

# TRUEVAULT

## TERMS AND CONDITIONS OF USE

The following terms and conditions of use ('**Terms**') apply to the access and use of the TrueVault Solution by the Customer who has executed a Work Order (and its End Users). These Terms in conjunction with the relevant Work Order, constitute a legal binding agreement between the Customer and TrueVault Pty Limited ACN 675 825 966 of Suite 6, 148-150 Richmond Road, Marleston, South Australia 5033 ('**TrueVault**'). By executing a Work Order, the Customer accepts and agrees to be bound by these Terms, with respect to the Work Order. These Terms take precedence over any terms contained in any document of the Customer's or included elsewhere, unless specifically stated otherwise in these Terms.

### 1 Definitions

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The meanings of the terms used in these Terms are set out below:

<b>Term</b>	<b>Meaning</b>
<b>Approved Purpose</b>	identity verification checks and person reauthentication in respect of the Customer's business or such other purpose as TrueVault agrees to from time to time
<b>Business Day</b>	any day other than a Saturday, Sunday or public holiday in Adelaide, South Australia
<b>Confidential Information</b>	<p>any information which is:</p> <ul style="list-style-type: none"><li>(a) confidential; and</li><li>(b) not in the public domain (unless in the public domain because of a breach of confidentiality),</li></ul> <p>including, but not limited to, the following:</p> <ul style="list-style-type: none"><li>(i) the Intellectual Property of the Group, including future Intellectual Property developed by the Group;</li><li>(ii) all information in or relating to personnel, policies, business plans, marketing strategies, products, services, manuals, product and service development, finances, funding, pricing policies, price and cost data, or other transactions or affairs of the Group;</li></ul>

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- (iii) the Group's customer lists and databases, supplier information (including services and agreements), and customers of the Group;
  - (iv) competitive and financial information concerning the business of the Group not in the public domain;
  - (v) trade secrets, ideas, concepts, processes, know-how, secret or confidential operations, processes, approaches or techniques of or developed by the Group in the course of its business and operations;
  - (vi) technical information relating to the Group's business including its operation, and products (including security information in relation to the TrueVault Solution);
  - (vii) all information concerning the business of the Group, its methods of operating, marketing and other activities;
  - (viii) information concerning the Group's customers; and
  - (ix) any other information that is or may be commercially valuable to the Group or its customers

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**Commencement Date** the commencement date as set out in the relevant Work Order

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**Corporations Act** the *Corporations Act 2001* (Cth)

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**Credits** where the Payment Type as set out in the Work Order is a Subscription, the credits to which the Customer is entitled pursuant to these Terms for the Customer and its End Users to access the TrueVault Solution

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**Customer Data** any and all files, data or information, including personal information (as that term is defined in the *Privacy Act 1988* (Cth)), which is posted, uploaded to, or provided by the Customer or any End User through the TrueVault Solution

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**Customer's Platform** the application or website of the Customer identified in writing to TrueVault at the Commencement Date (and approved in writing by TrueVault) as the platform through which end users of the Customer will access the TrueVault Solution (or such alternative application or website as TrueVault approves from time to time in its absolute discretion)

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<b>End User</b>	any employee, contractor, customer or end user of the Customer who is accessing the TrueVault Solution through the Customer's Platform
<b>End User Terms</b>	the terms on which TrueVault allows individuals to access and use a TrueVault Wallet and TrueVault Business User Portal, and which are published from time to time by TrueVault as its End User Terms
<b>Fee</b>	the fee payable by the Customer to TrueVault in accordance with these Terms, and as set out in the relevant Work Order
<b>Government Agency</b>	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
<b>Group</b>	TrueVault and each related body corporate of TrueVault, and a reference to Group will be deemed to include any member of the Group as the context permits
<b>GST</b>	the Goods and Services Tax as defined by the GST Act
<b>GST Act</b>	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) as amended from time to time
<b>Insolvency Event</b>	any of the following occurring to a person: <ul style="list-style-type: none"> <li>(a) becoming Deregistered;</li> <li>(b) stating that it is, or being, Insolvent;</li> <li>(c) being an Insolvent Under Administration;</li> <li>(d) having a Controller appointed over any of its assets;</li> <li>(e) becoming an Externally-Administered Body Corporate;</li> <li>(f) having a Provisional Liquidator appointed to it;</li> <li>(g) any of the events listed in section 459C(2) of the Act;</li> <li>(h) except to reconstruct or amalgamate while solvent, entering into a scheme of arrangement, composition with or assignment for the benefit of creditors;</li> <li>(i) obtaining protection from its creditors under any applicable law; or</li> </ul>

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- (j) anything analogous or having a substantially similar effect to any of these events.

