



General Terms and Conditions for New Zealand

The terms and conditions set forth below shall govern the accompanying purchase order ("Purchase Order") issued by Iron Mountain New Zealand Limited ("IM") to the Vendor or Supplier identified thereon ("Vendor") unless there exists a separate signed written agreement between IM and the Vendor (collectively, the "Parties") that specifies that it governs IM's procurement of the Goods or Services ordered from Vendor.

- 1. Acceptance.** The agreement by Vendor to furnish the Goods and/or Services (as defined below) hereby ordered, or its furnishing such Goods and/or Services, in whole or in part, shall constitute acceptance by Vendor of these General Terms and Conditions. By accepting IM's Purchase Order, Vendor acknowledges receipt of and agrees to comply with these General Terms and Conditions. IM shall not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Vendor inconsistent with or in addition to the terms and conditions set forth herein, including as part of any quotation, proposal or invoice shall be void and of no effect unless specifically agreed to by IM in writing. These General Terms and Conditions, together with a Purchase Order and any statement of work ("SOW") applicable to Goods and/or Services, any modifications accepted in writing by IM and data relating to price and delivery shall constitute the entire agreement between the Parties (collectively this "Agreement").
- 2. General.** Vendor shall provide the Goods and/or Services in accordance with specifications, delivery dates and prices set forth in this Agreement. IM shall pay Vendor the fees and charges specified in accordance with the terms stated in this Agreement.
- 3. Taxes and Other Charges.** All applicable goods and sales taxes and other applicable charges such as duties, customs, tariffs, imposts and government-imposed surcharges shall be stated separately on Vendor's invoice, and IM agrees to reimburse Vendor for all such applicable taxes or other charges occasioned by the purchase of the Goods or the delivery of Services by Vendor provided that all charges are accurately stated on the Vendor's invoice.
- 4. Title and Risk of Loss.** Vendor shall bear the risk of loss of Goods until they have been delivered (and, if required in writing by IM, until assembly of such Goods at IM's stated facility) and accepted by IM.
- 5. Shipping.** The price set forth by IM in its Purchase Order or SOW includes all shipping, handling and transportation costs to deliver the Goods to the designated IM location (estimated if so indicated) and the cost of installing the Goods in IM's facility (if so specified) at the indicated location. Goods will be deemed delivered to IM when assembled in accordance with specifications and

accepted by IM.

- 6. Inspection.** Notwithstanding any prior inspection or test, Goods are subject to final inspection, test, and acceptance by IM at the destination specified by IM. If the Goods are of a type that require performance testing, IM shall perform such testing promptly after the Goods have been delivered and, if applicable, following Vendor's installation. IM shall promptly notify Vendor in writing if the Goods do not meet performance specifications, and Vendor shall promptly perform corrective action to cause the Goods to meet such specifications or promptly replace the Goods with conforming Goods, at no additional cost to IM. IM permitting Vendor to perform installation shall not constitute acceptance.
- 7. Warranties.**
 - (a) Vendor represents and warrants that, upon acceptance, the Goods:
 - (i) are of new or merchantable quality of good material and workmanship and free from defects;
 - (ii) are free of encumbrances, liens, mortgages, security interests and third party interests with free and clear title;
 - (iii) are fit for purpose and conform to all applicable laws and regulations, New Zealand Safety Standards and comply with applicable Workplace Health and Safety legislation;
 - (iv) will conform with all performance specifications established by IM and set forth in Vendor's product literature for the Goods, and such Goods have been designed and manufactured so as to conform to the specifications;
 - (v) or IM's use of them, will not violate any copyright, patent, trade mark, trade secrets or other proprietary right of any third party and
 - (vi) otherwise comply with the provisions of the *Consumer Guarantees Act 1993*. On making a delivery the Vendor must give IM any product warranty and operating or maintenance instructions usual for that kind of goods.
 - (b) Vendor represents and warrants that the Services:
 - (i) are fit for purpose;
 - (ii) are provided with due care and skill and to a standard expected of a leader in its' industry;
 - (iii) comply with applicable Workplace Health and Safety legislation;
 - (iv) will be performed in compliance with any of IM's policies and procedures as they relate to the performance of the Services;
 - (v) conform with applicable laws and regulations, including any privacy laws, best industry standards and codes of practice published by Standards New Zealand and otherwise comply with the provisions of the *Consumer Guarantees Act 1993*.
 - (c) The Vendor and each of its subcontractors and their respective workers engaged in providing the Services or

