

# TRISEARCH GENERAL TERMS

## Currency

These TriSearch General Terms are current from 26 May 2025 for new Clients and 26 June 2025 for existing Clients.

## Table of Contents

1.	AGREEMENT .....	2
2.	THIRD PARTY PRODUCTS .....	2
3.	TERM.....	2
4.	ACCESS, LICENCE AND RESTRICTIONS .....	2
5.	PROVISION OF SERVICES.....	3
6.	SERVICE VARIATIONS .....	4
7.	CLIENT DATA .....	4
8.	CLIENT ACKNOWLEDGEMENTS AND OBLIGATIONS.....	4
9.	FEES AND INVOICES .....	5
10.	TRICONVEY REBATE OFFER .....	5
11.	GST.....	6
12.	WARRANTIES, ACKNOWLEDGEMENTS AND EXCLUSIONS .....	6
13.	INDEMNITIES .....	7
14.	LIMITATION OF LIABILITY.....	7
15.	SUSPENSION OF ACCESS .....	7
16.	TERMINATION .....	8
17.	CONSEQUENCES OF TERMINATION .....	8
18.	FORCE MAJEURE.....	8
19.	INTELLECTUAL PROPERTY RIGHTS .....	9
20.	CONFIDENTIALITY .....	9
21.	PRIVACY.....	9
22.	DATA PROTECTION & SECURITY .....	10
23.	AUDIT RIGHTS.....	10
24.	GENERAL .....	11
25.	DEFINITIONS AND INTERPRETATION.....	11
SCHEDULE 1 ARCHIE AI.....		16
1.	AI SERVICES .....	16
2.	MATTER DATA .....	16
3.	CONSENT .....	16
4.	OPT-OUT .....	16
5.	DISCLAIMERS .....	16

# General Terms

## 1. AGREEMENT

- 1.1 This agreement contains the terms and conditions that govern your access to and use of the TriSearch Systems and any TriSearch Products ordered and accessed through a TriSearch System and is made between TriSearch Pty Limited (**TriSearch, We, Us or Our**) and you or the entity you represent (**Client, You or Your**) comprising the following parts:
  - (a) these General Terms of this agreement;
  - (b) any special Product Terms applicable to TriSearch Products accessed or used by You as set out at <https://www.infotrack.com.au/legal/ProductTerms>;
  - (c) any Third Party Terms applicable to TriSearch Products accessed or used by You as set out at <https://www.infotrack.com.au/legal/ThirdPartyTerms>; and
  - (d) (if relevant) the terms of any Order Form entered into between the Parties, (together, this **Agreement**).
- 1.2 If there is any inconsistency between the documents listed above, the documents listed later will prevail to the extent of the inconsistency, except to the extent any of the provisions in this Agreement are declared to be an unfair contract term under Australian Consumer Law or are otherwise illegal, unenforceable or invalid.
- 1.3 This Agreement will commence on the earlier of:
  - (a) when You click an "I Accept" button or check box presented with this Agreement;
  - (b) when You first use any of the TriSearch Systems or TriSearch Products; or
  - (c) when You sign an Order Form,**(Commencement Date)** and will continue until it expires or is terminated.
- 1.4 You represent to Us that You are lawfully able to enter into, execute, and perform this Agreement and You have legal authority to bind the organisation or entity you represent (such as the company You work for), which You represent is duly organized under applicable Laws.