Unless otherwise defined in these Terms, any term in title case used in this definition has the meaning given by the Corporations Act

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**Intellectual Property** all present and future rights to intellectual property including any Inventions and improvements, trademarks (whether registered or common law trademarks), designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data or formula

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**Invention** any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium

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**Material Breach** a breach (including anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of these Terms;
- (b) any breach of other Government Agency requirements, or a breach of law; or
- (c) any of the obligations set out in **clauses 5** (Payment), **7** (Intellectual Property and TrueVault IP), **11** (Confidential Information), and **16** (Privacy),

and in deciding whether a breach is material no regard will be had to whether it occurs by some accident, mishap, mistake or misunderstanding

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**Pay as You Go** the provision of one or more TrueVault Solutions on a pay as you go basis as set out in the relevant Work Order

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**Payment Type** the basis on which payments are required to be made to TrueVault for access to the TrueVault Solution, being either a Subscription basis or a Pay as You Go basis

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**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth)

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**Personnel** any officers, employees, agents, consultants, contractors, sub-contractors of the Customer

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<b>Quarter</b>	each of the following periods: <ul style="list-style-type: none"> <li>(a) the period commencing on 1 January and concluding on 31 March in a calendar year;</li> <li>(b) the period commencing on 1 April and concluding on 30 June in a calendar year;</li> <li>(c) the period commencing on 1 July and concluding on 30 September in a calendar year; and</li> <li>(d) the period commencing on 1 October and concluding on 31 December in a calendar year</li> </ul>
<b>SLA</b>	the service level agreement or similar document which is published and amended from time to time by TrueVault on its website
<b>Special Conditions</b>	the special conditions as set out in the relevant Work Order (if any)
<b>Subscription</b>	the provision of one or more TrueVault Solutions on a subscription basis as set out in the relevant Work Order
<b>Subscription Period</b>	where the Payment Type as set out in the Work Order is a Subscription, such subscription period of time as set out in the Work Order, with the first such Subscription Period commencing on the Commencement Date and ending after such period of time as set out in the Work Order, and thereafter such successive subscription periods of time as set out in the Work Order, until terminated in accordance with these Terms
<b>Term</b>	the term as set out in the relevant Work Order
<b>TrueIdentity</b>	a biometrically anchored reusable identity credential, as developed and issued by TrueVault
<b>TrueVault Business User Portal</b>	the TrueVault functional interface offered by TrueVault to its customers (including the Customer) in different forms depending on the customer's business or individual use, the functionality and naming of which may change from time to time
<b>TrueVault IP</b>	means all Intellectual Property which is owned, used, applied for or created by TrueVault and others in connection with TrueVault, including all such rights in promotional material, and any other item or material provided to the Customer by TrueVault in connection with these Terms and includes, for the avoidance of doubt and without limitation, all source and object

	code, know-how and all other Intellectual Property Rights in or relating to the TrueVault Solution, TrueVault Services, TrueVault Business User Portal, and TrueVault Wallet
<b>TrueVault Service</b>	the credentialing services provided by TrueVault, the functionality and branding of which may change from time to time
<b>TrueVault Solution</b>	together the TrueVault Services, the TrueVault Business User Portal, and the TrueVault Wallet, and any part of it as accessed through such domain or application as notified by TrueVault to the Customer from time to time
<b>TrueVault Wallet</b>	the TrueVault credential wallet product offered by TrueVault to TrueVault customers, including the End Users, the functionality and naming of which may change from time to time
<b>Work Order</b>	the work order or similar document, executed between TrueVault and the Customer, with respect to TrueVault's provision of the TrueVault Solution to the Customer

## 2 Interpretation

- (a) Any provision of these Terms must be read down to the extent necessary to be valid. If that is not possible, it must be severed. All other provisions of these Terms are unaffected.
- (b) A provision of these Terms must not be construed to the disadvantage of a party because that party was responsible for including that provision and/or that provision benefits that party.
- (c) A failure or delay to exercise a power or right under these Terms does not operate as a waiver of that power or right.
- (d) In these Terms, unless the contrary intention appears:
  - (i) a person includes any other legal entity and vice versa;
  - (ii) the singular includes the plural and vice versa;
  - (iii) a gender includes the other gender;
  - (iv) where an expression is defined, its other grammatical forms have a corresponding meaning;
  - (v) a clause, schedule or annexure is a clause or schedule of or an annexure to these Terms;
  - (vi) reference to a document is to that document as amended or varied;

- (vii) any legislation includes any subordinate legislation and amendments;
  - (viii) conduct includes any act, omission, representation, statement or undertaking whether or not in writing; and
  - (ix) 'including', or similar words, does not limit what else might be included;
  - (x) unless otherwise indicated, a word or expression defined in the Corporations Act has the same meaning given to it in the Corporations Act, including:
    - (A) body corporate;
    - (B) holding company;
    - (C) officer;
    - (D) subsidiary; and
    - (E) related body corporate; and
  - (xi) amounts of money are expressed in Australian dollars.
- (e) Headings are for convenience and do not affect the interpretation of these Terms.

