Iran, North Korea, Sudan, Syria and Crimea (territory of Ukraine) (collectively, "**Restricted Countries**"), as well as individuals and entities identified on, or owned or controlled by or acting on behalf of individual or entities identified on, applicable government restricted party lists such as any person on the DFAT's list, the Specially Designated Nationals and Blocked Persons List, Sectoral Sanctions Identification List, Foreign Sanctions Evader List, Denied Persons List, Unverified List, Entity List and Debarred Parties List (collectively, "**Restricted Parties**").

(b) **Restricted Parties.** Customer represents that neither the Customer nor any of its end users: (i) is a Restricted Party; (ii) is located in, organised under the laws of or ordinarily resident in a Restricted Country; (iii) will directly or indirectly export, re-export or otherwise transfer any goods, technology or Services covered by the Terms and Conditions to Restricted Countries or Restricted Parties; or (iv) will access or otherwise use the Services from or in a Restricted Country.

(c) **Restricted Activities.** Customer will not directly or indirectly use or transfer the Services: (i) in violation of any Trade Control Laws; (ii) for activities directly or indirectly related to the design, development, production, stockpiling or use of nuclear explosive devices, missiles, chemical or biological weapons or other restricted end-uses; or (iii) for activities directly or indirectly related to Restricted Countries or Restricted Parties. Customer will not use the Services or any component thereof to process, export, re-export, store, host or otherwise transfer any Customer Data that is subject to the ITAR or subject to the EAR. Customer is solely responsible for compliance with Trade Control Laws in the use of the Services and in the use and processing of Customer Data or access to Customer Data by Customer. Customer is solely responsible for obtaining and complying with any required licenses or other authorisations under applicable Trade Control Laws for such activities.

11.5 Severability. If any provision of these Terms and Conditions is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms and Conditions will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Customer agrees that the section titled *Limitation of Liability* will remain in effect notwithstanding the unenforceability of any provision in the subsection titled *Limited Warranty*.

11.6 Waiver. Any waiver or failure to enforce any provision of these Terms and Conditions on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.7 Remedies. Except as provided in the sections titled *Limited Warranty for Professional Services* and *Indemnification*, the Parties' rights and remedies under these Terms and Conditions are cumulative. Customer acknowledges that the Services, Services Technology and Documentation contain valuable trade secrets and proprietary information of Iron Mountain and its suppliers, that any actual or threatened breach of the sections titled *Services Use*, *Intellectual Property* or *Confidentiality* or any other breach by Customer of its obligations with respect to Intellectual Property Rights of Iron Mountain or its suppliers will constitute immediate, irreparable harm to Iron Mountain and its suppliers for which monetary damages would be an inadequate remedy. In such case, Iron Mountain and its suppliers will be entitled to immediate injunctive



relief without the requirement of posting bond. If any legal action is brought to enforce these Terms and Conditions, the prevailing Party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

11.8 No Assignment. Neither Party shall assign or otherwise transfer the Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other Party, which shall not be unreasonably withheld, and any attempted assignment or transfer in violation of the foregoing will be null and void; provided, however, that Iron Mountain may assign or transfer the Agreement to an Affiliate. In the event of a change of control of a Party, whether in connection with a merger, acquisition, reorganisation or sale of all or substantially all of its assets, or other operation of law, such Party will provide written notice to the other Party at least (30) days prior to the change of control. The Terms and Conditions shall be binding upon the Parties and their respective successors and permitted assigns.

11.9 Force Majeure. Any failure or delay by either Party in the performance of its duties or obligations (except the payment of money owed) will not be considered a default, breach or ground for termination of the Agreement if such failure or delay is caused by an act of God, war, civil commotion, terrorism, riot, labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the reasonable control of such Party (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the affected Party shall be excused from any further performance of its obligations pursuant to these Terms and Conditions affected by the Force Majeure Event for as long as such Force Majeure Event continues. The affected Party shall use reasonable efforts, under the circumstances, to notify the other Party of the occurrence of a Force Majeure Event and use commercially reasonable efforts to resume performance in a timely manner.

11.10 Independent Contractors. Customer's relationship to Iron Mountain is that of an independent contractor, and neither Party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of Iron Mountain.

11.11 Third Parties. Certain software vendors are intended third party beneficiaries of Section 3 of these Terms and Conditions for the purposes of protecting their Intellectual Property Rights and for no other purposes.

11.12 Notices. Each Party must deliver all notices or other communications required or permitted under these Terms and Conditions in writing to the other Party by courier, by certified or registered mail (postage prepaid and return receipt requested), or by electronic mail. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or electronic mail, any such notice shall be considered to have been given on the delivery date.

11.13 Conflict of Terms; Purchase Orders. In the event of a conflict or inconsistency between these Terms and Conditions and the terms of any Statement of Work, these Terms and Conditions shall govern and control. Additional or conflicting terms and conditions on any purchase order shall not apply and are expressly rejected by Iron Mountain. Notwithstanding anything to the contrary, the Parties agree that in the event of a conflict between these Terms and Conditions and any terms agreed between the Parties relating to other services offered by Iron Mountain, including in relation to management of physical data, these Terms and Conditions shall prevail in relation to the Services (as defined hereunder) only.