

General Terms and Conditions

1. Introduction

- 1.1 You must accept this end user agreement (**End User Agreement**) before accessing and using the Services provided under this End User Agreement or accessing any related services.
- 1.2 By accessing the Services, you consent to be bound by the terms and conditions of, and are deemed to be a party to, this End User Agreement. If you do not agree with all of the terms and conditions of this End User Agreement, do not access the Services.
- 1.3 This End User Agreement is entered into by you as an end user of the Services. You confirm that you have the authority to act on behalf of any entity for whom you are using the Services.
- 1.4 From time to time CBSYS Limited (**CBSYS**) may need to make changes to this End User Agreement. CBSYS will notify you of any changes to this End User Agreement by posting them on the Website and on the dashboard available to you when you log-on to the Services. You agree by continuing to access or use the Services to be bound by the updated terms and conditions.

2. Definitions

- 2.1 In this End User Agreement unless the context otherwise requires:

Additional Service Options means additional features or functions of the Software or Services that are made available as optional extras at an additional cost.

Commencement Date means the date of this End User Agreement.

Data means any data or information inputted by you or for which you grant access to through the Website and/or the Services.

Default Rate means 1.5% of your monthly Service Fee.

Documentation means any documentation or information we make available to you in and around accessing and using the Services.

End User Agreement means your Special Terms and these general terms and conditions (as amended from time to time in accordance with this End User Agreement).

Expiry Date means the date on which this End User Agreement is terminated in accordance with its terms.

Fees means the fees, costs and expenses payable for the Services, including the Setup Fees, Service Fees, support fees, and any other fees, costs and/or expenses that may be charged by CBSYS pursuant to the terms of this End User Agreement.

Hardware means the timeclocks (as specified in the Special Terms) requiring physical installation at your premises, which enable you to access and use the Services you have subscribed for.

Installation means the installation of the Hardware (and, if applicable, CBSYS software) on your system to enable you to access and use the Services. Installation is included in the Setup Fee, unless you live outside of Auckland city and require CBSYS to physically install the Hardware at your premises, in which case additional fees and/or costs will apply (as set out in the Special Terms or otherwise notified by CBSYS).

Premium Support means the support services plan described as such on the Website.

Registered Users means the personnel of your organisation that access and use the Services, the total maximum number of which is specified in the Special Terms or as otherwise updated pursuant to clause 7.

Scheduled Maintenance means routine maintenance that is carried out at regular intervals for the purpose of releasing or updating versions of the Software or undertaking work on the Website.

Services means the services delivered through the Website (including access to and use of the Software, Documentation, the Support Services and any Additional Service Options) for which you have subscribed from time to time throughout the Term.

Service Commencement Date means the date on which CBSYS has completed your installation and Initial Training, as notified by CBSYS to you.

Service Fee means the monthly Service Fee specified in the Special Terms (or as otherwise updated from time to time in accordance with the terms of this End User Agreement) payable by you in accordance with this End User Agreement. The Service Fee includes 3 months of Premium Support from the Services Commencement Date and then Standard Support for the remainder of the Term. Additional Fees will apply if you elect to take Premium Support following the end of this initial 3 month period.

Setup Fee means the fee payable by you to CBSYS for Installation and the Initial Training, as specified in the Special Terms.

Software means the time and attendance software (and any related software) owned (or licensed) by CBSYS and operated through the Website.

Special Terms means the Special Terms signed by you and which form part of this End User Agreement.

Standard Support means the support services plan described as such on the Website.

Subscriber means the person who registers to access and use the Services and includes the entity or entities on behalf of whom that person enters into this End User Agreement.

Subscriber Application means a software application that is directly or indirectly used by you (regardless of whether provided by you or a third party) for the purpose of interoperating with a Service.

Support Services means the support services provided by (or on behalf of) CBSYS, in the form of either Standard Support or Premium Support, but for the avoidance of doubt, does not include any training. You will receive premium Support for a period of 3 months from the Service Commencement Date, and following the end of such initial 3 month period, the Support Service option available to you will be as specified in the Special Terms.

Term means the term of this End User Agreement, which shall commence on the Commencement Date and shall continue until the Expiry Date.