### **3 TrueVault Solution**

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#### **3.1 TrueVault Solution**

The Customer has requested TrueVault to provide, and TrueVault has agreed to provide, the TrueVault Solution to the Customer and its End Users in accordance with these Terms. Access to the TrueVault Solution by an End User is subject to such End User accepting the End User Terms.

#### **3.2 Right to use TrueVault Solution**

- (a) TrueVault grants the Customer a non-exclusive, non-transferable worldwide right for it and its End Users to access and use the TrueVault Solution during the Term through the Customer's Platform, subject to these Terms ('**Access Licence**') and for the Customer to use only those TrueVault trademarks that TrueVault may provide to the Customer from time to time to display on Customer's Platform.
- (b) The Access Licence includes the right for the Customer to integrate into the Customer's Platform the TrueVault Business User Portal (by means of an application programming interface ('**API**')) a methodology for End Users to obtain a TrueVault Wallet (in accordance with TrueVault's End User Terms).
- (c) In the event of any inconsistency between the Special Conditions (if any), these Terms, the Work Order, the provisions prevail to the extent of the inconsistency in the following order of priority: (a) the Special Conditions; (b) Work Order; and (c) these Terms.

### 3.3 Change to features

- (a) The Customer acknowledges that TrueVault is free, from time to time, to make changes or improvements to the TrueVault Solution that may alter the functionality of the TrueVault Solution. TrueVault owes no liability to the Customer for any change in functionality over time but will seek to minimise the impact on the Customer of any material decrease in core functionality that may be proposed.
- (b) TrueVault agrees to notify the Customer no less than ten (10) Business Days in advance of any material changes to the TrueVault Solution that may reasonably impact the Customer's use of the TrueVault Solution or require modifications to Customer's integrations.
- (c) The Customer agrees that any urgent or emergency changes (including security updates) may be implemented with shorter or no notice where TrueVault determines are urgent and necessary to protect platform integrity or data security.

### 3.4 Documentation

The Customer may be provided with a user manual or other explanatory documentation relating to the use of the TrueVault Solution in either printed or electronic form ('**Documentation**'). The Customer must ensure that its use of the TrueVault Solution complies with the Documentation. The Customer may copy any Documentation only on the basis that the copies are used solely in connection with the Customer's use of the TrueVault Solution and not for any other purpose, including for distribution to any third party.

### 3.5 Reporting

Upon written request of the Customer and not more than once per calendar quarter, TrueVault shall provide the Customer with a summary report detailing:

- (a) uptime statistics for the relevant period;
- (b) incident summaries including severity classification and resolution times;
- (c) support ticket volumes and response metrics;
- (d) any known or reported security incidents affecting the Customer's data or access.

## 4 Relationship

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The Customer engages TrueVault to provide the TrueVault Services as an independent contractor. The parties are not employees, partners, legal representatives, agents, joint venturers or franchisors. The Customer has no authority or right to bind TrueVault or to assume or create any obligations for or on behalf of TrueVault.

## 5 Payment

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- (a) The Customer must pay TrueVault on either a Subscription or on a Pay as You Go basis, and the Customer must pay the applicable Fees as set out in the Work Order.

- (b) Subject to these Terms, if the Payment Type is Pay as You Go:
  - (i) TrueVault may change the terms or amount of Fees from time to time. TrueVault will notify the Customer at least thirty (30) days before the any changes in the terms or amount of any Fees;
  - (ii) TrueVault will issue a valid tax invoice to the Customer on or around the last day of the month in respect of the Fees arising as a result of the services accessed and charges incurred for the immediately preceding month.
- (c) Where the Payment Type is a Subscription:
  - (i) Except as specified in these Terms or as prohibited by law, payment obligations are not able to be cancelled, and Fees paid are not refundable.
  - (ii) Any renewal of the Subscription after the end of the current Subscription Period is subject to the Customer agreeing, before the end of the current Subscription Period, to such revised Fees as TrueVault may in its discretion set. A failure of the parties to agree any revised Fee entitles either party to terminate these Terms in accordance with **clause 15.2**;
  - (iii) TrueVault will issue a valid tax invoice to the Customer on or around the last day of the Subscription Period in respect of the Fees for the upcoming Subscription Period, which must be paid in advance;
  - (iv) The first and last invoice will be pro-rated for the respective proportion of
  - (v) if the Customer uses all its included services in respect of a Subscription Period, it may either:
    - (A) TrueVault will invoice an excess usage charge monthly which will be charged at the Pay as You Go amounts
  - (vi) all unused included services lapse at the end of the relevant Subscription Period for which they are purchased, and cannot be transferred across Subscription Periods; and
  - (vii) if payment for an upcoming Subscription Period is not received within 21 days of the date of the invoice, the Subscription for that Subscription Period will be terminated and the Access Licence set out in **clause 3.2(a)** will terminate and be expired.
- (d) The Customer must pay all invoices issued by TrueVault within 10 Business Days after the Customer receives that invoice, such payment to be to a bank account nominated by TrueVault. All payments must be in immediately available funds and in the currency in which the invoice was issued. Payment of the invoice constitutes acceptance of these Terms.
- (e) Late payments will attract interest of four percentage points above the applicable cash rate target announced by the Reserve Bank of Australia from time to time. The interest rate will be per annum accruing daily.

