

Master Services Agreement

This Master Services Agreement is entered into as of the Effective Date by and between The Red Fox Group Pty Ltd (ABN 58 619 487 507) ("TRFG") and the Customer named in the applicable Order Form ("Customer").

1. Definitions

"Access Date" means the date TRFG makes the Customer's SwiftFox production environment available for use. The Access Date marks the commencement of Subscription Fees unless otherwise stated in the relevant Order Form.

"Acceptable Use Policy" means TRFG's Acceptable Use Policy, published at <https://www.swiftfoxcrm.com/policies/acceptable-use-policy>, which governs permitted and prohibited uses of the Subscription Service and forms part of this Agreement.

"Agreement" means the agreement formed between TRFG and the Customer, consisting of the Master Services Agreement and the applicable executed Order Form, including any annexes or appendices.

"Authorised User" means any individual who is authorised by the Customer to access and use the Subscription Service under the Customer's account.

"Business Day" means a day, other than a Saturday, Sunday, or public holiday in Australia, when banks in Victoria are open for business.

"Confidential Information" means any non-public information disclosed by one party to the other, in any form, that is designated as confidential or which by its nature a reasonable person would understand to be confidential.

"Contract Year" means each successive twelve-month period beginning on the Access Date or an anniversary thereof.

"Customer" means the entity identified as the customer in the Order Form.

"Customer Data" means all data, information, files, and content submitted to or uploaded into the Subscription Service by the Customer or its Authorised Users.

"Customer IP" means all Intellectual Property Rights owned by or licensed to the Customer and provided to TRFG under this Agreement, including Customer Data, Customer Content, and any materials, documents, or third-party content supplied by the Customer.

"Effective Date" means the date on which the Agreement becomes binding, being the later of (i) the date the Customer signs the Order Form and (ii) the date TRFG signs the Order Form.

"Initial Term" means the initial subscription period specified in the Order Form or, if not specified, a period of twenty-four months from the Access Date.

"Intellectual Property Rights" means all intellectual and industrial property rights throughout the world, whether registered or unregistered, including copyright, trade marks, business names, domain names, designs, patents, trade secrets, know-how, database rights, and any application or right to apply for registration of any such rights.

"Master Services Agreement" or **"MSA"** means this agreement, as amended from time to time by TRFG and made available at <https://www.swiftfoxcrm.com/policies/master-services-agreement>.

"Order Form" means a document issued by TRFG and executed by the Customer, referencing this MSA and specifying the commercial terms of the subscription. The Order Form may include pricing, scope of use, support inclusions, project deliverables, and other customer-specific terms.

“Privacy Laws” means the Privacy Act 1988 (Cth), the Australian Privacy Principles (APPs), and any other applicable privacy or data protection laws and regulations.

“Production Environment” means the Customer’s configured SwiftFox instance intended for live operational use.

“Professional Services” means implementation services, configuration, data migration support, training, consulting, and any additional development or professional services provided by TRFG, as expressly authorised under an Order Form or Statement of Work.

Unless expressly stated otherwise in writing, Professional Services are delivered on a resource allocation basis, not on a time and materials basis.

“Purpose of Agreement” means the sole purpose of this Agreement is to provide the Customer with access to the Subscription Service as a commercially available standard software product, together with any Professional Services expressly set out in the applicable Order Form.

For clarity:

- this Agreement does not guarantee any specific business outcome, workflow, organisational process, or feature beyond those expressly set out in the Order Form;
- the Customer acknowledges that any proposal, presentation, demonstration, statement of requirements, or marketing material provided by TRFG prior to entering into this Agreement was provided for information only and does not form part of this Agreement, except to the extent expressly and specifically set out in the Order Form;
- the Customer acknowledges that it has not relied on any statements, demonstrations, proposals, or marketing material outside the Order Form in entering this Agreement; and
- TRFG makes no representation or warranty that the Subscription Service or Professional Services will meet any purpose beyond those expressly set out in the Order Form.

This definition is exhaustive and prevails over any other statement or assertion of purpose, whether made before or after the Effective Date.

“Renewal Term” means any additional subscription term that follows the Initial Term, as expressly set out in an Order Form or as renewed in accordance with this Agreement.

“Repudiation” means a clear and unequivocal indication by a party, through words or conduct, that it does not intend to perform its material obligations under this Agreement, including:

- a) a statement that it will not continue with the Services except in accordance with an express termination right;
- b) wrongful termination or suspension of the Services outside this Agreement;
- c) failure to pay undisputed Fees for more than 30 days after written notice; or
- d) abandonment or refusal to proceed with agreed Services after written notice requesting confirmation of continuation.

A bona fide dispute raised in accordance with the dispute resolution clause does not constitute Repudiation.

“Service Levels” means the commitments made by TRFG regarding system availability, support response times, and resolution times, as described in a separate Service Level Agreement or referenced within the applicable Order Form. Service Levels do not constitute warranties.

“Setup Fee” means the one-time fee payable by the Customer for the Professional Services required to provision and prepare the Customer’s SwiftFox environment for use, typically consisting of implementation, configuration, and related professional services.

“Statement of Work” or **“SOW”** means a written document issued by TRFG that outlines a specific set of Professional Services to be delivered, typically including a description of the work to be undertaken, estimated timeframes, and either the confirmed or approximate costs involved. A Statement of Work does not require a formal signature by the Customer but will require written confirmation (such as via email) before TRFG will commence the work described.

“Subscription Service” or **“SwiftFox”** means the Software as a Service (SaaS) platform developed by TRFG, including its CRM features, workflows, form builder, communications modules, analytics tools, and all other components described in the Order Form. SwiftFox is a proprietary web-based platform made available at <https://www.swiftfoxcrm.com> or such other URLs as TRFG may designate.

“System Administrator” means the individual nominated by the Customer as the main administrative contact responsible for user access and management of the SwiftFox environment.

“Term” means the Initial Term and any Renewal Term(s).

“Third-Party Services” means any external services, applications, or tools that are not developed or controlled by TRFG, but which may be integrated with the Subscription Service at the Customer’s request or discretion.

“TRFG” or **“We”** or **“Us”** means The Red Fox Group Pty Ltd (ABN 58 619 487 507), the developer and provider of the SwiftFox platform.

“TRFG IP” means all Intellectual Property Rights owned by or licensed to TRFG in connection with the Subscription Service, including the Software and its underlying source code and architecture, platform features, modules, enhancements, user interfaces, templates, configurations, documentation, training materials, TRFG Content, system-generated outputs, and all branding, trade marks, logos, and other proprietary marks.

For clarity, this does not include Customer Data exports or customer-authored content.

“Update Effective Date” means the date specified by TRFG on which an update to this Agreement takes effect under clause 18.6.

“Usage-Based Services” means variable-cost services that depend on the Customer’s usage of certain features within SwiftFox. This includes, but is not limited to, sending SMS messages, making calls, or delivering emails through the platform. The Customer may receive a defined allowance for some of these services as part of their Subscription Fee. Any usage beyond the included allowance will be charged at the applicable rates, as detailed in the Order Form or on TRFG’s published pricing page.

2. Term and Termination

2.1 Term

This Agreement begins on the Effective Date and will continue for the Initial Term, or, if no Initial Term is specified in the applicable Order Form, for twenty-four (24) months from the Access Date.

At the end of the Initial Term, this Agreement will automatically renew for successive twelve (12) month renewal terms (each a Renewal Term) unless either party gives written notice of non-renewal at least ninety (90) days prior to the end of the then-current Term.

2.2 Non-Renewal

For clarity, a decision by either party not to renew this Agreement at the end of a Term in accordance with clause 2.1 constitutes expiry of the Agreement and not termination.

Except as expressly permitted under this Section 2, neither party has a right to terminate this Agreement for convenience or at will during a Term.

2.3 Termination for Cause (Material Breach or Insolvency Only)

Subject to clause 2.4 and Section 19 (Dispute Resolution), either party may terminate this Agreement by written notice if the other party:

(a) Material Breach

commits a material breach of this Agreement or an applicable Order Form and fails to remedy that breach within thirty (30) days after receiving a valid written notice that:

- is clearly labelled as a breach notice issued under this clause 2.3;
- identifies the specific clause(s) of this Agreement or applicable Order Form alleged to have been breached;
- sets out reasonable details of the factual basis for the alleged breach; and
- has been issued, progressed, and addressed in accordance with the Dispute Resolution process set out in Section 19,

provided that, for the purposes of this Agreement, a material breach is a breach that substantially deprives the non-breaching party of the benefit of this Agreement, where that benefit is limited strictly to the Purpose of Agreement (as defined) and the obligations expressly set out in the applicable Order Form.

If an objective, deliverable, or outcome is expressly stated in the applicable Order Form, TRFG is required to perform the corresponding obligations with reasonable skill and care. However, a failure to achieve an objective or outcome does not, of itself, constitute a material breach unless the Order Form expressly states that achievement of that objective or outcome is a binding contractual obligation and that failure to achieve it gives rise to a termination right.

For clarity, no objective, requirement, expectation, use case, or statement described, discussed, referenced, or provided outside the applicable Order Form forms part of the benefit of this Agreement or may be relied upon to assert a material breach.

Termination under this paragraph (a) may occur only after:

- (1) the dispute resolution process in Section 19 has been followed in good faith;
- (2) the applicable cure period has expired without the breach being remedied or otherwise resolved; and
- (3) the alleged breach has not been cured, waived, or resolved by agreement between the parties.

(b) Insolvency

becomes insolvent in circumstances where the party:

- (i) enters into any form of external administration, insolvency, restructuring, or analogous process;
- (ii) has a receiver, controller, administrator, liquidator, provisional liquidator, trustee, or similar insolvency officer appointed in respect of it or any of its assets; or
- (iii) resolves to wind up, dissolve, or cease carrying on business, other than for the purpose of a solvent restructure or reorganisation,

or is subject to any formal event or circumstance which has a substantially similar effect to any of the events described above under applicable law.

For clarity, a failure to pay Fees when due does not of itself constitute insolvency unless accompanied by circumstances that satisfy the criteria above.