Initial Training means the one initial standard remote training session provided by CBSYS, the cost of which is

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included in the Setup Fee, unless you request Training to be provided at your premises in which case an additional costs and fees will apply (as specified in the Special Terms or notified to you by CBSYS).

Website means time.cbsystems.co.nz or such other site as notified by CBSYS from time to time.

you means the Subscriber and, as the context permits, includes the Registered Users, and **your** has a corresponding meaning.

3. Services

3.1 Subject to compliance by you with this End User Agreement (as amended by CBSYS from time to time):

(a) CBSYS grants to you and you hereby accept from CBSYS, a non-exclusive, non-transferable and non-assignable right to access and use the Services for your own internal business purposes only (excluding the commercialisation or exploitation of information technology products or services); and

(b) you hereby subscribe for the Services.

4. Installation and training

4.1 CBSYS shall provide such Installation services as are specified in the Special Terms, at the Fees, costs and/or expenses specified in the Special Terms (or as otherwise notified by CBSYS from time to time).

4.2 Unless it has been agreed by CBSYS that CBSYS will install the Hardware at your premises for you (as specified in the Special Terms), you must install all Hardware supplied to you within 3 weeks of the date on which you receive such Hardware. If you do not install such Hardware within the relevant 3 week period, CBSYS will charge you a daily hardware rental fee (as notified by CBSYS) until such time as you have satisfactorily completed the installation of such Hardware.

4.3 CBSYS shall provide you with the Initial Training during or upon completion of Installation. The whole installation period should not exceed 6 weeks from the date of deposit received. Monthly charges starts after the 6 weeks period unless the delay in installation was caused by CBSYS.

4.4 If additional installation services, training or assistance is requested by you and CBSYS is able to provide such additional services or assistance, additional fees, costs and/or expenses will apply (as notified by CBSYS).

4.5 Despite any other term of this agreement, you acknowledge and agree that you must undertake certain actions (in connection with your own systems and hardware) before Installation can be completed by CBSYS. If Installation is delayed and over 6 weeks as a result of your failure to undertake such actions, CBSYS may commence charging the Service Fees from the date on which Installation was due to be completed (as opposed to the Service Commencement Date) and you may not terminate this End User Agreement until such time as you have completed such actions, or as otherwise agreed with CBSYS.

5. Ownership and intellectual property rights

5.1 All Hardware is owned by and shall remain owned by CBSYS. If any Hardware is not returned to CBSYS by

you in the condition required by clause 10.7, you will pay CBSYS (on demand) the cost of repairing or replacing such Hardware (as notified by CBSYS). Further, you agree that CBSYS may come onto your premises and remove any Hardware in your possession if you do not promptly return such Hardware promptly in accordance with clause 10.7.

5.2 The Services (and each part of them) are protected by copyright and other interests and are proprietary and confidential to CBSYS (or its third party licensors, suppliers and/or agents). All rights, title and interest in and to the Services (and each part of them), including associated intellectual property rights, are and will remain vested in CBSYS or its third party licensors, suppliers or agents (as applicable). These rights are protected by law and international treaties.

5.3 Except as specified in this End User Agreement, nothing contained in this End User Agreement confers on you any right or interest in, or licence or permit to use, any of the intellectual property rights in the Services (or any part of them) or any other intellectual property rights owned by or proprietary to CBSYS or any of its third party licensors, suppliers or agents.

5.4 You acknowledge and agree that:

(a) no obligation, warranty, undertaking or promise of CBSYS in this End User Agreement shall apply in respect of any third party software licensed to you (or CBSYS for the purposes of fulfilling its obligations under this End User Agreement); and

(b) you shall comply (in all respects) with any restrictions of use in any agreement entered into in respect of any third party software used in connection with (or incorporated into) the Services.

6. Restrictions on use

6.1 You may not license, assign, resell, share, pledge, rent or transfer any of your rights under this End User Agreement in relation to the Services or the Hardware or any part of them.