## 6 Customer responsibilities

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- (a) The Customer is responsible for maintaining (and causing its End Users to maintain) the confidentiality of its own passwords and other credentials used by it and its End Users to access the TrueVault Solution. The Customer must promptly notify TrueVault if the Customer becomes aware of any unauthorised access to the TrueVault Solution.
- (b) The Customer must not engage, and must ensure that any of its employees, officers and permitted assigns, do not engage in conduct that would limit, interfere with or prejudice the proper performance of the Customer's obligations under these Terms. The Customer is responsible for ensuring that its End Users comply with these Terms. The Customer is responsible for the acts and omissions of its End Users in connection with these Terms. End User accounts and passwords may not be shared and may only be used by one individual per account.
- (c) The Customer must comply with any reasonable direction or instruction given by any third party engaged by TrueVault which relates to the TrueVault Solution.
- (d) If requested by TrueVault, the Customer must promptly provide a comprehensive report to TrueVault regarding the status and use of the TrueVault Services and the TrueVault Business User Portal, including sales and marketing information and support applicable to the TrueVault Business User Portal, in a form prescribed by TrueVault and containing any detail TrueVault reasonably requires.
- (e) The Customer may only use the TrueVault Solution on these Terms, and for the Approved Purpose.
- (f) The Customer agrees to promote, advertise, and create awareness of the TrueVault Solution to their End Users as reasonably directed by TrueVault from time to time. TrueVault will approve any promotional materials in respect of TrueVault which are to be publicised by the Customer.

## 7 Intellectual Property

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### 7.1 TrueVault IP

- (a) Each party acknowledges and agrees that, as between the parties, the other party is and will remain the sole and exclusive owner of all right, title, and interest in that other party's technology, including all associated Intellectual Property, and all modifications, derivatives and enhancements of such technology and that these Terms does not affect such ownership. Except for the express limited rights granted under these Terms, neither party acquires any Intellectual Property, by license or otherwise, under these Terms.
- (b) The Customer acknowledges and agrees that:
  - (i) TrueVault owns all the right, title and interest in the TrueVault IP;

- (ii) other than pursuant to its access and use right under clause 3.2(a), TrueVault has not granted the Customer any other Intellectual Property Right pursuant to these Terms; and
  - (iii) on termination of these Terms the Customer must promptly return to TrueVault all TrueVault IP in its possession or under its control and immediately cease using the TrueVault Solution and any TrueVault IP.
- (c) Notwithstanding the above, TrueVault is not precluded from developing for itself, having developed, acquiring, licensing, or developing for third parties, as well as marketing and/or distributing materials, which are competitive with the Customer's products or services, so long as TrueVault does not use Customer's confidential information or intellectual property.

## 7.2 Inputted Data and feedback

- (a) As between the parties the Customer (or the relevant End User) owns all of the Intellectual Property Rights in Customer Data. The Customer grants (and must ensure that it will be a term of the End User Terms that each End User grants) to TrueVault and its related bodies corporate a worldwide, royalty-free, non-exclusive, limited licence to use, host, copy, transmit, modify, display and distribute Customer Data for the purpose of providing the TrueVault Services to the Customer and End Users and improving the Services (subject to the use of privacy minimisation techniques such as de-identification and pseudonymisation where possible and appropriate).
- (b) If the Customer or any End User provides TrueVault with feedback about the TrueVault Solution, TrueVault may use that feedback and incorporate it into its products and services without any obligation to the Customer or relevant End User.