Where an insolvency event occurs:

- (i) the non-affected party may suspend performance of all or part of its obligations immediately by written notice;
- (ii) the non-affected party is not required to continue performing its obligations to the extent there is a reasonable and objective risk of non-payment, non-performance, or loss arising from the insolvency event; and
- (iii) the non-affected party may terminate this Agreement by written notice, without prejudice to any accrued rights or remedies, including rights to payment for Fees accrued or incurred prior to termination.

Termination under this paragraph (b) is not subject to the dispute resolution process in Section 19.

For the avoidance of doubt

1. Allegations of breach that do not comply with the requirements of this clause 2.3 and Section 19 do not give rise to any termination right.

2. Operational issues, dissatisfaction, change requests, scope discussions, or matters expressly excluded from the definition of a Dispute under Section 19 do not constitute a material breach.
3. Termination for cause is a remedy of last resort and may not be used to circumvent the dispute resolution process, payment obligations, or the agreed Term.

2.4 Mandatory Dispute Resolution Prior to Termination for Breach

- a) Except in the case of insolvency under clause 2.3(b), a party may not terminate this Agreement for alleged material breach unless and until:
 - i. a valid Dispute Notice has been issued in accordance with Section 19;
 - ii. the receiving party has been given the full opportunity to investigate and remedy the alleged breach during the cure period specified in Section 19; and
 - iii. the escalation, mediation, and other procedural steps required by Section 19 have been followed, unless the Dispute is resolved earlier.
- b) Any notice of termination issued in breach of this clause 2.4 is invalid and of no effect unless and until the requirements of Section 19 have been satisfied.

2.5 Termination by Agreement

This Agreement may be terminated at any time by mutual written agreement executed by authorised representatives of both parties.

2.6 Effect of Termination

Upon lawful termination or expiry of this Agreement:

- a) TRFG will disable the Customer's access to the Subscription Service;
- b) all Fees accrued or invoiced prior to termination, and any Fees accelerated under this Agreement, become immediately due and payable;
- c) the Customer may request a standard-format export of its Customer Data within thirty (30) days following termination;
- d) TRFG may charge its standard rates for any custom data exports or assistance requested by the Customer; and
- e) subject to applicable law, TRFG will delete Customer Data, including backups, within sixty (60) days after termination unless required or permitted to retain it.

If the Customer lawfully terminates this Agreement for cause due solely to TRFG's uncured material breach following completion of the dispute resolution process under Section 19, the Customer will not be liable for Subscription Fees accruing after the effective termination date.

2.7 Effect of Invalid or Premature Termination Attempts

If either party purports to terminate this Agreement other than in strict compliance with this Section 2 and Section 19:

- a) the purported termination is invalid and has no effect unless and until it is determined, in accordance with Section 19, that the termination was valid;
- b) the Customer remains liable for all Fees payable under this Agreement during the period between the purported termination and any determination under Section 19; and
- c) TRFG's continued performance of the Subscription Service, invoicing, acceptance of payment, or enforcement of payment obligations does not constitute acceptance of, or acquiescence in, the purported termination.

2.8 Expiry of Unsigned Order Forms

If the Customer does not return a signed Order Form within three (3) calendar months of the date TRFG signs it, the Order Form will expire automatically unless re-issued or extended in writing by TRFG.

2.9 Minimum Commercial Commitment, Setup Fees and Pricing Structure

The Customer acknowledges that the Fees under this Agreement have been determined on a holistic and commercially reasonable basis, reflecting the establishment of an ongoing subscription relationship for the Initial Term.

In particular, the Customer acknowledges and agrees that:

- a) the Setup Fee reflects TRFG's allocation of personnel, delivery capacity, expertise, and onboarding effort, and is not calculated on a time-and-materials basis;
- b) the Setup Fee may be discounted or subsidised relative to TRFG's standalone professional services rates on the assumption that the Customer will maintain an active subscription and pay Subscription Fees for the full Initial Term;
- c) for clarity, the Setup Fee is not intended to reflect the full cost to TRFG of onboarding and enablement activities if provided on a standalone basis; and
- d) the Subscription Fees represent a minimum commercial commitment for the applicable Term and are payable regardless of actual usage levels, internal adoption, or the extent to which the Customer elects to utilise particular features.

The Customer further agrees that a change in usage, internal priorities, adoption timing, or an early termination of this Agreement does not invalidate the commercial basis on which the Fees were agreed and does not give rise to any right to a refund, credit, re-pricing, or adjustment of the Setup Fee or Subscription Fees, except as expressly provided in this Agreement.

2.10 Exclusive Termination Regime

This Section 2 sets out the exclusive circumstances and process by which this Agreement may be terminated.

To the maximum extent permitted by law, neither party may terminate, rescind, repudiate, or otherwise treat this Agreement as terminated or discharged except in strict compliance with this Section 2 and, where applicable, Section 19.

Any attempt to terminate or otherwise treat this Agreement as terminated or discharged other than in accordance with this Agreement is invalid and constitutes a repudiation of this Agreement.

3. Subscription and Professional Services

3.1 Subscription Service

TRFG grants the Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the Subscription Service during the Term, subject to this Agreement and the applicable Order Form.

Unless expressly stated otherwise in an Order Form, the Customer's access is limited to TRFG's standard, commercially available Subscription Service and does not include any customisations, modifications, or bespoke functionality.

The Customer acknowledges and agrees that:

- the Subscription Service is a standardised, off-the-shelf software platform provided to multiple customers on a non-exclusive basis;
- it is not tailored to the Customer's unique or evolving operational, regulatory, or strategic requirements unless Additional Development is expressly defined and agreed in writing; and
- except as expressly set out in a signed Order Form, TRFG makes no representation or warranty that the Subscription Service will meet all of the Customer's specific, anticipated, or future business needs or use cases.

TRFG will provide access to the production environment on the Access Date. Unless otherwise stated in an executed Order Form, Subscription Fees commence on the Access Date, irrespective of the Customer's internal readiness, implementation progress, or operational use of the Subscription Service.

3.2 Professional Services

TRFG may provide Professional Services to support the Customer's use of the Subscription Service. Professional Services may include configuration, implementation support, data migration, training, consulting, and Additional Development.

All Professional Services must be expressly authorised through:

- an Order Form, which sets out the scope, deliverables, fees, assumptions, dependencies, and estimated timelines; or

- a Statement of Work (SOW), where services fall outside the scope of an existing Order Form.

Professional Services will not commence unless and until the applicable Order Form or SOW has been authorised in accordance with this Agreement. Unless otherwise agreed in writing, Professional Services are delivered on a resource allocation basis, not on a time and materials basis.

By executing an Order Form or authorising a SOW, the Customer provides a binding instruction for TRFG to allocate internal personnel, delivery capacity, infrastructure, and (where relevant) third-party or subcontracted resources to the engagement.

TRFG will perform Professional Services with reasonable skill and care in accordance with the applicable Order Form or SOW.

3.3 Fees, Allocation, and Commercial Basis of Professional Services

Professional Services Fees reflect both the delivery of Services and TRFG's commitment of delivery capacity, allocation of appropriately skilled personnel, and prioritisation of the Customer's engagement within TRFG's delivery schedule.

The Customer acknowledges that, following execution of an Order Form or SOW, TRFG may:

- formally assign and schedule personnel to the Customer project within its delivery planning systems;
- incur internal staffing and operational costs;
- enter into supplier or contractor commitments; and
- decline, defer, or reprioritise other work,

in reliance on that authorisation. The parties agree that this allocation and commitment of capacity forms a substantive and measurable component of the value of the Professional Services.

Accordingly, to the maximum extent permitted by applicable law:

- Professional Services Fees are not solely contingent on project completion, adoption, acceptance, or the Customer achieving particular business outcomes, as Fees reflect both Services performed and resources committed in reliance on the Order Form or SOW; and
- where TRFG has allocated personnel or incurred identifiable, non-cancellable cost commitments in reliance on an executed Order Form or SOW, the Customer is not entitled to any refund, credit, set-off, or reduction of Professional Services Fees solely because scope is later reduced, Services are delayed or suspended, or the Agreement or an Order Form is terminated prior to completion of a project.

For the purposes of this clause, "allocated" means personnel formally assigned to the Customer project in TRFG's delivery planning systems or where TRFG has incurred identifiable, non-cancellable cost commitments in reliance on the relevant Order Form or SOW.

TRFG will use reasonable endeavours to mitigate unrecovered costs by redeploying allocated personnel where reasonably practicable, provided this does not require TRFG to prioritise redeployment over its legitimate business operations or existing customer commitments.

Nothing in this clause relieves TRFG of its obligation to use reasonable skill and care to deliver the Professional Services or permits TRFG to decline to perform Professional Services that have been paid for, except where suspension or termination is permitted under this Agreement, including due to the Customer's breach, non-payment, or failure to cooperate.

The parties agree that this allocation-based fee structure is commercially reasonable, reflects TRFG's legitimate interests in capacity planning and resource commitment, and represents a proportionate allocation of commercial risk rather than a penalty.

3.4 Project Roles and Personnel

The Customer must appoint a Project Lead with sufficient authority to provide instructions, approvals, decisions, and coordination on behalf of the Customer. The Customer may replace its Project Lead by written notice to TRFG. TRFG is entitled to rely on directions and approvals provided by the nominated Project Lead.

Each party may assign, replace, or reassign personnel involved in the delivery or receipt of the Subscription Services and Professional Services from time to time, provided that any replacement personnel have reasonably appropriate skills and experience for the role being performed.

TRFG may assign or replace its account manager, project manager, or other delivery personnel at its discretion. Such changes do not, of themselves, constitute a breach of this Agreement.

TRFG may identify indicative personnel (including a project lead or key contacts) in proposals, Order Forms, SOWs, or related materials for planning and communication purposes only. Unless expressly stated otherwise in a signed Order Form, such references are indicative only and do not create a contractual obligation to provide any specific named individual or to ensure continuity of personnel.

3.5 Configuration

Configuration refers to TRFG's assistance in adapting and tailoring the Subscription Service using available platform settings, tools, workflows, field structures, and templates. Configuration enables the Customer to optimise its use of the standard platform without requiring new software development.

The Customer acknowledges that:

- configuration is distinct from Additional Development and does not involve new code being written or published;
- TRFG may assist with configuration but does not guarantee that configuration alone will achieve specific functional outcomes unless expressly agreed in writing; and
- where configuration is insufficient to meet desired outcomes, TRFG is under no obligation to undertake Additional Development unless separately scoped and agreed.