6.2 Except as expressly permitted by relevant copyright laws, no copying, redistribution, displaying, performing, reproducing, licensing, transferring or publication of the Services' (or any part of them) is permitted without express written permission of CBSYS (which may be withheld at the sole discretion of CBSYS). Any copy made remains subject to the provisions of this End User Agreement, and all titles, trademarks, copyright notices and other legends shall be reproduced on such copy.

6.3 You may not modify, translate, reverse engineer, decompile, disassemble or create derivative works of the Services (or any part of them) or otherwise attempt to (a) defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Services (or any part of them), including, without limitation, any such mechanism (including the Website) used to restrict or control the functionality of the Services (or any part of them) or circumvent any contractual usage limit; or (b) derive the source code or the underlying ideas, algorithms, structure or organisation form of the Services (or any part of them); or (c) frame or mirror any part of the Service (or its content), other than for your own internal business purposes (for no

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- commercial gain or resale). You will at all times, including during and after the term of this End User Agreement, keep the content of the Services (or any part of them) confidential.
- 6.4 You may not access the Service if you are a direct competitor of CBSYS, except with CBSYS's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes
- 6.5 In respect of your access to and use of the Services you will comply with all applicable laws and regulations and all guidelines, procedures and policies notified by CBSYS from time to time.
- 6.6 Without detracting from any other rights, CBSYS reserves the right to modify, amend or cease to offer any of the Services (or any part of them) upon providing you with five days prior notice. Such notice shall be provided on the Website and on the dashboard available to you when you log-on to the Services.
- 6.7 You agree to indemnify and hold CBSYS, its third party licensors, agents, suppliers and distributors and its directors, officers and employees, harmless from all claims, liabilities, damages, losses, including legal fees and expenses, due to or arising out of your use of the Services and/or any breach of this End User Agreement by you. CBSYS will not be liable to you or to any other person arising directly or indirectly out of or in connection with the Services, the Installation, implementation, maintenance, operation, use or unavailability of the Services or otherwise in connection with this End User Agreement.
- 6.8 In connection with the Services, you agree as follows: (a) only the Registered Users may access and use the Services; (b) you will notify each Registered User of the terms of this End User Agreement and ensure that each of them strictly comply with its terms; (c) you will at all times, including after the term of this End User Agreement, keep the Services and the content associated with them, together with all access details, including passwords and codes, confidential; (d) you are solely responsible for all Data, the contents of your e-mail messages, attachments and stored files and CBSYS reserves the right to remove from its servers any content that may expose CBSYS to potential liability (but for the avoidance of doubt a failure by CBSYS to do so does not relieve you from responsibility); (e) you may not distribute through the Services any attachments, documents or files that: (i) infringe on any copyright, patent, trade secret, trademark or other third party proprietary rights; (ii) violate any law, statute, ordinance or regulation, including but not limited to any applicable privacy legislation, such as the New Zealand Privacy Act 1993; (iii) are defamatory, libellous or obscene; or (iv) contain viruses, trojan horses, worms, time bombs, or similar harmful programming routines; (f) you may not use the Services for any unlawful purpose; (g) you may not use the Services in a manner that may damage, disable, overburden or impair either the Services or the networks connected to the Services; (h) you may not attempt to gain unauthorised access to the Services, including but without limitation, through hacking or password mining; and (i) you may not use the Services to collect personal information about third parties, including without limitation, e-mail addresses.
- 6.9 CBSYS may at its discretion use technology (including digital rights management protocols) or other means to protect the Services, protect its customers, or to prevent any breach of this End User Agreement.
- 7. Access by Registered Users**
- 7.1 No more than the number of Registered Users specified in the Special Terms (or otherwise updated pursuant to this clause 7.1) may access and use the Services. If you wish to increase or decrease the number of your Registered Users at any time during the Term, you must notify CBSYS in writing of such request and, subject to clause 7.2, CBSYS will update your number of Registered Users accordingly, with immediate effect. CBSYS will notify you of the applicable increase or decrease (as applicable) to your Service Fees as a consequence of the increase or decrease in your number of Registered Users
- 7.2 If you have increased your number of Registered Users under clause 7.1, you may not request any decrease to your number of Registered Users during the subsequent 6 month period.
- 7.3 You are responsible for keeping all access information, including email addresses and log-on credentials, secret and secure. Without limiting the foregoing, you agree:
- (a) not to allow any person other than Registered Users to access and use the Services or the Hardware;
 - (b) to ensure that Registered Users do not permit any other person to use their user name or log-on credentials;
 - (c) not to disclose, or permit any Registered User to disclose, log-on credentials or any other information (such as security tokens or codes) that may allow any person (other than a Registered User) to gain access to and use of the Services or the Hardware; and
 - (d) to inform CBSYS immediately of any known or suspected unauthorised access to and use of the Services or the Hardware.
- 8. Data and Subscriber Applications**
- 8.1 You acknowledge and agree that we may access or disclose information about you (including Data) in order to:
- (a) comply with the law or legal proceedings served on us;
 - (b) enforce and investigate potential breaches of this End User Agreement or any other unauthorised use of the Services; or
 - (c) protect our rights, property, or the safety of our employees, customers or the public.
- you consent to the access and disclosures outlined in this clause 2.1.
- 8.2 In order to provide you with the Services (and improve on them), CBSYS may also collect certain information about the performance of the Services and your use of the Services. CBSYS may make use of such information to track usage and to better understand the use of the Services, improve and revise the Services based on such usage, publish industry level statistics (whether to