## 8 Restrictions

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- (a) The Customer must not, and must not permit any third party to, without TrueVault's prior written approval:
- (i) modify, adapt or amend the TrueVault Solution, TrueVault Business User Portal, TrueVault Wallet or the TrueVault IP;
  - (ii) disassemble, decompile, introduce any harmful code, or reverse engineer all or any parts of the computer programs, source code or object code which comprise the TrueVault Solution or the TrueVault IP (or attempt to do so); or
  - (iii) sub-licence, rent, sell, lease, distribute or otherwise transfer the TrueVault Wallet, TrueVault Business User Portal, or the TrueVault IP or any part of it except as permitted under these Terms.
- (b) TrueVault is responsible for maintaining control over the TrueVault Wallet and the TrueVault Business User Portal, and for uploading and updating the TrueVault Wallet and the TrueVault Business User Portal. TrueVault will not be expected by

the Customer to include or modify the TrueVault Wallet or TrueVault Business User Portal or any information on it or TrueVault Services available through it.

- (c) Nothing in these Terms limits TrueVault's right to licence or provide access to any third party of any of the TrueVault Solution, TrueVault Services, TrueVault Business User Portal, TrueVault Wallet, or TrueVault IP.

## 9 Upgrades

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- (a) From time-to-time, TrueVault may introduce adaptations, upgrades or enhancements to the TrueVault Wallet or TrueVault Business User Portal or make changes to the tools and features of any part of the TrueVault Solution including the availability of products and features or features dependent upon other services or software.
- (b) Where such adaptations, upgrades or enhancements are applicable to the TrueVault Wallet or the TrueVault Business User Portal, TrueVault shall make them available to the Customer subject to the payment of the applicable Fees, notified to the Customer at that time, provided that if the Customer does not wish to accept an upgrade or enhancement which would involve the payment of additional Fees, it may, within 30 Business Days of receiving notice of such upgrade or enhancement, give notice to TrueVault if it wishes to accept the change subject to any terms and conditions provided at the time.
- (c) Any adaptations, upgrades or enhancements to the TrueVault Wallet or TrueVault Business User Portal, and any new features or tools that are added to it will be owned by and will vest in TrueVault upon creation.

## 10 Service and access

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- (a) TrueVault shall maintain and regularly test a documented business continuity and disaster recovery plan (BCP/DRP) designed to ensure the restoration of services within a reasonable time following a disaster or service disruption. The Customer may request a summary of this plan once per year under confidentiality.
- (b) TrueVault will ensure secure, encrypted backups of relevant system data no less than once every 24 hours and retain such backups for a minimum of 30 days.
- (c) TrueVault reserves the right to change the method of access at any time. The Customer also agrees that, in the event of degradation, instability or an emergency affecting the TrueVault Solution, TrueVault may, in its sole discretion, temporarily suspend the Customer's access to the TrueVault Solution in order to limit threats to and protect the operational stability and security of the TrueVault Solution. TrueVault does not guarantee or warrant that the TrueVault Solution will be available 24 hours a day, seven days a week or that it will otherwise be free from errors, bugs or faults.
- (d) Any environmental and other factors outside of the reasonable control of TrueVault may prevent TrueVault from being able to complete a search of an End User including (without limitation) where the End User has not correctly completed their

application or has not provided required information or consents, or where there are delays from third parties. In these cases, TrueVault shall be obliged only to use reasonable efforts to provide the requested search and will not be liable for any delay or failure to provide the search.

## 11 Confidential Information

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- (a) Each party will have access to certain Confidential Information.
- (b) Each party (**Recipient**) must keep secret and confidential and not disclose any Confidential Information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers) or the terms of these Terms, except:
  - (i) where the information is in the public domain as at the date of these Terms (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);
  - (ii) if the Recipient is required to disclose the information under any applicable law;
  - (iii) where the disclosure is expressly permitted under these Terms;
  - (iv) if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under these Terms, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
  - (v) if the party to whom the information relates has consented in writing before the disclosure; or
  - (vi) if disclosure is required in connection with a merger, acquisition, corporate reorganisation, sale of all or substantially all of the Recipient's assets, investment or any other transaction, in which case the Recipient may disclose Confidential Information relating to another party to prospective or actual purchasers, investors or successors on a strictly confidential basis.
- (c) The Recipient must notify the other party as soon as practicable if it becomes subject to an obligation to disclose Confidential Information.
- (d) The Recipient must provide the other party any assistance reasonably required by the other party in relation to any proceedings commenced against a third party for the unauthorised use, copying or disclosure of Confidential Information.
- (e) The Customer must ensure that its directors, officers, employees, agents, representatives and shareholders comply in all respects with the Recipient's obligations under this **clause 11**.
- (f) Within 10 Business Days of termination of these Terms, a party must return or destroy any document containing the Confidential Information of the Discloser. For the avoidance of doubt, any Confidential Information of an End User is managed by

each party in accordance with their obligations to the End User, which for TrueVault is in accordance with its End User Terms.