## 2. THIRD PARTY PRODUCTS

- 2.1 You acknowledge and agree that some TriSearch Products incorporate or are a compilation of Third Party Products (in whole or in part) which rely upon data and/or services provided to TriSearch by Third Party Suppliers, and are subject to Third Party Terms.
- 2.2 You acknowledge and agree that, for each order for Third Party Products submitted by You and supplied by a Third Party Supplier through the TriSearch System:
  - (a) a separate contract is formed between You and the applicable Third Party Supplier comprising these General Terms (as applicable), Third Party Terms, and the order (**Supplier Contract**);
  - (b) TriSearch enters into the Supplier Contract with You as agent for You and the Third Party Supplier for the benefit of TriSearch, You and the Third Party Supplier, and holds the benefit of the Supplier Contract as trustee for You and Third Party Supplier;
  - (c) Your legal rights and remedies for any Loss or Claims suffered by You in connection with the Third Party Products are against the Third Party Supplier and are not against TriSearch, except to the extent such Loss or Claim cannot be excluded by Law or is directly caused by TriSearch's breach of a Supplier Contract or TriSearch's negligent, wilful, criminal or fraudulent act or omission.
- 2.3 You appoint TriSearch as your agent to act on Your behalf for the purposes of:
  - (a) submitting Your orders for Third Party Products to the applicable Third Party Supplier;
  - (b) delivering the Third Party Products to You on behalf of the Third Party Supplier;
  - (c) entering into the Supplier Contract with the Third Party Supplier on Your behalf as specified in clause 2.2(b); and
  - (d) taking payment for the Third Party Products from You on trust for the benefit of the Third Party Supplier and remitting payment to the Third Party Supplier on Your behalf.
- 2.4 You acknowledge and agree that:
  - (a) TriSearch may charge You a Service Fee for acting as your broker and agent; and
  - (b) You authorise TriSearch, as Your agent, to do everything reasonably necessary for it to carry out its obligations under this Agreement in accordance with your lawful instructions.

## 3. TERM

- 3.1 **Term of Agreement:** This Agreement will commence on the Commencement Date and will continue for the Initial Term until terminated or otherwise expires (**Term**). Thereafter, this Agreement will automatically renew for subsequent Renewal Periods until terminated or otherwise expires.

## 4. ACCESS, LICENCE AND RESTRICTIONS

- 4.1 **Access:** TriSearch will provide access to the TriSearch Systems to enable You to order and access TriSearch Products via the TriSearch Systems during the Term.
- 4.2 **Delivery:** In consideration for the Fees, TriSearch will deliver the TriSearch Products ordered by You via the TriSearch Systems.
- 4.3 **Grant of Licence:** Subject to the restrictions set out in this clause 4, TriSearch grants to You a non-exclusive, non-sublicensable, non-transferable, revocable licence for You (through Your Permitted Users) to:
  - (a) access and use the TriConvey Software, TriSearch Platform and TriSearch Products for the Permitted Purpose; and

- (b) grant to Your End User clients a limited, exclusive, non-sublicensable, non-transferable personal licence (on a one-to-one basis) to use the TriSearch Products subsisting in the Derivative Works in connection with the professional, transactional or advisory services You (or Your Permitted Users) were engaged to provide to that End User. This right only applies where You are authorised under a Permitted Purpose to create Derivative Works using the TriSearch Products,
- during the Term and strictly in accordance with the terms of this Agreement and all Laws.
- 4.4 **Duration of Licence:** The licence granted by TriSearch to You under clause 4.3 will immediately come to an end:
- (a) in respect of the TriSearch Systems, upon the termination or expiry of this Agreement; and
  - (b) in respect of the TriSearch Products, upon the earlier of the completion of the Permitted Purpose or expiry of this Agreement (other than the licence under clause 4.3(b) to TriSearch Products subsisting in the Derivative Works created before termination or expiry of this Agreement, in which case the licence shall continue until completion of the Permitted Purpose).
- 4.5 **Users:** You warrant and agree that You:
- (a) will (and will ensure that Your Permitted Users will) only use and access the TriSearch Systems and TriSearch Products for the Permitted Purpose(s), in compliance with the terms of this Agreement and in accordance with all applicable Laws.
  - (b) will restrict access to any TriSearch Systems and TriSearch Products solely to Your Permitted Users; and
  - (c) You are responsible and remain fully liable for the acts and omissions of Your Permitted Users and Representatives in connection with this Agreement.
- 4.6 **Licence Restrictions:** Except as expressly permitted under this Agreement, You agree to ensure that neither You nor any Permitted User will not (nor attempt to):
- (a) **Permitted Purpose:** use the TriSearch Systems or TriSearch Products for any purposes other than the Permitted Purpose;
  - (b) **No Third Party Benefit:** use the TriSearch Products on behalf of or for the benefit of any third party other than Your End User clients;
  - (c) **User Credentials:** share any User Credentials or otherwise enable unlawful access to the TriSearch Systems or TriSearch Materials by any other person (whether simultaneously or independent of You);
  - (d) **Disclaimers:** remove, alter or deface any registered or unregistered trademark, logo, copyright notices, disclaimers or other proprietary notice appearing on or in any TriSearch Products or TriSearch Materials;
  - (e) **Trade Marks:** adversely affect or jeopardise the rights of TriSearch (or its Representatives) to register any unregistered trade marks, whether or not an application for registration has been made;
  - (f) **Misuse and Damage:** interfere, damage, alter, misuse or gain unauthorised access to the TriSearch Environment or TriSearch Materials or otherwise interfere with the ability of any other user of the TriSearch Systems to use the TriSearch Products;
  - (g) **Scraping:** data mine, scrape, crawl, aggregate, copy, extract or attempt to harvest (whether by any automated process, 'brute force attack' or otherwise) the TriSearch Environment or TriSearch Materials for any purpose, including setting up or adding to a database;
  - (h) **Reverse Engineer:** decompile, disassemble, translate, replicate or otherwise reverse engineer any software programs or any part of the TriSearch Environment or TriSearch Materials;
  - (i) **No Transfer:** sublicense, sell, resell, commercialise, assign or transfer any right, title or interest (including any Intellectual Property Rights) in the TriSearch Materials to any person;
  - (j) **Copyright:** copy, reproduce, publish, disclose, distribute, display, alter, modify or adapt the TriSearch Materials or create a derivative work by combining the TriSearch Materials (in whole or in part) with other materials to create a new work (save where reasonably necessary to use or access the TriSearch Materials for the Permitted Purpose as set out in an Order Form);
  - (k) **Direct Marketing:** use the TriSearch Products in any way in connection with Direct Marketing;
  - (l) **Off-shore Disclosure:** transfer, store, disclose or make available the TriSearch Products outside of the Territory;
  - (m) **Competition:** use the TriSearch Materials or TriSearch Systems in any way that competes with TriSearch's business or the TriSearch Products offered by TriSearch.
  - (n) **Misuse:** use the TriSearch Materials or TriSearch Systems in any way that would or may:
    - (i) constitute a misuse of any person's Confidential Information or infringe upon any person's rights (including Intellectual Property Rights and Moral Rights);
    - (ii) breach any Laws or otherwise amount to a use or disclosure for unlawful purposes;
    - (iii) damage the reputation or goodwill of TriSearch or otherwise be misleading, deceptive or defamatory; or
    - (iv) be intended to avoid incurring Fees or minimise the applicable Fees payable,
 (each, a **Non-Permitted Purpose**).