furnishing the Goods must hold current government licenses, permits and other certifications or trade qualifications required to perform the Services or furnish the Goods. IM may at any time require evidence of such licenses, certifications and/or qualifications.

- (d) If the Goods or Services include software, with respect to such software, Vendor represents and warrants that:
- (i) the software will be free of defects in materials and workmanship,
 - (ii) the software will materially conform to Vendor's then-current documentation for such software, and
 - (iii) the software does not contain any Harmful Code. In the event the software does contain any such third party technology, Vendor warrants that:
 - A. Vendor has the right to use all such third party technology in the manner necessary to fulfill its obligations under this Agreement,
 - B. Vendor has the right to grant IM use of such third party technology under this Agreement,
 - C. Vendor is in compliance with all restrictions and requirements associated with such third party technology, and
 - D. IM's use of such third party technology pursuant to this Agreement will not restrict, alter or otherwise encumber IM's rights or interests in any technology or intellectual property owned or independently licensed by IM.
- (e) The warranty period for the Goods and Services shall be one year from the date of inspection and acceptance of the Goods or Services by IM.
- (f) In the event of the breach of the foregoing warranties during the warranty period, Vendor shall, at IM's election and at no cost to IM, promptly repair, replace, modify or re-perform the Goods or Services so as to correct such warranty breach. Any Goods or Services repaired, replaced, modified, made good or re-performed, will be subject to the same warranty conditions as the original Goods or Services and the relevant warranty period shall commence from the date the Goods or Services were repaired, replaced, modified, made good or re-performed. Vendor makes no warranty with respect to items manufactured and/or installed by others, except that, to the extent of its ability to do so, Vendor hereby assigns to IM the benefit of any warranty provided by others.
- (g) The warranty entitlements set forth in this Section 7 cover both IM and any customers of IM to whom IM re-sells the Goods.
- (h) IM agrees to furnish Vendor prompt notice of all defects of which it becomes aware, either orally or by written notice. IM may affect repair or replacement of defective Goods if Vendor fails to or refuses to do so promptly, in which event Vendor shall reimburse IM for the cost thereof. IM's action to correct defects shall not relieve Vendor of any obligations or liability hereunder or under the *Consumer Guarantees Act 1993*.

8. Invoicing; Payment. Vendor's invoices shall be

submitted to the address specified by IM on the Purchase Order or SOW. Unless otherwise specified in a Purchase Order or SOW, IM agrees to pay invoices within sixty (60) days of the date of IM's receipt of an undisputed invoice from Vendor (but in no event prior to acceptance), provided that such invoice contains an accurate description of the Goods or Services furnished which matches those Goods or Services specified in the Purchase Order and provided further that any taxes or other charges are set forth on a separate line item in a manner that provides reasonable detail to IM. Invoices that fail to meet the foregoing requirements shall be returned to Vendor and the payment period will not commence until IM receives an accurate and complete invoice. IM may set off against any payment due and payable by IM to the Vendor, any payment due and payable by the Vendor to IM whether under this Agreement, a Purchase Order, SOW or otherwise. Vendor shall be responsible for its own expenses unless otherwise previously agreed in writing or specified in advance in the Statement of Work, and any previously agreed upon travel expenses shall be in accordance with IM's travel policy for Vendors.