## 12 Warranties

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- (a) The Customer warrants and represents to TrueVault:
  - (i) it will comply with all laws and regulations applicable to its provision or use of the TrueVault Solution;
  - (ii) it will cooperate with TrueVault, including by making available information and Personnel as reasonably required by TrueVault and provide accurate and timely information to assist with fault diagnosis and resolution, so that TrueVault can provide access to and enable use of the TrueVault Solution;
  - (iii) it will ensure End Users are trained and aware of the Approved Use of the TrueVault Solution;
  - (iv) it will ensure its systems and integrations with the TrueVault Solution are maintained in accordance with the Documentation;
  - (v) it will be responsible for all networks, systems, internet services, telecommunications and any other facilities (including any associated fees and charges) used or required for the Customer (and any End User) to access and use the TrueVault Solution;
  - (vi) it will be responsible for backing up any data (including Customer Data) the Customer may have on any computer or storage device which is to be the subject of, or otherwise used in the performance of, the TrueVault Solution or any other services provided by TrueVault;
  - (vii) it will be responsible for the provision and quality of any data (including Customer Data) which is to be input or processed using the TrueVault Solution, and the Customer agrees that for TrueVault Solution to operate successfully, any document or data (including Customer Data) must comply with our reasonable format and quality requirements and other specifications; and
  - (viii) that any data (including Customer Data) provided by the Customer or any End User is accurate, complete, lawful, and does not infringe any third-party rights, and the Customer is responsible for any data (including Customer Data) submitted, transmitted or processed through the TrueVault Solution, including ensuring that such data complies with all applicable laws, regulations, and industry standards.
- (b) The Customer acknowledges and agrees that TrueVault makes no representation or warranty about the TrueVault Solution. To the fullest extent permitted by law, TrueVault disclaims any implied or statutory warranty, including any warranty as to title, non-infringement, merchantability or fitness for a particular purpose.

- (c) TrueVault warrants that it maintains appropriate administrative, physical and technical safeguards to protect Customer Data, aligned to ISO/IEC 27001, and undertakes to promptly notify the Customer in the event of a notifiable data breach.

## 13 Indemnity

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- (a) The Customer releases and indemnifies and keeps indemnified TrueVault and its officers, employees and agents against any losses, liabilities, costs, charges or expenses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by TrueVault arising out of or in connection with:
  - (i) the Customer's, Personnel's or the End User's use or access of the TrueVault Solution;
  - (ii) any breach of these Terms by the Customer or breach of the End User Terms by any End User or Personnel;
  - (iii) any breach of any rights of a third party by the Customer, Personnel or the End User;
  - (iv) any breach of any applicable law by the Customer, Personnel or the End User;
  - (v) any improper use of the TrueVault Solution by the Customer, any Personnel or End User;
  - (vi) any fraudulent, dishonest or negligent act, omission or wilful misconduct of the Customer, End User or any Personnel;
  - (vii) the Customer's failure to comply with any statutory obligation or any directive or instruction issued by a Government Agency to the extent to which they impact the TrueVault Solution; or
  - (viii) claims by any person in respect of loss of, or damages to, or encroachment on any property including any intellectual property.
- (b) If the TrueVault Solution is likely to become the subject of a claim by any person, TrueVault may in its sole discretion:
  - (i) modify the TrueVault Solution as it considers reasonably necessary to avoid all risk; or
  - (ii) terminate these Terms and refund a pro rata portion of the Fee (if applicable).

## 14 Limitation of liability

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- (a) Nothing in this **clause 14** applies to unlawfully limit the liability of a party for their own fraud or wilful misconduct or in connection with death or personal injury or in respect of the Customer's obligation to pay any Fees or invoices.

- (b) To the extent permitted by applicable law, TrueVault is not liable, and the Customer agrees not to hold TrueVault responsible, for any damages or losses (including, but not limited to, loss of money, goodwill, or reputation, profits, or other intangible losses or any special, indirect, or consequential damages) resulting directly or indirectly from:
- (i) the Customer's inability to use the TrueVault Solution as a result of any valid termination or suspension of these Terms;
  - (ii) the Customer's use of, or inability to use, platforms, websites, software, systems (including any networks and servers used to provide the TrueVault Solution) operated by TrueVault;
  - (iii) delays, disruptions, glitches, bugs, errors, inaccuracies, viruses or other malicious software involved in accessing the TrueVault Solution;
  - (iv) the content, actions, or inactions of third parties; or
  - (v) any unauthorised access to, damage or alteration to, deletion or destruction of, or failure to store or backup, Customer information due to the Customer's negligent acts or omissions.
- (c) If any exclusion or limitation of any liability or warranty contained in these Terms, is ineffective, or if a condition, warranty or term is implied in relation to these Terms or TrueVault Solution, to the maximum extent permitted by law, TrueVault's maximum aggregate liability for each and all claims (individually and together) under or relating to these Terms is limited, at TrueVault's election, to the resupply of any services performed or provided by TrueVault or the payment of the cost of having such services resupplied.
- (d) Notwithstanding any other provision of these Terms, to the maximum extent permitted by law, in no event will TrueVault's liability exceed the aggregate fees that the Customer has paid to TrueVault under these Terms during the 12 months preceding a claim.
- (e) Notwithstanding any other provision of these Terms, in no event will either party to these Terms be liable under or in connection with these Terms for:
- (i) any indirect, consequential, special, incidental, punitive or exemplary damages; or
  - (ii) loss of or damage to data, business, revenues or profits (in each case whether direct or indirect),