3.6 Additional Development

Additional Development refers to enhancements, customisations, or bespoke functionality developed by TRFG, whether funded by the Customer or initiated by TRFG. When funded in whole or in part by the Customer, Additional Development constitutes a Professional Service.

Additional Development must be expressly scoped and priced in a signed Order Form, Change Order, or SOW. Where no such agreement exists, TRFG has no obligation to commence or complete such work.

The Customer acknowledges that:

- discovery activities, workshops, or implementation learnings do not create an obligation on TRFG to undertake Additional Development;
- TRFG may propose a Change Order in response to such learnings but is not required to do so; and
- it remains the Customer's responsibility to confirm that the Subscription Service, together with any scoped Additional Development, meets its organisational requirements.

Unless expressly agreed otherwise, timelines for Additional Development are indicative and non-binding. Delays do not affect the Access Date or delay the commencement of Subscription Fees.

3.7 Delivery and Dependencies

All schedules, milestones, and timeframes provided by TRFG are indicative estimates based on the information available at the time of planning and the Customer's timely fulfilment of its responsibilities. They are not guaranteed delivery dates.

The Customer must provide timely access to personnel, data, systems, approvals, and decisions reasonably required for delivery. Where delays, rework, or additional effort arise due to Customer dependencies, changes in scope, or third-party factors outside TRFG's reasonable control, TRFG may make reasonable adjustments to schedules, sequencing, and delivery timeframes to reflect the impact of those matters.

TRFG will use reasonable endeavours to minimise the effect of such delays on the overall delivery timetable, but TRFG is not liable for any failure to meet an estimated schedule, milestone, or delivery timeframe, and such failure does not, of itself, constitute a breach of this Agreement or give rise to any right to terminate, withhold payment, or claim compensation.

Delays arising from Customer dependencies or third-party factors do not defer the Access Date or the commencement of Subscription Fees unless expressly agreed in writing.

3.8 Acceptance

Deliverables arising from Professional Services are deemed accepted upon the earlier of:

- written confirmation of acceptance; or
- five (5) Business Days after delivery, if no written rejection is received.

Any rejection must be made reasonably and in good faith and must identify specific non-conformities. TRFG will be afforded a reasonable opportunity to address confirmed issues. Requests for enhancements or out-of-scope items are not grounds for rejection.

The Subscription Service is deemed accepted on the Access Date and is not subject to internal go-live, completion of Professional Services, or realisation of business outcomes.

3.9 Separation of Subscription and Professional Services

The Subscription Service and Professional Services are distinct service components governed by this Agreement.

The Customer acknowledges that the Subscription Service is a complete, standalone software product with independent commercial value, and that Professional Services are optional services intended to facilitate, accelerate, or support the Customer's implementation and use of the Subscription Service.

A delay, dispute, suspension, or termination relating to Professional Services does not, of itself:

- a) affect the Customer's right to access or use the Subscription Service;
- b) relieve the Customer of its obligation to pay Subscription Fees;
- c) constitute a breach of the Subscription Service obligations; or
- d) render the Subscription Service defective, unusable, or unfit for purpose.

Similarly, a dispute relating solely to the Subscription Service does not invalidate or unwind Professional Services that have been validly authorised or performed.

For the avoidance of doubt, the Customer may not claim that the Subscription Service lacks value, is not fit for purpose, or has failed for lack of consideration solely because Professional Services were not provided, were delayed, were suspended, or did not achieve desired implementation outcomes.

3.10 Change Requests and Change Orders

Either party may propose changes to scope, sequencing, assumptions, deliverables, timelines, or functionality (each a Change Request).

TRFG may assist in evaluating Change Requests in good faith. Any such assistance does not constitute a commitment to proceed or a modification of this Agreement.

A Change Request has no contractual effect unless documented in a signed Change Order, revised Order Form, or new SOW. Until then, existing scope, obligations, and payment terms remain unchanged.

The negotiation or rejection of a Change Request does not suspend obligations, delay payments, or constitute a Dispute for the purposes of Section 19.

3.11 Product Roadmaps and Future Functionality

Any product roadmap, development plan, feature preview, or statement regarding future functionality is provided for indicative and informational purposes only.

Unless expressly incorporated into a signed Order Form as a binding commitment, such materials do not form part of this Agreement and do not create any obligation on TRFG to deliver any particular enhancement, functionality, timeline, or outcome.

TRFG may modify, reprioritise, defer, or discontinue planned features or functionality at its discretion as part of the ongoing evolution of the Subscription Service.

3.12 Effect of Customer Delay

Where delivery of Professional Services or the Subscription Service is delayed or disrupted due to the Customer's failure to meet its obligations under this Agreement, including delays in approvals, feedback, data provision, or availability of personnel, TRFG may reasonably treat the affected phase, deliverable, or milestone as commercially complete for invoicing purposes.

This clause does not prevent TRFG from completing remaining work once the Customer resumes cooperation, but ensures that delays outside TRFG's control do not defer payment obligations.

3.13 Capacity Management and Prioritisation

TRFG may manage, allocate, and reprioritise its delivery resources across customers in a commercially reasonable manner, having regard to capacity, urgency, dependencies, and fairness.

This clause does not relieve TRFG of its obligation to perform Professional Services with reasonable skill and care, but recognises that delivery sequencing may change as part of normal operational planning.

3.14 Product Evolution

The Customer acknowledges that the Subscription Service is an evolving software product. TRFG may update, enhance, modify, or replace features as part of normal product development, provided that the overall functionality of the Subscription Service is not materially reduced.

TRFG does not guarantee that any specific feature, configuration, or user interface will remain unchanged for the duration of the Term.

4. Acceptable Use

The Customer must ensure that all Authorised Users comply with the Acceptable Use Policy. TRFG may suspend access in accordance with Section 12 in the event of a breach.

In the event of any inconsistency between this Section 4 and the Acceptable Use Policy, the Acceptable Use Policy prevails.

5. Fees and Payment

5.1 Fees

The Customer must pay all fees as set out in the applicable Order Form, which may include:

- a) Subscription Fees;
- b) Setup Fees;
- c) Consulting Fees;
- d) usage-based charges (e.g., SMS credits, Email overage fees, calling fees, additional portals);
- e) hosting, support or other add-on services that apply.

5.2 Invoicing and Payment

Unless otherwise stated in the applicable Order Form:

- a) Subscription Fees will be invoiced monthly, commencing on the Access Date.
- b) Consulting Fees, Setup Fees, and other one-off charges will be invoiced in line with the billing frequency or project milestones specified in the Order Form.
- c) Overage charges for usage beyond agreed allowances (such as excess emails, SMS, or call minutes), as well as any approved additional services, will be invoiced monthly in arrears.
- d) All invoices are payable within thirty (30) days of the invoice date, unless otherwise agreed in writing.

5.3 Late Payment

TRFG may charge interest on overdue amounts at 1.5% per month and recover reasonable debt collection costs.

5.4 Taxes

All fees are exclusive of GST and other applicable taxes. The Customer is responsible for paying all such taxes in addition to the quoted prices.

5.5 Hosting Usage Adjustments

TRFG provides hosting as part of the Subscription Fee under a standard enterprise hosting model designed to support normal and reasonably foreseeable usage levels for an organisation of the Customer's size and profile ("Fair Use").

If the Customer's usage materially exceeds Fair Use, including through sustained abnormal server load, excessive data storage, unusually high transaction volumes, or significant and unanticipated increases in usage volumes, TRFG may:

- a) require the Customer to reduce usage to within Fair Use levels;
- b) implement reasonable technical controls to protect platform stability; and/or
- c) propose a revised hosting fee or a separate hosting arrangement to reflect the increased infrastructure and operational costs.

Where materially excessive usage persists, TRFG may implement an appropriate hosting surcharge, revised hosting arrangement, or reasonable technical controls on reasonable notice during the then-current Term.

TRFG will consult with the Customer in good faith before implementing any pricing adjustment under this clause. However, where materially excessive usage continues, TRFG may implement a reasonable interim hosting surcharge or technical controls pending resolution.

TRFG is not responsible for any degradation of performance, service levels, or availability to the extent caused by the Customer's usage exceeding Fair Use, and any related impact will not constitute a breach of this Agreement or the Service Level Agreement.

This clause is intended to address exceptional or disproportionate usage and does not apply to ordinary growth or normal platform usage.

5.6 Fee Changes

- a) TRFG may adjust Fees from time to time by giving the Customer at least thirty (30) days' prior written notice, including the rationale for the adjustment.
- b) No increase to Subscription Fees will apply during the first twelve (12) months following the Access Date, unless:
 - i. the change is required to comply with Applicable Law, a regulator direction, or a tax/VAT/GST change; or
 - ii. the change relates to Usage-Based Services, Third-Party Services, or pass-through costs expressly contemplated by this Agreement or an Order Form.
- c) If the Customer reasonably objects in writing to a notified fee change under clause 5.6(a) on the basis that it is materially detrimental to the Customer (and the change is not within clause 5.6(b)(i) or 5.6(b)(ii)), the parties will engage in good faith to discuss the objection for a period of up to thirty (30) days from TRFG's receipt of the objection.
- d) If the parties do not reach agreement within that period:

- i. the pre-existing Fees will continue to apply until the end of the then-current Term; and
 - ii. either party may give notice of non-renewal to take effect at the end of the then-current Term (and not merely the then-current billing period).
- e) For clarity:
- i. the Customer's failure to object within the 30-day notice period constitutes acceptance of the fee change; and
 - ii. nothing in this clause limits the Customer's obligation to pay Fees that are properly due under this Agreement, including during any dispute-resolution process under Section 19.

5.7 No Set-Off, Withholding or Suspension of Payment

The Customer must pay all Fees in full without set-off, counterclaim, deduction, withholding, suspension, or reduction, including during any dispute, investigation, remediation period, or dispute resolution process conducted under Section 19.

5.8 Payment Obligations During Disputes

The existence of a Dispute, Operational Issue, Change Request, or proposed Change Order does not relieve the Customer of its obligation to pay Fees when due.