- 9. Progress Schedule.** If the Purchase Order or SOW provides for payment based on completion dates and/or delivery schedules, then Vendor shall promptly notify IM of any changes in such completion dates and/or delivery schedules. If requested by IM, within five (5) business days of receipt of any work ordering document issued hereunder, Vendor shall prepare and submit for IM's approval a more detailed schedule for the delivery of the Goods or performance of the Services. Such schedule shall indicate the dates for the starting and completion of the various stages of delivery and installation, and shall be revised during the course of performance as required by the conditions of the work. No extension beyond the completion date or delivery schedules shall be made unless IM approves such extension in writing. The Vendor will be liable for any delay that is not agreed by IM and that causes loss or damage to IM.

- 10. Changes.** IM, from time to time, may authorise changes in the Goods or Services, provided however, that Vendor shall not proceed with any change (including, but not limited to any change in cost, quantity, delivery or completion schedule) without prior written authorisation from IM. IM shall confirm all changes in the Goods or Services by giving Vendor a written confirmation of the change. Vendor shall, within five (5) business days of any requested change, furnish to IM a written change document, signed by the Parties, setting forth in detail the effect of any such changes, including adjustments to the cost, quantity, delivery, or completion schedule, if any, for the Goods and/or Services.

11. Installation.

- (a) If applicable, Vendor shall select, arrange, schedule and accomplish installation of the Goods, including but not

limited to, arranging and effecting delivery of all required materials. Vendor shall begin installation of Goods no later than two (2) business days after delivery of the Goods at IM's facility, unless the Parties mutually agree in writing to an alternate installation schedule. It is Vendor's responsibility to visit delivery or installation sites to verify local conditions and to determine that no unusual conditions will be met in the work of installation. Vendor shall only be paid for any reasonable expenses incident to additional work caused by unusual latent conditions that may develop and/or be encountered during installation if such conditions would not have been reasonably anticipated by an experienced installer of the Goods and could not have been discovered until installation had commenced, and provided that Vendor notifies IM of the existence of such conditions before performing such additional work.

- (b) Vendor shall ensure that the conduct of the installation crew is professional and non-disruptive to IM's business operations. Vendor shall be responsible for all onsite material handling, including unloading of Goods.

12. Insurance.

Prior to furnishing the Goods and/or Services, Vendor shall obtain and continuously maintain during the term of this Agreement, adequate insurance;

- (a) for goods supplied against product liability for at least \$10 million per any one event;
- (b) services provided against professional indemnity liability for at least \$10 million per any one event;
- (c) if the Vendor is to provide services on any land under the care, control or management of IM, against public risk liability in respect of that land for at least \$10 million. At any time IM may require evidence of such insurances in the form of Certificates of Currency. The Vendor must name IM as a co-insured if required. The effecting of insurance does not limit the Vendor's liabilities under this Agreement.

13. Indemnification and Liability

- (a) **Bodily Injury/Property Damage Indemnification.** Each party (the "Indemnifying Party") agrees to indemnify, defend and hold the other party (the "Indemnified Party") harmless with respect to any claim or demand for bodily injury (including death) or loss of or damage to tangible property, to the extent based upon the negligent acts or omissions of the Indemnifying Party, provided that the Indemnified Party provides the Indemnifying Party prompt written notice of any such claim or demand.
- (b) **Loss or Damage.** The Vendor will indemnify, defend and hold harmless IM for any loss, damage, claim, costs, expenses, liabilities, environmental damage, compensation, fines, penalties, demand or expense of any nature (including consequential loss and legal fees on a solicitor and own client basis) suffered or incurred by IM arising directly or indirectly in relation to any breach of the Agreement or as a result of an act or omission of the Vendor arising out of, or connected to the Goods furnished or Services performed under this Agreement.

This clause applies to the exclusion of any terms that may be contained in the Vendors' trading terms which might otherwise exclude or limit the Vendor's liability.