even if the party knew or should have known such damages were possible and even if a remedy fails of its essential purpose.

## 15 Termination

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### 15.1 Suspension

TrueVault may suspend the Customer's access to TrueVault Solution (or any part of TrueVault Solution), or otherwise suspend the Customer's rights under these Terms if TrueVault suspect that the Customer is, will or may likely be in breach of any provision of these Terms until such time as TrueVault has completed its reviews and is satisfied no breach has occurred or is likely to occur.

### 15.2 Termination with notice

Either party may terminate the Work Order and these Terms by giving the other party 30 Business Days written notice of such termination. If these Terms provides for a Payment Type that is a Subscription, then such termination is without prejudice to the obligation of the Customer to pay Fees for the full remainder of the Subscription Period.

### 15.3 Termination for Material Breach, non-payment or Insolvency

TrueVault may terminate the Work Order and these Terms with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under these Terms on the due date for payment and remains in default not less than 30 days after being notified to make such payment; or
- (b) the Customer commits a Material Breach of any term of these Terms and either:
  - (i) the breach is irremediable; or
  - (ii) the breach is remediable and the other party fails to remedy that breach within a period of 14 days after the other party has, or is deemed to have, received written notice requesting it to do so; or
- (c) an Insolvency Event occurs in relation to the Customer.

### 15.4 Survival

The occurrence of any termination does not affect:

- (a) any accrued rights or remedies of a Party;
- (b) any obligation of a Party which accrued prior to the occurrence of that event, and which remains unsatisfied; or
- (c) this **clause 15** and any other provision of these Terms which is expressed or intended to come into effect on, or survive, the occurrence of that event, including **clause 1** (Definitions), **clause 2** (Interpretation), **clause 11** (Confidential Information), **clause 14** (Limitation of liability), and **clause 18** (General).

## 16 Privacy

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- (a) The Customer must implement and maintain appropriate technical and organisational measures to protect Personal Information against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration, or disclosure.
- (b) The Customer must comply with the requirements of all relevant laws, codes, regulations, rules and industry practice, including those relating to the collection, storage and handling of Personal Information.
- (c) The Customer must do all things reasonably necessary to ensure that any Personal Information is not collected, stored, handled or disclosed other than in accordance with these Terms, including complying with the obligations under **clause 16(g)**.
- (d) The Customer must comply with the requirements of all legislation, relevant codes, regulations, rules and industry practice in relation to safety in the performance of any matter contemplated by these Terms, including the *Privacy Act 1988* (Cth) and the Australian Privacy Principles (APPs).
- (e) The Customer warrants that it has and will provide all reasonable information, training, instruction and supervision that is necessary to protect all persons from risks in respect of the matters contemplated by these Terms.
- (f) The Customer shall retain Personal Information only for as long as necessary to fulfill the purposes for which it was collected and shall securely delete or anonymise Personal Data when it is no longer needed.
- (g) In addition to its obligations under **clause 16(c)**, the Customer must immediately notify TrueVault if it becomes aware of any suspected or known unauthorised access to or disclosure or loss of Personal Information. The notification must include the nature of the breach, the affected data, and the measures taken to mitigate the breach. The Customer must take all steps reasonably required by TrueVault in the event of any suspected or known unauthorised access, disclosure or loss of such Personal Information, which may include:
  - (i) undertaking a thorough internal assessment to ascertain the source of the disclosure and whether the disclosure is likely to result in serious harm to any individual affected, and communicate the findings to TrueVault;
  - (ii) notifying the relevant authorities; and
  - (iii) taking such other action as TrueVault may reasonably require, to minimise harm to any affected individuals.

## 17 GST

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### 17.1 GST gross-up

If a party ('the supplier') is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) these Terms, the recipient of the supply

must (in addition to any other payment for, or in connection with, the supply) pay to the supplier an amount equal to such GST ('**GST gross-up**').