All Fees remain payable in accordance with this Agreement unless and until expressly determined otherwise in accordance with Section 19.

5.9 Deferred or Conditional Subscription Commencement

Where an Order Form provides for Subscription Fees to commence on a date later than the Effective Date, or to be deferred, discounted, staged, or conditional upon a milestone, event, or acceptance criterion:

- a) such arrangement relates only to the timing of invoicing, and does not affect the Customer's commitment to the Initial Term specified in the Order Form;
- b) the Initial Term is deemed to commence on the Effective Date for contractual and commitment purposes, regardless of when Subscription Fees are first invoiced; and
- c) in the event of repudiation by the Customer under clause 14.9, the Subscription Fees payable for the full Initial Term (if repudiation occurs before invoicing commences) or the remaining balance of the then-current Term (if repudiation occurs after invoicing commences) become immediately due and payable in accordance with clause 14.9.

The parties acknowledge that deferred, discounted, or conditional commencement arrangements are offered by TRFG in reliance on the Customer's commitment to the full Initial Term, and that this clause reflects a reasonable allocation of risk and protection of TRFG's legitimate commercial interests, including upfront provisioning, resource allocation, and pricing concessions. TRFG will take reasonable steps to mitigate its losses where commercially practicable, and any direct cost savings achieved as a result will be credited against amounts recoverable under clause 14.9.

5.10 Professional Services Fees - Committed Scope

All Professional Services Fees specified in an Order Form constitute committed consideration for the allocation of TRFG personnel, scheduling, and delivery capacity.

Accordingly:

- a) Professional Services Fees are payable in full in accordance with the Order Form, regardless of whether delivery is delayed, suspended, or prevented by the Customer;
- b) the Customer may not cancel, pause, or defer Professional Services in order to avoid payment; and
- c) in the event of repudiation under clause 14.9, all remaining Professional Services Fees specified in the applicable Order Form become immediately due and payable.

The parties acknowledge that these Fees reflect committed personnel allocation, delivery planning, and opportunity cost. TRFG will use reasonable efforts to reallocate personnel where commercially practicable and credit any direct cost savings achieved.

5.11 Acceleration and Debt Recovery

Any Fees accelerated or rendered immediately payable under this Agreement (including under clauses 14.9 or 5.9) become immediately due and payable as a debt. The parties acknowledge that the amounts recoverable under the relevant clauses represent a reasonable allocation of risk and a genuine attempt to quantify losses that would otherwise be difficult to determine at the time of contracting.

5.12 Suspension of Services

Without limiting any other rights or remedies available to it, TRFG may suspend access to the Subscription Service and/or suspend delivery of Professional Services, in whole or in part, if:

- a) the Customer fails to pay any undisputed Fees when due;
- b) the Customer repudiates this Agreement within the meaning of clause 14.9;
- c) the Customer breaches its security, acceptable use, or compliance obligations;
- d) continued provision of the Services would pose a legal, regulatory, security, or operational risk; or
- e) TRFG is otherwise entitled to suspend Services under this Agreement.

Any suspension under this clause:

- a) does not terminate this Agreement;
- b) does not relieve the Customer of any payment obligations;
- c) does not pause, defer, reduce, or excuse Fees; and
- d) does not affect TRFG's right to recover amounts already invoiced or payable.

TRFG will use reasonable endeavours to restore Services once the grounds for suspension have been remedied.

5.13 Invoice Acceptance

An invoice will be deemed accepted by the Customer unless the Customer notifies TRFG in writing of a bona fide dispute within seven (7) Business Days of receipt, specifying the nature of the dispute in reasonable detail.

Undisputed portions of an invoice remain payable in accordance with this Agreement.

Failure to raise a dispute within this period does not relieve the Customer of its obligation to pay the invoice when due.

6. Warranties and Disclaimers

6.1 TRFG Warranties

TRFG warrants that:

- (a) it has full power and authority to enter into this Agreement and to perform its obligations under it;
- (b) it will provide the Subscription Service and any Professional Services with reasonable skill and care, in compliance with applicable laws, and materially in accordance with the applicable Order Form and any expressly agreed service descriptions;
- (c) it owns, or has valid licences or other rights to use, the Intellectual Property Rights in the Software sufficient to grant the rights expressly granted to the Customer under this Agreement; and
- (d) it will not knowingly introduce viruses, malware, or other malicious code into the Subscription Service.

6.2 Customer Warranties

The Customer warrants that:

- it has the authority and capacity to enter into and perform its obligations under this Agreement;
- it owns or has the necessary legal rights to all Customer Data and any third-party materials provided under this Agreement;

- it grants TRFG the necessary licences and permissions to use Customer Data and third-party materials as required to provide the Services;
- its use of the Service will comply with all applicable laws and regulations and will not infringe the rights of any third party; and
- it will ensure that its Authorised Users comply with this Agreement and do not use the Service for any unlawful or unauthorised purpose.

6.3 Warranty Remedies

If the Subscription Service or any Professional Services fail to materially meet the warranties in clause 6.1, the Customer must promptly notify TRFG in writing, specifying the nature of the issue in reasonable detail.

Upon receipt of such notice, TRFG will be given a reasonable opportunity to remedy the failure and may, at its option:

- provide a corrected version of the affected Service;
- implement a commercially reasonable workaround that is not materially detrimental to the Customer; or
- re-perform the affected Services.

Any such remediation will be provided at no additional cost to the Customer.

Subject to clause 6.5 (Mandatory Law Carve-Out), the remedies set out in this clause 6.3 constitute the Customer's sole and exclusive remedies for any breach of the warranties in clause 6.1.

The remedies in this clause are conditional on the Customer having complied with its obligations under this Agreement, including timely notification and reasonable cooperation in identifying and resolving the issue.

For the avoidance of doubt:

- any failure or dissatisfaction relating to Professional Services does not constitute a breach of the Subscription Service;
- such failure or dissatisfaction does not, of itself, give rise to any right to terminate the Subscription Service or withhold Subscription Fees; and
- any right to terminate this Agreement for breach is governed exclusively by Section 2 (Termination) and is subject to compliance with Section 19 (Dispute Resolution).

6.4 Disclaimers

Except as expressly stated in this Agreement, and to the maximum extent permitted by law:

- the Subscription Service and any Professional Services are provided "as is" and "as available";
- TRFG does not warrant that the Subscription Service will be uninterrupted, error-free, or free from defects;
- TRFG does not warrant that the Subscription Service will meet the Customer's specific requirements, achieve any particular business outcome, or be suitable for any particular purpose; and
- all conditions, warranties, representations, guarantees, and terms that would otherwise be implied (whether by statute, common law, course of dealing, or otherwise) are excluded.

6.5 Mandatory Law Carve-Out

Nothing in this Agreement excludes, restricts, or modifies any condition, warranty, guarantee, right, or remedy that cannot be excluded, restricted, or modified under applicable law.

To the extent permitted by law, all other conditions, warranties, representations, guarantees, rights, and remedies that would otherwise be implied are excluded.

For the avoidance of doubt:

- this clause does not create or expand any contractual right of termination, cancellation, refund, or fee reduction;
- any non-excludable statutory rights or remedies operate only to the extent, and in the manner, required by applicable law; and

- c) any exercise of such rights remains subject to the procedural and dispute resolution requirements of this Agreement, except to the extent prohibited by law.

6.6 No Industry Standard Warranty

Except as expressly stated in this Agreement or an applicable Order Form, TRFG does not warrant that the Subscription Service or Professional Services conform to any particular industry standard, customary practice, or benchmark.

No obligation, warranty, or representation will be implied on the basis that similar services are offered by other providers or that the Customer expected functionality based on industry norms.

6.7 Automated and AI-Generated Outputs

Where the Subscription Service includes features that generate outputs through automated processing, machine learning, or artificial intelligence, such outputs are provided for informational and assistive purposes only.

The Customer remains solely responsible for reviewing, validating, and determining the appropriateness of any such outputs before relying on them for decision-making, compliance, or operational use.

TRFG makes no representation or warranty as to the accuracy, completeness, or suitability of automated or AI-generated outputs.

7. Liability, Indemnity and Insurance

7.1 Unlimited Liability

Nothing in this Agreement limits or excludes either party's liability for:

- a) death or personal injury caused by negligence;
- b) fraud or fraudulent misrepresentation;
- c) breach of confidentiality except to the extent expressly limited under clause 18.17;
- d) breach of Intellectual Property Rights; or
- e) any other liability that cannot be excluded or limited under applicable law.

7.2 Limitation of Liability

Subject to clause 7.1, the total aggregate liability of each party to the other for any and all claims arising out of or in connection with this Agreement, whether in contract, tort (including negligence), statute, or otherwise, is limited for each Contract Year to:

- a) in respect of all liabilities of each party arising in relation to clauses 10 and 18.17, 200% of the Subscription Fees paid by the Customer during that Contract Year; and
- b) In respect of any other liabilities of each party under the Agreement, the total Subscription Fees paid by the Customer during that Contract Year.

7.3 Exclusion of Consequential Loss

Subject to clause 7.1, neither party is liable under or in connection with this Agreement for any:

- a) loss of profits, revenue, or anticipated savings;
- b) loss of business, customers, contracts, opportunities, or goodwill;
- c) loss or corruption of data or software;
- d) inability to use hardware, software, or data;
- e) wasted management or staff time.
- f) or for any indirect, incidental, special, consequential, or punitive damages.

While TRFG performs routine backups of Customer Data within the Subscription Service environment, the Customer remains responsible for maintaining its own independent backups. TRFG is not liable for any loss, corruption, or unavailability of Customer Data unless such loss is directly caused by TRFG's material breach of this Agreement or gross negligence.

7.4 Proportionate Liability

Where a loss arises due to the acts or omissions of both parties (or their personnel), each party's liability is limited to the proportion of the loss fairly attributable to its own conduct.

7.5 Indemnity by TRFG

TRFG will indemnify, defend, and hold harmless the Customer from and against any third-party claim alleging that the Subscription Service infringes valid Intellectual Property Rights, provided that:

- a) the Customer promptly notifies TRFG in writing of the claim and makes no admission of liability;
- b) TRFG has sole control of the defence and settlement; and
- c) the Customer provides reasonable cooperation.