- (c) **Intellectual Property Indemnification.** Vendor will indemnify, defend and hold harmless IM for any action against IM brought by a third party to the extent the action is based on a claim that the Goods or Services infringe such third party's patent, trademark, copyright, or misappropriates such third party's trade secret (a "Claim"). Vendor agrees to pay all damages and costs (including reasonable legal fees) attributable to such Claim or those costs and damages agreed to in a monetary settlement of such Claim.

14. **Ownership of Work Product.** "Work Product" shall mean all deliverables, inventions, innovations, improvements, or other works of authorship that Vendor (or its subcontractors) may conceive or develop in the course of performing the Services, whether or not the Work Product is eligible for patent, copyright, trademark, trade secret or other legal protection. Vendor agrees that all such Work Product is considered *work for hire* and shall be the sole and exclusive property of IM. If for any reason IM does not to have sole and exclusive ownership of such Work Product, Vendor hereby assigns, transfers and conveys to IM all right, title and interest in the Work Product, including, without limitation, all related worldwide patents, patent applications, copyrights, trademarks, trade secrets, rights of reproduction, and any and all other rights of whatever kind or nature. Vendor agrees to execute such further documents and to perform such further acts, at IM's expense, as may be necessary to perfect the foregoing assignment and to protect IM's rights in the Work Product.

15. **Compliance with Laws.** Vendor represents and warrants that the Goods and the Services shall be manufactured, sold and provided in compliance with all relevant federal, state and local laws and regulations.

16. **Confidential Information.** "Confidential Information" shall mean any proprietary, confidential and/or trade secret information concerning or relating to the property, business and affairs of the party disclosing such information (the "Disclosing Party") that is disclosed to the other party (the "Receiving Party") under this Agreement, except for information that was previously known to the Receiving Party free of any obligation to keep it confidential, is subsequently made public by the Disclosing Party or is disclosed by a third party having a legal right to make such disclosure. Confidential Information shall be held in confidence and used or disclosed only to the extent reasonably necessary in the performance of obligations under this Agreement. All such disclosures of Confidential Information shall only be made to those who have a need to know for purposes of performing the obligations under this Agreement, and who are bound by a written agreement with the Receiving

Party to guard such disclosed Confidential Information.

17. Safety and Security. If Vendor is performing Services within an IM facility or on its premises, then Vendor agrees to comply with IM's policies and procedures relating to safety and security.

18. Privacy and Data Protection.

(a) Vendor recognises that due to the nature of IM's business, a high level of security is required to be maintained for the protection of Personal Information. "Personal Information" is defined as any information or data related to or associated with an identified or identifiable natural person, including, but not limited to, any IM employee information, or IM customer information.

(b) If it is foreseeable that Vendor and/or Vendor's personnel may:

- (i) collect any Personal Information either directly or indirectly from IM's personnel; and/or
- (ii) have access to any Personal Information at any time in connection with this Agreement, regardless of where the Personal Information resides,

Vendor agrees to:

- (i) implement and maintain adequate technical, physical and organisational controls, consistent with prevailing industry standards, as appropriate to meet its obligations under all applicable laws and regulations related to the security and privacy of Personal Information to protect the Personal Information against misuse and loss, from unauthorised access, modification or disclosure;
 - (ii) not use the Personal Information except to the extent necessary to provide the Goods and / or Services; and
 - (iii) not disclose the Personal Information to any third party without the prior written consent of IM except as required by law.
- (c) The Vendor will immediately notify IM in the event it becomes aware of a suspected or actual breach and will provide IM with all reasonable assistance to enable IM to comply with its obligations under the *Privacy Act 2020*.
- (d) Upon termination of this Agreement for any reason, Vendor shall return, or, at the written request of IM, destroy, and retain no copies of, all Personal Information created or received by Vendor on behalf of IM or its customers, and Vendor shall cause its own third party service Vendors to do the same. Vendor agrees that it shall not transfer any Personal Information outside of New Zealand without IM's express approval.