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- you of other subscribers) and for customer support services.
- 8.3 Title and associated intellectual property rights in the Data remain your property. Access to and use of the Data is subject to you not being in breach of this End User Agreement. To the extent necessary to perform the Services you grant a non-exclusive licence to CBSYS in respect of the Data. Such licence extends to CBSYS allowing access to the Data to any third party applications that you may enable for use in conjunction with the Services, however CBSYS shall not be responsible for any such access or use of the Data by any such third party application provider.
- 8.4 You are solely responsible for maintaining a copy of all Data. CBSYS has in place for its own purposes policies and procedures to prevent data loss (and recovery) but does not make any guarantee around loss of your Data and as such CBSYS expressly excludes any liability for any loss of Data.
- 8.5 Where you use a Subscriber Application, you grant CBSYS permission to allow the provider of that Subscriber Application to access the Data as required for the interoperation of that Subscriber Application with the Service. If the provider of the Subscriber Application ceases to make the Subscriber Application available for interoperation with the corresponding Services, CBSYS reserves the right to stop providing those Services without any refund or recourse from you. If CBSYS has concerns around the security of your Subscriber Application, it may refuse to interoperate with your Subscriber Application until you address those security concerns.
- 9. Payment of Fees**
- 9.1 In consideration of the Installation and Initial Training services, you agree to pay to CBSYS the Setup Fee and one month's Service Fees within 7 days of the Commencement Date.
- 9.2 In consideration of your use of the Services, you agree to pay to CBSYS:
- (a) in advance (from the Service Commencement Date), the monthly Service Fee specified in the Special Terms, and as amended from time to time by notice from CBSYS. The Service Fee shall be payable one months in advance; and
 - (b) in arrears, any other Fees, costs and expenses payable by you in respect of the Services (including any Additional Service Options you may subscribe for from time to time) supplied by CBSYS during the relevant month and any other fees, costs or expenses incurred under or in connection with this End User Agreement in the relevant month.
- 9.3 From time to time CBSYS may need to make changes to your Fees. CBSYS will notify you of any such changes by posting on the Website and by emailing you. If you do not agree to the amended Fees, you must notify CBSYS prior to the effective date of such amendment and your End User Agreement will terminate on the date immediately before the date on which the amended Fees come into effect.
- 9.4 If your actual usage during any month exceeds your contracted number of Registered Users, you agree to pay CBSYS Service Fees based on your additional usage (over and above the contracted number of Registered Users) at the beginning of the next monthly billing period. CBSYS shall issue you a statement in this regard detailing the relevant charges. Registered Users joining part way through a monthly billing period will be charged from the commencement of that relevant monthly billing period.
- 9.5 Monthly Fees shall be payable in full each month, notwithstanding any unavailability of the Service during the relevant month (for any reason).
- 9.6 All Fees are payable by credit card, automatic bank payment, electronic funds transfer, direct debit authority or otherwise, as required by CBSYS.
- 9.7 All payments must be made by the 20th of the month following the month to which the Fees apply without set-off or deduction.
- 9.8 If you do not make full payment of any Fees by their due date for payment, CBSYS may, without limiting any other right or remedy it may have in respect of non-payment or late payment:
- (a) charge you an administration fee of \$50;
 - (b) charge interest on the outstanding amount at the Default Rate per annum (charged monthly) from the due date until the date of actual payment; and
 - (c) seek reimbursement of all costs incurred (including collection agency and legal costs, if any) by CBSYS in connection with the collection of any such overdue Fees from you.
 - (d) Will be given 2 late payment reminder before putting account on Halt and require payment on due amount immediately to allow any access to CleverTime data & lift halt.
- 9.9 Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on CBSYS's income. If CBSYS is required to pay or collect any taxes (including any goods and services tax) on any Fees charged under this End User Agreement, or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on CBSYS's net income, then such taxes and/or duties will be billed to and paid by you immediately upon receipt of CBSYS's invoice and supporting documentation for the taxes or duties charged.
- 9.10 You agree that your purchase of the Service is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by CBSYS regarding the future functionality or features.
- 10. Term**
- 10.1 This End User Agreement shall be in effect for the Term.
- 10.2 Unless expressly agreed otherwise by CBSYS (on a case by case basis), if you fail to pay any Fees by the due date for payment of such Fees, CBSYS may (at its discretion):
- (a) suspend the provision of the Services until such time as the Fees have all been paid in full; or
 - (b) terminate this End User Agreement with immediate effect.