This indemnity does not apply to claims arising from:

- a) unauthorised modifications to the Subscription Service,
- b) use in combination with non-TRFG products, or
- c) use outside the scope of this Agreement.

7.6 Indemnity by the Customer

The Customer will indemnify, defend, and hold harmless TRFG (and its officers, employees, contractors, and agents) from any claim, loss, or liability arising from or in connection with:

- a) misuse or unauthorised use of the Subscription Service;
- b) breach of this Agreement (including warranties in clause 6) by the Customer or its Authorised Users;
- c) actual or alleged infringement of third-party Intellectual Property Rights arising from Customer Data, Customer Content, or third-party materials provided by the Customer; or
- d) third-party claims relating to the Customer's use of the Subscription Service, except where caused directly by TRFG's breach or negligence.

This clause survives termination or expiry of this Agreement.

7.7 Insurance

TRFG will, at its own expense, maintain the following insurance policies with a reputable insurer throughout the Term of this Agreement:

- a) Cyber Liability Insurance
- b) Information and Communication Technology (ICT) Liability Insurance
- c) Public Liability Insurance
- d) Business Insurance
- e) Management Liability Insurance

Evidence of current insurance coverage will be provided upon reasonable request. Maintaining these policies does not limit TRFG's obligations or liabilities under this Agreement.

7.8 Privacy Compliance and Mutual Indemnity

Each party must ensure that its personnel comply with applicable privacy laws, including the Privacy Act 1988 (Cth) and associated regulations. Each party indemnifies the other for any loss or liability arising from a breach of these obligations by its personnel. This clause survives termination of this Agreement.

8. Intellectual Property

8.1 Ownership

Each party retains ownership of its pre-existing Intellectual Property Rights. Nothing in this Agreement transfers ownership of Intellectual Property from one party to the other, except as expressly stated.

8.2 TRFG Intellectual Property

TRFG and its licensors retain all rights, title, and interest in and to the Subscription Service and all related Intellectual Property Rights, including:

- a) the Software and its underlying source code and architecture;
- b) all platform features, modules, and enhancements (including those developed or configured during the Term);
- c) user interfaces, documentation, training materials, and TRFG Content;
- d) system configurations, templates, and system-generated outputs; and
- e) all branding, trademarks, logos, and other proprietary marks (together, "TRFG IP").

Except as expressly permitted under this Agreement, the Customer must not copy, reproduce, modify, adapt, create derivative works from, distribute, transmit, or publicly display any part of the TRFG IP without TRFG's prior written consent.

8.3 Customer Intellectual Property

The Customer and its licensors retain all rights, title, and interest in and to:

- a) Customer Data;
- b) Customer Content; and
- c) any materials, documents, or third-party content provided to TRFG under this Agreement (together, "Customer IP").

The Customer grants TRFG a non-exclusive, royalty-free, worldwide licence to use, host, copy, transmit, and modify the Customer IP solely as required to provide the Services and perform TRFG's obligations under this Agreement.

The Customer warrants that it has the necessary rights and permissions to grant this licence and that TRFG's authorised use of the Customer IP will not infringe any third-party rights.

8.4 Feedback

TRFG may use any feedback, suggestions, or recommendations provided by the Customer or its Authorised Users to improve its products or services, without obligation, attribution, or restriction.

8.5 Aggregated and anonymised data

TRFG may collect, analyse, and use aggregated and anonymised data derived from Customer Data and the Customer's use of the Subscription Service for its business purposes, including to improve, test, and operate its services, and for industry analysis and benchmarking. Any such data must not identify the Customer, its Authorised Users, or any individual, and will not be considered Customer Data or Confidential Information.

9. Website Design and Hosting Services

9.1 Content Responsibility

The Customer is solely responsible for all content displayed or uploaded to the website, including but not limited to text, images, videos, files, and external links. TRFG accepts no liability for the accuracy, legality, or appropriateness of content displayed on the Customer's website.

9.2 Domain Name Registration and Fees

The Customer is responsible for the registration, renewal, and management of any domain names associated with their website, unless otherwise agreed in writing.

TRFG is not liable for any website outages or issues arising from domain name expiration, misconfiguration, or transfer delays.

9.3 Hosting and Uptime

Where TRFG provides website hosting, TRFG will use reasonable endeavours to maintain availability of the hosted environment. However, uninterrupted or error-free operation is not guaranteed.

TRFG is not responsible for any interruption, outage, delay, or performance degradation to the extent caused by factors outside TRFG's reasonable control, including internet service disruptions, third-party hosting infrastructure failures, domain name issues, or actions or omissions of the Customer or its users.

Except to the extent required by applicable law, TRFG is not liable for any loss of data, loss of access, or service interruption arising from website hosting, and any liability that cannot be excluded is subject to the limitations of liability set out in Section 7.

9.4 Customer Training and Handover

TRFG will provide access to training materials via the SwiftFox Academy to enable the Customer to manage and maintain their website independently. Upon completion of the website build and handover, the Customer assumes full responsibility for ongoing maintenance, content updates, and general upkeep of the website.

9.5 Third-Party Integrations and Tools

At the Customer's request, TRFG may implement third-party tools or services, such as payment gateways, form tools, or plug-ins. TRFG is not responsible for the availability, performance, or cost of third-party services, which may be subject to their own terms and pricing.

9.6 Intellectual Property

TRFG retains full ownership of all proprietary templates, components, frameworks, and code developed as part of its website platform offering.

This includes any new elements created during the course of the project, whether for a new website or enhancements to an existing one.

Any templates, frameworks, components, or code developed or enhanced by TRFG during the project may be reused, modified, or repurposed by TRFG for other Customers or projects.

The Customer is granted a non-exclusive, non-transferable licence to use the completed website for its operations. All content supplied by the Customer remains the Customer's intellectual property.

9.7 Security and Backups

The Customer is responsible for maintaining secure login credentials and user permissions for the website content management system.

9.8 Termination and Suspension

TRFG reserves the right to suspend hosting services or disable access to the website if fees remain unpaid or if the Customer breaches the terms of this Agreement.

TRFG will provide reasonable written notice and an opportunity for the Customer to remedy any such breach prior to suspension or termination.

9.9 Optional Ongoing Support

TRFG will provide ongoing website support as part of the standard website services offering. This includes reasonable troubleshooting, routine software updates, and assistance with minor content changes.

Support services do not include major redesigns, new development, or third-party integrations unless otherwise agreed in writing. Any work outside the standard support scope may be billed separately on a time and materials basis or included in a separate agreement.

9.10 Website Attribution and Branding

All websites or digital platforms developed by TRFG or built on the SwiftFox platform will display a visible SwiftFox credit in the footer, linking to <https://www.swiftfoxcrm.com>. This credit will be clear, unobstructed, and cannot be removed or altered without TRFG's prior written consent.

10. Data Protection and Privacy

10.1 Compliance

TRFG will comply with the Privacy Act 1988 (Cth), the Australian Privacy Principles (APPs), and all other applicable data protection and privacy laws in the collection, use, storage, and handling of personal information.

10.2 Data Breach Notification

TRFG will notify the Customer without undue delay and, in any event, within 72 hours of becoming aware of any data breach affecting Customer Data, consistent with the requirements of the Notifiable Data Breaches (NDB) scheme.

Such notification will be provided by email to the Customer's System Administrator or other nominated contact. TRFG will cooperate reasonably with the Customer to assist in any legal or regulatory reporting obligations relating to the breach.

10.3 Subprocessors

TRFG may engage third-party service providers and subprocessors to assist in delivering the Services, including for hosting, analytics, support, infrastructure, and other operational functions.

TRFG will ensure that all subprocessors are contractually bound to data protection, confidentiality, and security obligations that are no less protective than those imposed on TRFG under applicable privacy laws and this Agreement.

10.4 Data and Information Security Measures

TRFG is committed to maintaining robust information security practices, which include:

- Hosting all client data within Microsoft Azure data centres, with geo-redundant replication across primary and secondary regions;
- Encrypting data both in transit and at rest using industry-standard encryption protocols;
- Maintaining information security practices aligned with ISO 27001 standards, with annual reviews to ensure continuous improvement in managing information security risks;
- Conducting regular penetration testing and technical vulnerability assessments, promptly addressing any identified issues;
- Implementing role-based access controls to ensure only authorised personnel have access to sensitive information;
- Utilising advanced monitoring tools to detect and respond to suspicious activities in real time.

10.5 Customer Security Cooperation

The Customer must reasonably cooperate with TRFG in connection with any investigation, mitigation, or remediation of security incidents, including by promptly providing relevant information, access, and assistance where required.

To the extent permitted by law, TRFG will not be responsible for delays, increased impact, or additional costs arising from the Customer's failure to provide such cooperation.

11. Service Level Agreement (SLA)

The SwiftFox Service Level Agreement (SLA), published at <https://www.swiftfoxcrm.com/policies/service-level-agreement-for-swiftfox-crm>, forms part of this Agreement and is binding on both parties.

The SLA sets out the service availability targets and support response commitments applicable to the Subscription Service. Any service credits or remedies expressly specified in the SLA are the Customer's sole and exclusive remedies for failure to meet the SLA, subject to the limitations and exclusions of liability set out in this Agreement.

12. Acceptable Use Policy

The SwiftFox Acceptable Use Policy, published at <https://www.swiftfoxcrm.com/policies/acceptable-use-policy>, forms part of this Agreement and is binding on all Authorised Users.

The Acceptable Use Policy sets out permitted and prohibited uses of the Subscription Service. The Customer is responsible for ensuring that all Authorised Users comply with the Acceptable Use Policy, and any breach by an Authorised User is deemed to be a breach by the Customer.

Without limiting any other rights under this Agreement, TRFG may suspend the access of any Authorised User who breaches the Acceptable Use Policy. Where reasonably practicable, TRFG will provide notice of the suspension and will reinstate access once the breach has been remedied or addressed to TRFG's reasonable satisfaction.

13. Professional Conduct and Mutual Non-Disparagement

Each party must act in a professional manner and in good faith in connection with this Agreement, including maintaining timely and constructive communication, cooperating reasonably, and working together in good faith to resolve issues without undue delay.