19. Term and Termination.

(a) Unless terminated as provided herein, this Agreement shall not terminate until satisfactory completion of the work has occurred, as specified in the SOW or Purchase Order. IM may terminate this Agreement without cause, by giving Vendor thirty (30) days advance written notice. In the event of termination without cause by IM, IM agrees

to pay Vendor for all of the Goods or Services delivered up to the date of termination, based upon the actual Goods delivered or hours worked by Vendor (but not to exceed the fixed price amount if a fixed price has been agreed upon under the Statement of Work or Purchase Order), provided Vendor delivers to IM all such Goods or Services in a satisfactory manner up to the effective date of termination, including, but not limited to, notes, reports, and analyses and other stated deliverables, whether completed or in progress, which shall be compiled in an organised and understandable format.

(b) Either party may terminate this Agreement for material breach of the other party's obligations and/or warranties, provided, however, the terminating party shall give the other party at least thirty (30) days prior written notice of the breach and opportunity to cure within the thirty (30) days. If the non-breaching party has a reasonable belief that such material breach cannot be cured within thirty (30) days, such party may terminate this Agreement immediately, unless otherwise mutually agreed upon by the parties. Termination for material breach shall not preclude the terminating party from exercising any other remedies it may have under this Agreement or at law.

20. Notices. All notices given by one party to another under this Agreement must be in writing and shall be transmitted by certified mail, postage prepaid, or sent by nationally recognised overnight courier. Notices shall be addressed:

- (a) in the case of notices given by IM, to Vendor's address and to the attention of the authorised agent, identified by Vendor in the SOW or an invoice; and
- (b) in the case of notices given by Vendor, to IM's mailing address at 4-6 Mt Richmond Drive, Mt Wellington, Auckland 1061, and to the attention of the Legal Department.

21. Relation of the Parties. The performance by Vendor of its duties and obligations under this Agreement shall not create or imply an agency relationship between Vendor and IM, nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties. If Vendor employs the use of its own personnel, employees or contractors under this Agreement, Vendor shall assume full liability for payroll withholding, worker's compensation and other statutory contributions for such individuals as they are not employees of IM. IM's sole obligation shall be to pay the Vendor at the agreed-upon rates in the SOW or Purchase Order.

22. Modern Slavery

Vendor must:

- (a) not engage in forced labour, Slavery, Servitude or Trafficking in Persons of any form;
- (b) not do anything that would be an offence under any Anti-Slavery Law if it were done in a jurisdiction in which an Anti-Slavery Law is in force;

- (c) provide all assistance and information reasonably requested by IM to enable IM to comply with any reporting, risk management or other obligations to which it is subject;
- (f) inform its' subcontractors and third party suppliers (relevant to the Agreement) of its' obligations under any Anti-Slavery Law; and
- (g) maintain complete records evidencing its' compliance with this clause 22 and:
 - (i) provide IM with written evidence of the Vendor's compliance with these terms; and
 - (ii) with at least ten (10) business days' notice, allow IM to access the Vendor's records, personnel, systems and premises as reasonably necessary to allow IM to verify the Vendor's compliance with these terms at least once per annum (or more frequently if IM has reasonable grounds to suspect any breach of these terms).
- (h) Any breach of this clause 22, will be a material breach and shall entitle IM to terminate this Agreement with immediate effect.

For the purposes of this clause 22, the following definitions will apply:

Anti-Slavery Law means any law in any jurisdiction prohibiting or regulating risk in relation to the use of slavery, Serfdom, Servitude, forced labour, Exploitation, Trafficking in Persons or similar activities and includes Part 6, section s98 to 98D of the *Crimes Act 1961* ("Crimes Act").

Serfdom has the meaning given to it in s98(2) of the *Crimes Act* and includes the status or condition of a person who is by any law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to that other person, whether for reward or not and who is not free to change that status or condition and includes Servitude and any similar condition.

Servitude means services or labour provided by a person through use of coercion, threat or deception.