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10.3 CBSYS may terminate this End user Agreement on notice with immediate effect if you fail to comply with any other term or condition of this End User Agreement and such failure is not remediable or, if remediable, is not remedied by you within 30 days of the date on which CBSYS notifies you of such failure.

10.4 CBSYS may terminate this End User Agreement on 30 days' notice to you.

10.5 You may terminate this End User Agreement on 60 days' notice to CBSYS at any time following a date which is 12 months after the Services Commencement Date.

10.6 Notice of termination under this clause 10 may be provided:

- (a) by you by calling the CBSYS accounts team on +649 889 0055, or by emailing CBSYS at accounts@cbsystems.co.nz; OR
- (b) by CBSYS by providing notice of termination to you by email, to the email address you notify to CBSYS as part of the subscription process). –

10.7 You agree that upon expiration or termination of this End User Agreement you will immediately cease to access or use the Services, return all Hardware (at your own cost and in the same condition as it was on the date it was supplied to you, subject only to fair wear and tear) to CBSYS, and destroy all access codes or passwords related to the Services in your possession or under your control. If you have damaged or lost any Hardware, CBSYS shall charge you for the cost of repairing or replacing (as applicable) such Hardware.

10.8 If your End User Agreement is terminated (for any reason) prior to the Expiry Date, you must:

- (a) continue to pay Service Fees until such time as all Hardware has been received by CBSYS in accordance with clause 10.7;
- (b) pay all other Fees incurred prior to the date of termination,

and you acknowledge and agree that CBSYS shall not be obliged to refund any Fees paid in advance that relate to the period following the effective date of termination.

11. Updates and new versions and changes to Services

11.1 CBSYS may provide updates to or new versions of the Services (or any part of them) and reserves the right to take down access to the Services (including applicable servers hosting the Software and/or Data) to conduct Scheduled Maintenance or for any other reasons outside CBSYS' reasonable control, including denial of service attacks. CBSYS will use reasonable efforts to perform Scheduled Maintenance outside of standard business hours and provide prior notification to its subscribers (including you). You agree to comply with CBSYS's instructions in relation to any update or new version and CBSYS will not be held liable for any upgrade to an update or new version of the Services (or any part of them).

12. Warranties

12.1 CBSYS guarantees that it has the full power and authority to grant the rights granted by this End User Agreement to you and that subject to you complying with

the terms of this End User Agreement, the use of the Services by you will in no way constitute an infringement of any intellectual property rights of any third party. In the event of a breach of the warranty in this clause 12, your sole remedy will be (at CBSYS's option) the replacement of the infringing Services (or part thereof) with non-infringing Services, the modification of the Services so that they cease to be infringing, or the procurement of the right for you to continue using the Services in accordance with this End User Agreement.