Each party must ensure that its personnel, including employees, contractors, and representatives, treat the other party's personnel with courtesy, respect, and professionalism at all times. Harassment, threatening behaviour, or persistent unreasonable conduct towards personnel may constitute a material breach of this Agreement.

Subject to the carve-outs below, neither party may make, authorise, or encourage any public statement, review, publication, or communication relating to this Agreement or the other party that it knows, or reasonably ought to know, is false, misleading, incomplete, or presented in a manner that is reasonably likely to cause material reputational harm.

Each party agrees that any concerns, complaints, or disputes relating to the performance of this Agreement should be raised privately and in good faith, and that the other party must be given a reasonable opportunity to investigate and respond before any public communication is made.

If a party becomes aware of any public statement, review, or publication relating to this Agreement or the other party that breaches this clause 13, the other party may request in writing that the statement be corrected, clarified, or removed. The party responsible for the statement must, within a reasonable time and acting in good faith, cooperate with that request, including by taking reasonable steps to amend, correct, or remove the statement from the relevant platform where it is reasonably able to do so.

Nothing in this clause restricts or prevents either party from:

- a) making truthful statements required by law, regulation, or a competent regulatory authority;
- b) making statements in connection with formal legal proceedings, arbitration, or dispute resolution processes;
- c) providing accurate and non-misleading information to professional advisers, insurers, or regulators; or
- d) expressing fair, honest, and non-misleading opinions based on actual experience, provided such statements are not made for the primary purpose of causing reputational harm.

This clause survives termination or expiry of this Agreement.

14. Customer Responsibilities

14.1 Data Accuracy, Completeness and Provision

The Customer must ensure that all data, content, documentation, and information provided to TRFG is complete, accurate, and supplied in a timely manner. TRFG is entitled to rely on the accuracy of all information provided by the Customer. Any delays, defects, or rework arising from incomplete or inaccurate information are the responsibility of the Customer.

14.2 Authorised Users

The Customer is responsible for managing Authorised Users, including:

- a) granting and revoking access as required;
- b) ensuring all Authorised Users undertake appropriate training before accessing the Subscription Service;
- c) ensuring compliance with this Agreement and all TRFG policies.

The Customer is responsible for all actions taken by its Authorised Users.

14.3 Security Obligations

The Customer must:

- a) maintain the security of its devices, networks, and login credentials;
- b) implement reasonable internal safeguards to protect access to the Subscription Service;
- c) immediately notify TRFG of any suspected or actual security breach, unauthorised access, credential compromise, or misuse of the Subscription Service.

14.4 Third-Party Systems and Integrations

Where the Customer connects any third-party system, service, or integration, the Customer is responsible for ensuring that such systems are properly configured, maintained, and supported.

TRFG is not liable for performance issues, data discrepancies, failures, or delays caused by third-party systems outside TRFG's control or outside the scope of the Order Form.

14.5 Compliance and Lawful Use

The Customer must comply with all applicable laws, regulations, and industry obligations in its use of the Subscription Service.

The Customer must not:

- a) use the Subscription Service for unlawful purposes;
- b) interfere with TRFG's systems or other customers' use of the Subscription Service; or
- c) attempt to access any Service or data other than that which it is authorised to access.

14.6 Confirming Requirements, Platform Scope, Purpose of Agreement and Non-Reliance

The Customer acknowledges, confirms, and agrees that:

- a) **Standard Platform:** TRFG provides a commercially available standard platform and not a bespoke, custom-built, or tailored solution. The functionality delivered is limited to the standard features of the Subscription Service and the Professional Services expressly documented in the Order Form.
- b) **Customer Responsibility for Fit:** The Customer is solely responsible for determining that the Subscription Service and Professional Services meet its operational, business, functional, technical, regulatory, and strategic requirements before entering into this Agreement.
- c) **Scope Limitations:** No feature, workflow, integration, benefit, outcome, business process, efficiency gain, or organisational change is included unless expressly described in the Order Form or this Agreement. Undocumented assumptions, expectations, desired outcomes, or understandings do not form part of the agreed scope.

- d) **Non-Reliance:** The Customer has not relied on any representation, example, demonstration, workflow illustration, roadmap discussion, verbal statement, marketing material, email, or other communication not expressly incorporated into the Order Form as a binding commitment.
- e) **Dissatisfaction:** Dissatisfaction with any feature, workflow, design choice, limitation of the standard platform, optional module, or the commercially available functionality of the Subscription Service does not constitute:
 - i. a breach by TRFG;
 - ii. a failure of purpose;
 - iii. grounds to terminate, delay, suspend, or refuse payment; or
 - iv. evidence that the Subscription Service is “unfit for purpose” where such purpose was not expressly agreed in writing.
- f) **Change of Mind:** A change of mind by the Customer, including (without limitation) a change in business priorities, strategic direction, internal processes, preferred workflows, technology stack, staffing, governance requirements, or intended use of the Subscription Service, does not alter the Customer’s obligations under this Agreement.
- g) **Purpose of Agreement:** The Customer must not assert, after signing, any new or implied “purpose” of the Agreement that was not explicitly documented. For clarity: a later assertion that “the Customer entered into this Agreement in order to achieve [X] purpose” does not give rise to any right to cancel or modify the Agreement unless that purpose is expressly set out in the Order Form.
- h) **Explicit Purpose Statement:** The purpose of this Agreement is solely to provide the Customer with access to the Subscription Service (as defined in the Definitions) and any Professional Services expressly set out in the Order Form.
- i) **Internal Adoption & Organisational Factors:** The Customer acknowledges that dissatisfaction with internal adoption, governance, change-management outcomes, staff readiness, training effort, or internal organisational processes does not constitute a failure by TRFG and does not entitle the Customer to refuse payment, delay the project, or terminate the Agreement.
- j) **Reliance Limited to Agreement:** The Customer enters into this Agreement in reliance only on the express terms contained in this Agreement and the Order Form, and not on any other statement or representation.

14.7 Change Management, Internal Readiness and Governance

The Customer acknowledges that adoption and implementation of the Subscription Service will likely require internal change management, process design, data preparation, and staff training.

Unless expressly agreed in an Order Form, the Customer remains solely responsible for:

- a) managing its internal change processes;
- b) coordinating resources and stakeholders;
- c) ensuring timely approvals and decisions; and
- d) ensuring that internal readiness does not delay TRFG’s delivery schedule.

Any delays caused by the Customer do not relieve it of its obligations under this Agreement.

14.8 Participation in Professional Services Delivery

The Customer must participate actively in the delivery of Professional Services, including:

- a) attending scheduled implementation meetings;
- b) providing required information, data, and requested feedback within reasonable timeframes;
- c) ensuring key personnel are available and prepared; and
- d) avoiding delays or postponements except in exceptional circumstances. Delays caused by the Customer may impact the delivery timeline, but do not affect any payment obligations.

14.9 Non-Repudiation, Continuous Engagement and Anti-Abandonment

- a) The Customer acknowledges that this Agreement contemplates active and ongoing engagement by the Customer throughout the Term, including timely communication, decision-making, approvals, payment, and cooperation.

- b) Without limiting any other rights or remedies available to TRFG, the Customer's conduct will constitute Repudiation of this Agreement where the Customer, whether by act or omission and in a manner that materially impacts TRFG's ability to perform the Services:
 - (i) fails to pay any undisputed Fees when due in accordance with this Agreement or an applicable Order Form, and such failure continues for more than fourteen (14) days after written notice from TRFG;
 - (ii) repeatedly fails to provide approvals, feedback, information, data, or decisions required for TRFG to perform its obligations within reasonable or agreed timeframes, after written notice requesting such cooperation;
 - (iii) materially obstructs, delays, or prevents implementation, configuration, delivery, or completion of the Subscription Service or Professional Services;
 - (iv) disengages from the project or ceases meaningful participation for a sustained period of thirty (30) days or more after written notice from TRFG seeking confirmation of continuation;
 - (v) purports to suspend, pause, abandon, or "reset" the project other than as expressly permitted under this Agreement; or
 - (vi) asserts an intention, whether expressly or by conduct, not to be bound by this Agreement or not to perform its material obligations.
- c) For the avoidance of doubt, Repudiation may arise without the Customer expressly stating an intention to terminate this Agreement and may be inferred from a pattern of material conduct, delay, non-responsiveness, or non-payment.
- d) If TRFG reasonably determines that the Customer has repudiated this Agreement, TRFG may, without limiting any other rights or remedies available at law or under this Agreement:
 - (i) suspend the Subscription Service and/or Professional Services;
 - (ii) accelerate all Fees payable for the remainder of the then-current Term and any committed Professional Services in accordance with Section 5;
 - (iii) invoice immediately for all work performed, resources allocated, and commitments made;
 - (iv) treat any affected deliverables, milestones, or phases as commercially complete for invoicing purposes where TRFG has been prevented from completing them due to the Customer's conduct; and
 - (v) pursue recovery of all amounts due as a debt.
- e) The parties acknowledge that the remedies available under this clause reflect a reasonable allocation of risk and protection of TRFG's legitimate commercial interests in reliance on the agreed Term, resource allocation, and pricing structure. TRFG will take reasonable steps to mitigate its losses where commercially practicable, and any direct cost savings achieved will be credited against recoverable amounts.
- f) The exercise of any right under this clause 14.9 does not require TRFG to terminate this Agreement and does not waive TRFG's right to rely on Section 19 (Dispute Resolution) or Section 2 (Term and Termination).
- g) The Customer may not rely on its own Repudiation, non-engagement, or failure to perform as a basis to assert a Dispute, withhold payment of undisputed amounts, delay acceptance, or seek termination of this Agreement.

14.10 No Reliance on Other Customers

The Customer acknowledges that the Subscription Service is provided to multiple customers and that implementations, configurations, features, workflows, or outcomes achieved by other customers are not indicative of, and do not create any entitlement to, similar functionality or outcomes for the Customer.

15. Suggestions

We encourage all customers to provide feedback, suggestions, and ideas to improve the Subscription Service or Consulting Services.

The Customer agrees that all such comments and suggestions are non-confidential and that TRFG own all rights to use, modify, and incorporate them into the Subscription Service or Consulting Services without any payment or attribution to the Customer.