Slavery means the condition of a person over whom powers of ownership are exercised and includes debt bondage, serfdom and any similar condition,

Exploitation has the meaning given to it under s98D(4) of the *Crimes Act* and includes causing a person, whether by deception or coercion to be involved in slavery, practices similar to slavery, servitude, forced labour or other forced services; and includes any similar condition.

Trafficking in Persons means any offence under s98D of the *Crimes Act*; and includes: (a) the exploitation or facilitating the exploitation of a person; or (b) the reception, recruitment, transport, transfer, concealment or harbouring of a person; and (c) any similar condition or conduct to the conditions or conduct comprised in any such offence.

23. Anti-Bribery

- (a) IM has a zero tolerance policy towards bribery and corruption including towards facilitation payments and grease payments.
- (b) Vendor undertakes and confirms that it, its affiliates and personnel have not and will not make, offer, promise to

make or authorise the making to any person or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value including without limitation gifts or entertainment, facilitation payments or grease payments, in order to obtain, influence, induce or reward any improper advantage in connection with this Agreement or where to do so would breach any applicable anti-corruption or anti-money laundering laws or regulations ("Anti-Corruption Obligation").

- (c) Vendor shall promptly notify IM in writing should it become aware of any actual or suspected breach of the Anti-Corruption Obligation.

24. Diversity.

- (a) IM is committed to and prides itself on recognising the values of having a diverse and inclusive workplace and values relationships with Vendors who share this commitment.
- (b) Vendor agrees to support IM in this commitment by:
 - (i) complying with all federal, state and local laws, regulations and orders relating to the employment of labour; and
 - (ii) using best endeavours not to discriminate against any person based on race, colour, religion, sex, sexual orientation, age, nationality, disability, people of Aboriginal or Torres Strait Island descent or any other classification protected by law (collectively "Protected Classification").
- (c) IM retains the right to terminate this Agreement with immediate effect where Vendor, Vendor's personnel, agents, representatives or subcontractors make any comments, remarks, gestures or behaviours, whether suspected or actual that are or may be considered offensive or discriminatory under any Protected Classification.

25. Miscellaneous.

- (a) Conflict. Vendor must ensure that neither it, nor any of its personnel, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of the Vendor's obligations under this Agreement or performance of the Services by the Vendor.
- (b) Consumer Guarantees Act 1993. Where IM is purchasing the Goods and Services as a consumer (as defined in the *Consumer Guarantees Act 1993*), the Vendor acknowledges that the *Consumer Guarantees Act 1993* applies to the purchase of the Goods and Services by IM.
- (c) Audit. IM or IM's independent auditor may at any time on reasonable prior notice to the Vendor, conduct an audit of the Vendor with respect to the Vendor's compliance with its obligations under the Agreement. The Vendor will promptly comply with IM's requests and provide IM with all reasonable assistance in the conduct of any audit. This audit right continues for a period of seven (7) years following payment of a final invoice.