#### **17.2 GST invoice**

If a GST gross-up is payable, then the supplier must give the recipient a tax invoice for the supply.

#### **17.3 Payment**

Provided a tax invoice has been given, the GST gross-up must be paid by the recipient:

- (a) if any monetary consideration is payable for the supply, at the same time and in the same manner as such monetary consideration;
- (b) if no monetary consideration is payable for the supply, within ten Business Days after the day on which the tax invoice is given.

#### **17.4 Reimbursements**

If any payment to be made to a party under or in connection with these Terms is a reimbursement or indemnification of any expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with **clause 17.1**.

#### **17.5 Adjustments**

If an adjustment event has occurred in respect of a supply made under or in connection with these Terms, any party that becomes aware of the occurrence of that adjustment event must notify the other party as soon as practicable, and the parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply, or any refund of GST (or part thereof), is paid no later than 20 Business Days after the supplier first becomes aware that the adjustment event has occurred.

#### **17.6 Definitions**

- (c) Terms used in this **clause 17** which are defined in the GST Act have the meaning given to them in the GST Act.
- (d) In this clause, a reference to a payment includes any payment of money and any form of consideration other than payment of money.
- (e) In these Terms, all references to payments and obligations to make payments, including all references to compensation (including by way of reimbursement or indemnity), are, but for the operation of this clause, exclusive of GST.

## 18 General

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### 18.1 Other acts

Each party must, at its expense:

- (a) promptly do all things reasonably necessary to give full effect to these Terms; and
- (b) maintain all consents, approvals and authorities necessary for that party to perform its obligations under these Terms.

### 18.2 Assignment

The rights and obligations of the Customer cannot be assigned, charged or otherwise dealt with and the Customer must not attempt or purport to do so, without the prior written consent of TrueVault. TrueVault may assign these Terms in their entirety without the Customer's consent to its affiliate or as part of a merger, acquisition, corporation reorganisation, or sale of all or substantially all its assets.

### 18.3 Entire agreement

These Terms contains the entire agreement and understanding between the parties with respect to the subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

### 18.4 Amendment

TrueVault reserves the right to amend these Terms from time to time. TrueVault may amend these Terms by publishing an updated, amended or revised version on TrueVault's website or by providing it to the Customer by email (each defined as '**Amended Terms**'). The Customer has thirty (30) days to decide whether the Customer accepts or does not accept any Amended Terms ('**Acceptance Period**'). If the Customer does not accept the relevant Amended Terms, the Customer will have the right to terminate its rights under these Terms during the relevant Acceptance Period at no additional cost to the Customer. The continued use of TrueVault Solution after the relevant Acceptance Period has lapsed will be deemed acceptance of the relevant Amended Terms.

### 18.5 Consents, approvals, requests and notices

- (a) Where conduct requires a consent or approval, that consent or approval must be given before that conduct occurs.
- (b) A consent, approval, request or notice must be in English and in writing.
- (c) Any consent, approval, request or notice is deemed to have been received:
  - (i) if delivered personally, when left at the person's address;
  - (ii) if sent nationally by mail, three (3) Business Days after it is posted;
  - (iii) if sent internationally by mail, five (5) Business Days after it is posted; and

- (iv) if sent by email, at the time and date it was successfully sent without the sender subsequently receiving a delivery failure notice.
- (d) Any consent, approval, request or notice to TrueVault must be emailed to the contact details as set out in the relevant Work Order.
- (e) Unless stated otherwise, a copy of any consent, approval, request or notice must be given to each party.
- (f) Where two or more persons comprise a party, notice to one is effective notice to all.

## **18.6 Payments**

- (a) Unless stated otherwise, a reference to money means Australian currency.
- (b) Unless stated otherwise or required by Law, payments must be made without set off or deduction.
- (c) Payments must be made in the manner nominated by the payee at least two Business Days before a payment is due.
- (d) The payee may, at its option, apply money received from a payer against any money then due by the payer to the payee.
- (e) Any late payment attracts interest. Interest will be calculated at four percentage points above the cash rate target announced by the Reserve Bank of Australia from time to time. That interest will accrue and be recoverable from day to day.
- (f) All payments must be made in immediately available funds
- (g) A payment in 'immediately available funds' refers to a payment in cash, by bank cheque the drawer of which is an Australian bank, by telegraphic transfer of cleared funds or by a direct credit of cleared funds.

## **18.7 Subcontract**

The Customer agrees that TrueVault may subcontract to any person to perform all or part of TrueVault's obligations under these Terms without seeking the Customer's consent or approval.

## **18.8 Governing law**

The laws in South Australia govern these Terms. The parties submit to the exclusive jurisdiction of the Courts of South Australia and the Federal Court of Australia (Adelaide Registry).