16. Audit and Compliance

16.1 Audit Rights

TRFG reserves the right to audit the Customer's use of the Services to verify compliance with the terms of this Agreement, including (but not limited to) licensing restrictions, usage limits, and Authorised User entitlements.

Audits must be conducted in a manner that minimises disruption to the Customer's business and preserves confidentiality.

16.2 Customer Obligations During Audit

The Customer must, upon request, certify its compliance with this Agreement, including confirming that the number of Authorised Users has not been exceeded. TRFG may, on reasonable notice and during normal business hours, conduct audits to verify such compliance. The Customer agrees to cooperate with any audit by providing timely access to relevant systems, records, and personnel. If an audit is conducted on-site, it will take place in the presence of a designated representative of the Customer.

16.3 Audit Scheduling

If the proposed audit date or time is not suitable, the Customer may suggest an alternative, provided it is no more than two (2) Business Days from the original date proposed by TRFG.

16.4 Audit Costs and Breach Consequences

If an audit reveals that the Customer has exceeded the permitted usage or is otherwise in breach of this Agreement, the Customer agrees to promptly pay any applicable additional fees. If the breach exceeds five percent (5%) of the permitted usage, the Customer shall also reimburse TRFG for the reasonable costs incurred in conducting the audit.

17. Subcontracting

17.1 Use of Subcontractors

TRFG may engage subcontractors to perform certain aspects of the Services.

TRFG shall remain responsible for the acts and omissions of its subcontractors as if they were its own employees.

18. General Terms

18.1 Order of Precedence

In the event of any inconsistency or conflict between the documents forming this Agreement, the following order of precedence applies to the extent of the inconsistency:

- a) the applicable Order Form, but only to the extent that it contains clearly identified Special Conditions expressly stated to modify this Master Services Agreement;
- b) any jurisdiction-specific annexures to this Master Services Agreement;
- c) this Master Services Agreement
- d) any other schedules or annexures to this Agreement (excluding jurisdiction-specific schedules or annexures); and
- e) any policies, supporting documentation, or other materials referenced by this Agreement.

For the avoidance of doubt:

- a) this Master Services Agreement may be modified only by special conditions in an Order Form that are clearly labelled, expressly intended by both parties to vary this Master Services Agreement, and signed by authorised representatives of both parties;

- b) an Order Form, Statement of Work, Change Order, proposal, or similar document does not vary or override this Master Services Agreement by implication, inference, course of dealing, or reference, and does not modify this Master Services Agreement unless it satisfies clause 18.1(i); and
- c) except as permitted under clause 18.1(i), no Order Form, Statement of Work, or Change Order may override or modify provisions relating to termination, dispute resolution, repudiation, liability, governing law, or other foundational provisions of this Master Services Agreement.

18.2 Governing Law and Jurisdiction

This Agreement is governed by the laws of Victoria, Australia. The parties submit to the exclusive jurisdiction of the courts of Victoria, Australia.

18.3 Assignment

Neither party may assign this Agreement without prior written consent, except in connection with a merger, acquisition or sale of substantially all assets.

18.4 Force Majeure

Neither party will be liable for any delay or failure to perform its obligations under this Agreement (other than payment obligations) to the extent that such delay or failure is directly caused by events beyond its reasonable control (a Force Majeure Event), including natural disasters, pandemics or epidemics that result in binding government restrictions or prohibitions directly preventing performance, acts of war or terrorism, civil unrest, government orders, or failures of utilities or telecommunications networks.

The party seeking to rely on a Force Majeure Event must:

- a) promptly notify the other party in writing, describing the nature of the Force Majeure Event, the specific obligations affected, and how the Force Majeure Event directly prevents performance of those obligations;
- b) provide reasonable evidence, upon request, demonstrating the direct causal connection between the Force Majeure Event and the inability to perform the affected obligations;
- c) use reasonable efforts to mitigate the effects of the Force Majeure Event, including implementing any reasonable alternative means of performance that would allow the affected obligations to be performed, in whole or in part, where available; and
- d) resume performance as soon as reasonably practicable once the Force Majeure Event ceases to prevent performance.

For the avoidance of doubt:

- (i) Force Majeure Events are to be construed narrowly and apply only where the Force Majeure Event directly, materially, and unavoidably prevents performance of the affected obligations;
- (ii) the existence of a Force Majeure Event alone is insufficient — the affected party must demonstrate a direct causal link between the Force Majeure Event and its inability to perform the specific obligations affected;
- (iii) Force Majeure Events do not include general economic conditions, market disruption, reduced demand, changes in business priorities, internal resourcing decisions, staffing shortages not directly caused by the Force Majeure Event, or the mere inconvenience or increased cost of performance; and
- (iv) a Force Majeure Event does not excuse or suspend the Customer's obligation to pay Fees accrued prior to the Force Majeure Event, or Subscription Fees during any period in which the Subscription Service remains available and accessible to the Customer.

TRFG may suspend only the affected Services during a Force Majeure Event in accordance with Section 5, and any such suspension will not constitute a breach of this Agreement.

If a Force Majeure Event continues for more than ninety (90) consecutive days and materially and continuously prevents performance of this Agreement despite ongoing compliance with the mitigation obligations above, the parties must consult in good faith to agree an appropriate course of action, which may include suspension, modification, or termination of this Agreement by mutual written agreement.

Either party may terminate this Agreement by written notice only if:

- a) the Force Majeure Event has continued for more than one hundred and eighty (180) consecutive days;
- b) the Force Majeure Event has directly, materially, and continuously prevented performance of the affected obligations throughout that period;
- c) all reasonable mitigation and alternative means of performance have been exhausted; and
- d) the Subscription Service has not remained available and accessible to the Customer during that period.

Any termination under this clause 18.4 does not affect Fees accrued prior to termination and does not affect any rights or remedies accrued prior to the effective date of termination.

18.5 Notices

A notice under this Agreement must be in writing and may be given by email, prepaid post, or courier to the address or email address specified in the most recent Order Form (or any updated details notified in writing in accordance with this clause).

A notice is deemed received:

- a) if sent by email, on the earlier of:
 - i. the recipient confirming receipt in writing; or
 - ii. the next Business Day after transmission, provided that the sender does not receive an automated bounce-back or error notification indicating non-delivery;
- b) if sent by prepaid post, two Business Days after posting; and
- c) if delivered by courier, at the time the courier records delivery at the recipient's address.

A notice received outside Business Hours is deemed received at the commencement of the next Business Day.

18.6 Updates to the Master Services Agreement and Policies

- a) TRFG may update this Master Services Agreement and any policies, schedules, annexes, or other documents incorporated by reference (including the Acceptable Use Policy and any Service Level Agreement) from time to time, including during a current Term, to reflect legal or regulatory requirements or to accommodate updates to TRFG's products and services.
- b) Updated versions of the Master Services Agreement will be published at:
<https://www.swiftfoxcrm.com/policies/master-services-agreement>
- c) Updated versions of any policies or other incorporated documents will be published at their respective URLs and/or notified to the Customer in writing in accordance with clause 18.5.
- d) Unless a different effective date is specified by TRFG in the notice or publication, an update takes effect fourteen (14) days after publication or notice (as applicable) (Update Effective Date). Subject to clauses 18.6(e) to 18.6(h), an update may apply during a current Term, including where it affects the Customer's rights or obligations.
- e) Where an update is required by law, regulation, or a regulator, or is reasonably necessary to address security, privacy, data protection, fraud prevention, platform integrity, or protection of TRFG's intellectual property, the update will take effect on the Update Effective Date and the Customer has no right to object under clause 18.6(f).
- f) If the Customer reasonably believes that an update (other than an update described in clause 18.6(e)) materially and adversely affects its rights or obligations under this Agreement, taken as a whole (Materially Adverse Change), the Customer may notify TRFG in writing within fourteen (14) days after the Update Effective Date, setting out reasonable details of the basis for the objection (Objection Notice).
- g) If the Customer gives a valid Objection Notice:
 - i. the parties will engage in good faith discussions to seek to resolve the objection; and
 - ii. unless and until the objection is resolved, the version of this Agreement in effect immediately prior to the Update Effective Date will continue to apply between the parties for the remainder of the then-current Term only.
- h) If the parties are unable to resolve the objection, either party may terminate this Agreement effective at the end of the then-current Term by written notice.

- i) Continued use of the Subscription Service after the Update Effective Date constitutes acceptance of the updated Agreement, except to the extent the Customer has given a valid Objection Notice in accordance with clause 18.6(f).
- j) For clarity, this clause does not permit TRFG to unilaterally amend any Order Form.

18.7 Entire Agreement

This Agreement, together with all executed Order Forms and any TRFG policies expressly referenced within it, including the Acceptable Use Policy and the Service Level Agreement, constitutes the complete and exclusive agreement between the parties. It overrides any prior discussions, proposals, understandings, or communications, whether written or oral. Each party acknowledges that in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

No other documents, terms, or representations form part of this Agreement unless specifically included by a written amendment signed by both parties.

TRFG may provide the Customer with additional materials, such as user guides, presentations, or product descriptions, to support the Customer's understanding of the Subscription Service or related offerings. These materials are provided for information only and do not form part of this Agreement or create any binding obligations.

18.8 Severability

If any part of this Agreement is found invalid, the remainder will continue in full force, and the invalid provision will be replaced with one of similar intent.

18.9 Electronic Execution

TRFG may, at its discretion, offer the Customer the ability to execute Order Forms electronically through an authorised e-signature platform or online self-service process. Completion of an Order Form by electronic means will constitute binding acceptance of both the Order Form and this Master Services Agreement.

Alternatively, the Customer may choose to print, sign, and return the Order Form manually. Where a printed Order Form is used, the Customer must return the signed document to the TRFG representative who issued or signed the Order Form. A scanned copy sent by email will be sufficient for execution.

18.10 Publicity

The Customer grants TRFG a non-exclusive, royalty-free, worldwide licence to identify the Customer as a client of TRFG and to use the Customer's name and logo for the purpose of marketing, promotional, and reference activities, including on TRFG's website, in proposals, presentations, case studies, and other marketing materials.

TRFG will use the Customer's name and logo in a professional manner and in accordance with any brand guidelines provided by the Customer in writing.

The Customer may withdraw its consent to such use by providing written notice to TRFG. Upon receipt of such notice, TRFG will cease using the Customer's name and logo in new marketing materials within a reasonable period.