- (d) Time is of the Essence. Time for delivery of the Goods and/or performance of Services is of the essence in this Agreement.
- (e) Survival. The terms, provisions, representations and warranties herein shall survive the delivery of the Goods and Services and payment of the fees and charges.
- (f) Amendment. No amendment or modification of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of the party against whom enforcement is sought.
- (g) Entirety. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, representations and undertakings with respect to the subject matter.
- (h) Waiver. No term or provision hereof shall be waived except in writing, and specific waiver in any one instance shall not constitute a waiver of any other instance.
- (i) Force Majeure. Neither party shall be liable for a delay in its performance of its obligations under this Agreement due to causes beyond the delayed party's reasonable control.
- (j) Assignment. Vendor may not assign or subcontract this Agreement, in whole or in part, without IM's prior written consent. IM may assign this Agreement to an affiliate, in whole or in part.
- (k) Release of Liens. All Goods delivered and Services performed under this Agreement shall be free of liens and encumbrances. Vendor shall obtain releases of liens executed by Vendor and Vendor's subcontractors prior to final payment.
- (l) Severability. If any term of this Agreement is found to be unenforceable or contrary to law, it shall be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.
- (m) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the New Zealand. The parties consent to the exclusive jurisdiction of the courts of New Zealand for any action or proceeding brought by either party in connection with or arising out of this Agreement.
- (n) Dispute Resolution. The following procedure shall be followed in all disputes other than breaches of material obligations under this Agreement which IM and Vendor cannot resolve informally. The aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the nature of the dispute. The persons identified for purposes of notices set forth in Section 20, or their designees, shall meet (in person or by telephone) within fourteen (14) days after the date of the written notification to attempt to resolve the dispute. If those persons are unable to agree on a resolution, then senior management personnel of each of IM and Vendor having authority to resolve the dispute without the further consent of any other person ("Management") shall meet or otherwise act promptly to facilitate an agreement. If Management cannot resolve the dispute within thirty (30) days after their initial meeting or other action (or in case either party fails to participate in the dispute resolution), either party may take such other and further action as it deems necessary. IM and Vendor agree that neither of them shall take any legal action unless and until this dispute resolution procedure has been employed or waived.
- (o) Equitable Relief. Vendor acknowledges that monetary damages may be an inadequate remedy for breach by Vendor of this Agreement and, accordingly, IM may enforce this Agreement, without following the alternative dispute resolution procedures set forth herein, by seeking appropriate equitable relief.
- (p) Subcontracting. Vendor is responsible for the acts, omissions and defaults of its subcontractors to the same extent as if they were the acts, omissions and defaults of the Vendor. The Vendor is not discharged from any obligation or liability arising under this Agreement by entering into any subcontract nor will IM have any liability or obligation to the Vendor for any act, omission, default, breach of contract or insolvency of a subcontractor.
- (q) Recalls. In the event the Goods are subject to a product recall in respect of the manufacture, production, packaging, storage or transportation of the Goods and which may have an adverse impact on the quality, safety or availability of the Goods, the Vendor will immediately notify IM in writing.
- (r) Publicity. Vendor agrees not to use IM's name, trademark or logo in any way on its web site or in any of its advertising or other written material provided to third parties, shall not create a link, either directly or indirectly between Vendor's web site and IM's web sites, and shall not insert a reference or attribution to the Vendor, without the prior written consent of IM. Vendor agrees to seek approval from IM to issue any news release or public communication in which IM or its activities with the Vendor are mentioned.

26. Definitions and Interpretation

Definitions

In these terms and conditions unless the contrary intention appears or the context otherwise requires:

Goods means the goods, supplied by Vendor to IM in accordance with this Agreement, a Purchase Order and/or the SOW.

Harmful Code means any Trojan Horse, time bomb, worm, trap door, back door, timer, clock, counter, drop dead device, virus, spyware, malware or other malicious code or other computer software routine intended or designed to:

(a) disable, damage, erase, disrupt or impair the normal operation of any IM facilities, systems, network or infrastructure; (b) cause any software or hardware to become inoperable, unsecure or incapable of being used in the full manner for which it was designed and created; (c) which provides Vendor or any third party with access to or the ability to alter data or programming code; or (d) otherwise have a material adverse impact on the confidentiality, security, integrity or availability of any IM



Confidential Information or data.

IM means Iron Mountain New Zealand Limited (3528011) and any Iron Mountain Related Company (as defined in the *Companies Act 1993*) or IM group company.

Services means the services provided by Vendor to IM in accordance with this Agreement, a Purchase Order or SOW.

Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes, assigns, employees, agents, representatives and contractors;
- (c) if a period of time is specified, and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (d) headings in this Agreement are inserted for convenience and do not affect the interpretation of this agreement;
- (e) a reference to a statute, mandatory guideline or other law includes regulations and, amendments, or replacements of that statute, ordinance, code, guideline or law;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from the clause.