12.2

CBSYS warrants that the then current, unmodified version of the Software provided by CBSYS through the Services and any Hardware supplied by CBSYS will operate in all material respects in conformity with the CBSYS specifications applicable to such Software and Hardware as notified to you in writing (**Specifications**), provided that such Software and Hardware is used correctly and in accordance with all relevant documentation and CBSYS instructions and directions. In the event of any breach of the warranty in this clause 12.2 or any other defect or deficiency in the Software, your sole remedy will be (at CBSYS's option) the repair or replacement of the non-conforming Software or Hardware (or part thereof) or a refund of the Fee paid by you for such non-conforming Software or Hardware (or part thereof). To the extent any defect or deficiency arises in the Software or Hardware as a result of your failure to access or use such Software or Hardware correctly and otherwise strictly in accordance with all relevant documentation and CBSYS instructions and directions, any repairs or replacements undertaken under this clause shall be undertaken at your sole cost and expense.

12.3

CBSYS warrants that work performed to complete any Services will be performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry. In the event of a breach of the warranty in this clause 12.3, your sole remedy will be the re-performance of the work resulting in the non-conforming Services by CBSYS.

12.4

Without limiting the generality of clause 12.5, CBSYS shall have no liability or responsibility for any failure or unavailability of, or interruption to, the Service where such failure, interruption or unavailability was caused or contributed to by the acts or omissions of any third party (including any provider of telecommunications or internet services upon which the Service relies).

12.5

CBSYS does not represent that the Services (or any part of them) will be uninterrupted, are error-free or will satisfy all of your requirements. Nor does CBSYS provide any warranties in respect of the accuracy, completeness, timeliness or supply of information via the Website (or data storage centres). The warranties in this clause 12 are in lieu of all other warranties in respect of the Services. To the maximum extent permitted under applicable law, all other warranties, conditions and representations, whether express, implied or verbal, statutory or otherwise, and whether arising under this End User Agreement or otherwise are hereby excluded, including, without limitation, the implied warranties of merchantability, non-infringement and fitness for a particular purpose.

13.

Limitation of liability

13.1

If you suffer loss or damage as a result of any act or omission of CBSYS (or any of its third party licensors,

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agents, suppliers, distributors and/or its directors, officers and employees) arising out of or in connection with this End User Agreement and/or the Services, then all claims by you against CBSYS whether in contract, equity, tort (including negligence), breach of statutory duty or otherwise) or any other theory of liability are limited in aggregate to the Fees paid by you during the Term.

- 13.2 Under no circumstances will CBSYS, its third party licensors, agents, suppliers, distributors and/or its directors, officers and employees be liable, whether in contract, equity, tort (including negligence, breach of statutory duty or otherwise) or any other theory of liability for any direct or indirect: loss of profits, loss of revenue, loss of data, loss of anticipating savings; or for any indirect, special or consequential loss whatsoever.

14. General

- 14.1 This End User Agreement and the provision of the Services provided hereunder will be governed by New Zealand law and you agree to submit to the exclusive jurisdiction of the New Zealand courts in respect of any disputes or claims arising out of or in connection with the Services. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 14.2 This End User Agreement is personal to you and may not be assigned by you or otherwise dealt with by you without the prior written consent of CBSYS. If you are not a natural person, any change of control in your corporate entity will be deemed an assignment. CBSYS may assign this End User Agreement at any time by notice in writing to you.
- 14.3 This End User Agreement constitutes the entire agreement between the parties with respect to the use of the Services and supersedes all prior or contemporaneous understandings regarding such subject matter.
- 14.4 If any of provision of this End User Agreement is determined to be illegal, invalid or otherwise unenforceable, then to the extent, it shall be severed and deleted from these terms and the remaining terms shall survive and continue to be binding and enforceable.
- 14.5 No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of the End User Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the End User Agreement.
- 14.6 Any provision necessary for the interpretation or enforcement of this End User Agreement shall survive any expiry of termination.