For clarity, this clause does not require TRFG to amend or remove historical materials created prior to receipt of the withdrawal notice.

18.11 Waiver

A failure or delay by either party to exercise any right, power, or remedy under this Agreement does not operate as a waiver of that right, power, or remedy.

A waiver is effective only if it is in writing and signed by the party granting the waiver. A waiver of any breach does not constitute a waiver of any subsequent breach.

18.12 Relationship of the Parties

The parties are independent contractors. Nothing in this Agreement creates a partnership, joint venture, fiduciary relationship, agency, or employment relationship between the parties.

Neither party has authority to bind the other or to represent that it has such authority.

18.13 Further Assurance

Each party must, at its own cost, do all things and execute all documents reasonably necessary to give full effect to this Agreement and the transactions contemplated by it.

18.14 Counterparts and Execution

This Agreement and any Order Form may be executed in any number of counterparts, each of which is an original, but all of which together constitute one instrument.

Execution and delivery of this Agreement or an Order Form by electronic means (including electronic signature platforms and scanned copies) is effective and binding.

18.15 Third Party Rights

Except as expressly provided in this Agreement, this Agreement does not create any rights enforceable by any person or entity that is not a party to it.

The parties do not intend that any term of this Agreement be enforceable by any third party, including under any applicable third party rights legislation.

18.16 Cumulative Rights

The rights, powers, and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights, powers, or remedies provided by law.

18.17 Confidentiality (Mutual Non-Disclosure Agreement)

Each party must keep confidential all Confidential Information of the other party and must not, without the prior written consent of the other party, disclose or use that Confidential Information except as permitted under this Agreement. Confidential Information may be used solely for the purposes of performing obligations or exercising rights under this Agreement.

A party may disclose Confidential Information only to its employees, officers, contractors, professional advisers, insurers, auditors, or related bodies corporate who have a legitimate need to know the information for the purposes of this Agreement and who are bound by confidentiality obligations no less protective than those set out in this Agreement.

A party may also disclose Confidential Information to the extent required by law, regulation, court order, or a regulatory authority, provided that (to the extent legally permitted) the receiving party gives the other party prompt written notice of the required disclosure and cooperates with any reasonable efforts to limit or challenge the disclosure.

Confidential Information does not include information that is or becomes publicly available other than as a result of a breach of this Agreement, that is lawfully received by the receiving party from a third party without restriction on disclosure, or that is independently developed by the receiving party without reference to or use of the Confidential Information.

Each party must protect the other party's Confidential Information using at least the same degree of care as it uses to protect its own confidential information of a similar nature, and in any event no less than reasonable care.

Upon termination or expiry of this Agreement, or upon written request, each party must promptly return or securely destroy all Confidential Information of the other party in its possession or control, including all copies, extracts, summaries, notes, and records in any form, except to the extent that retention is required by law or for legitimate internal compliance, audit, or record-keeping purposes.

Nothing in this Agreement grants either party any licence, right, or ownership interest in respect of the other party's Confidential Information, except to the extent expressly required to perform this Agreement.

The obligations in this clause 18.17 survive termination or expiry of this Agreement for five (5) years, except for Confidential Information that constitutes trade secrets, which must be kept confidential for so long as it remains a trade secret under applicable law.

Nothing in this clause 18.17 limits either party's right to seek injunctive or other equitable relief in relation to a breach of confidentiality, provided that any monetary liability arising from such breach remains subject to the limitations and exclusions of liability set out in this Agreement.

18.18 Commercial Reasonableness and Allocation of Risk

The parties acknowledge and agree that the payment, acceleration, suspension, recovery, and continuity mechanisms set out in this Agreement, together with the allocation of risk, responsibility, and remedies between the parties, are a genuine and reasonable reflection of the commercial bargain between the parties, are commercially reasonable in light of the nature of the Subscription Service and Professional Services, and are not intended to operate as a penalty.

Each party acknowledges that it has had the opportunity to obtain independent legal advice in relation to this Agreement and that the Agreement has been entered into freely, with a clear understanding of the rights, obligations, risks, and remedies allocated under it.

18.19 Continuity of Obligations

Each party may restructure, reorganise, merge, demerge, change ownership or control, or otherwise vary its corporate structure, internal arrangements, or manner of operation from time to time.

Any such change by a party does not, of itself, affect the validity or enforceability of this Agreement, nor relieve that party of any obligation to perform in accordance with this Agreement.

Without limiting the foregoing:

- a) any restructuring, novation, internal reorganisation, change in usage patterns, deployment model, or operational arrangements by the Customer does not reduce, avoid, or otherwise affect the Fees payable under this Agreement, which remain determined by reference to the pricing basis expressly set out in the applicable Order Form, unless expressly agreed in writing by TRFG; and
- b) any restructuring, change of control, internal reorganisation, outsourcing, or operational change by TRFG does not relieve TRFG of its obligations to provide the Subscription Service and any Professional Services in accordance with this Agreement.

This clause does not limit either party's rights to assign or novate this Agreement where, and to the extent, expressly permitted under this Agreement.

18.20 Change of Control

For the purposes of this Agreement, Change of Control means, in relation to a party, any event or series of related events as a result of which a person or entity that did not previously control that party acquires control of that party, where control means the direct or indirect ownership of more than fifty per cent (50%) of the voting power or issued share capital of that party, or the ability to direct the management and policies of that party.

Each party must notify the other in writing of any Change of Control that it reasonably believes may materially affect its performance of, or ability to comply with, this Agreement.

A Change of Control does not, of itself:

- a) constitute a breach of this Agreement;
- b) give rise to any right of termination, suspension, or variation of this Agreement; or
- c) relieve either party of its obligations under this Agreement.

Following a Change of Control, this Agreement continues in full force and effect and remains binding on the relevant party and, where applicable, its permitted successors and assigns, subject to any express assignment or novation provisions set out in this Agreement.

Nothing in this clause limits either party's rights or obligations under this Agreement in respect of confidentiality, data protection, information security, or compliance with applicable laws following a Change of Control.

19. Dispute Resolution

19.1 Purpose and Application

This Section 19 sets out the exclusive process for resolving any dispute, controversy, or claim arising out of or in connection with this Agreement or any Order Form (a Dispute).

The purpose of this Section 19 is to ensure that Disputes are clearly identified, addressed promptly, and resolved in good faith, with a primary focus on remediation and continuity of performance wherever reasonably practicable.

Compliance with this Section 19 is a condition precedent to:

- a) termination of this Agreement for alleged breach (except insolvency); and
- b) commencement of court proceedings or other formal action, except as permitted under clause 19.10.

During the resolution of a Dispute, each party must continue to perform its obligations under this Agreement in accordance with clause 19.8, unless performance is expressly suspended or excused under this Agreement.

19.2 Good Faith Engagement Outside Formal Disputes

The parties acknowledge that not all issues, concerns, or questions constitute Disputes.

Where a party raises an operational issue, service concern, dependency issue, or other matter that does not involve an alleged failure to perform an express contractual obligation, the parties must engage with each other in good faith and in a timely and constructive manner with a view to addressing the matter appropriately.

Engagement under this clause does not, of itself, give rise to any termination right, suspend any obligation, or alter the operation of this Agreement.

19.3 What Constitutes a Dispute

A Dispute arises only where one party alleges that the other has failed to perform a specific, express obligation set out in this Agreement or an applicable Order Form.

Alleged expectations, assumptions or statements made by either party do not constitute binding obligations unless expressly documented in this Agreement or an applicable Order Form.

19.4 Dispute Notice

A party may raise a Dispute only by issuing a written notice (a Dispute Notice) that:

- a) clearly identifies the clause(s) alleged to have been breached;
- b) describes the factual basis of the alleged breach in reasonable detail; and
- c) outlines the material impact of the alleged breach.

A Dispute Notice must be issued in good faith and relate to a genuine alleged failure to comply with an express obligation.

Correspondence or complaints that are not clearly identified as a Dispute Notice do not initiate the formal dispute-resolution process under this Section 19.

19.5 Initial Response and Cure Period

Upon receipt of a valid Dispute Notice:

- a) the receiving party must acknowledge it within five (5) Business Days;
- b) the receiving party will have thirty (30) days (or such longer period as is reasonable having regard to the nature of the issue) to investigate and, where applicable, remedy or otherwise resolve the alleged breach (the Cure Period); and
- c) the parties must meet during the Cure Period to discuss the Dispute and attempt resolution.

The Cure Period is extended by any delay caused by the other party's failure to provide reasonably required cooperation, access, or information.

19.6 Escalation

If the Dispute is not resolved during the Cure Period:

- a) senior operational representatives of each party must meet within ten (10) Business Days and attempt in good faith to resolve the Dispute; and
- b) if still unresolved, the Dispute must be escalated to senior executives (director, CEO, COO, or equivalent) of each party, who must meet within a further ten (10) Business Days and attempt resolution in good faith.

19.7 Mediation

If the Dispute is not resolved through executive escalation, either party may refer the Dispute to non-binding mediation administered in accordance with the ACICA Mediation Rules.

The mediator will be agreed between the parties or, failing agreement within five (5) Business Days, appointed by ACICA.

Mediation will take place in Melbourne, Victoria, unless the parties agree otherwise.

Each party will bear its own costs of mediation and the mediator's fees will be shared equally.

19.8 Continuity and Payment During Dispute

Unless otherwise agreed in writing:

- a) the Customer must continue to pay all undisputed Fees;
- b) TRFG must continue to provide the Subscription Service and any Professional Services not directly affected by the Dispute; and
- c) neither party may withhold, set off, suspend, or delay performance solely because a Dispute exists.

For clarity, the existence of a Dispute does not prevent TRFG from exercising its rights in relation to non-payment of undisputed Fees.

19.9 Litigation

If the Dispute is not resolved within twenty (20) Business Days after mediation is initiated, either party may commence proceedings in the courts specified in this Agreement.

19.10 Urgent Relief

Nothing in this Agreement prevents either party from seeking urgent interlocutory or injunctive relief where reasonably necessary to protect its rights.

19.11 Confidentiality

All negotiations and mediation discussions conducted pursuant to this Section 19 are confidential and without prejudice, except as required by law.