## 5. PROVISION OF SERVICES

- 5.1 **Delivery:** TriSearch will deliver the TriSearch Products via the TriSearch Systems.
- 5.2 **TriSearch Obligations:** TriSearch warrants that it will use reasonable commercial endeavours to provide access to the TriSearch Systems and TriSearch Products:
- (a) in a professional, competent, timely and responsible manner;
  - (b) in compliance with the terms of this Agreement; and
  - (c) in compliance with all Laws that apply to the TriSearch Systems and TriSearch Products supplied under this Agreement.
- 5.3 **User Credentials:** TriSearch will provide User Credentials to You to allow access to the TriSearch Systems.
- 5.4 **Affiliates:** You acknowledge and agree that:
- (a) the TriSearch Systems or TriSearch Products may be provided by any TriSearch Affiliate; and
  - (b) the Client Data may be disclosed to TriSearch's Affiliates in connection with this Agreement,

provided that TriSearch remains solely responsible for the provision of the TriSearch Products and TriSearch Systems and security of the Client Data in accordance with this Agreement. For the purposes of this clause, any references to TriSearch in this Agreement are read as references to TriSearch and any relevant TriSearch Affiliate.

## 6. SERVICE VARIATIONS

- 6.1 **Service Variations:** Subject to clause 6.3, TriSearch reserves the right to, at any time during the Term:
- (a) modify the method of supply and delivery of, or access to, the TriSearch Products;
  - (b) to change or discontinue any feature or functionality of the TriSearch Systems or TriSearch Products for any reason and at any time;
  - (c) amend or vary the terms of this Agreement from time to time. We will provide at least 30 days' notice in writing to You if any of these changes materially and adversely affect Your rights under this Agreement;;
  - (d) amend the Third Party Terms from time to time where directed or required by the Third Party Supplier or to otherwise comply with TriSearch's agreement with a relevant Third Party Supplier. We will provide at least 30 days' notice in writing to You if any of these changes materially and adversely affects Your rights under this Agreement;
  - (e) suspend or otherwise deactivate Your, and each of the relevant Permitted Users', access to the TriSearch Systems and any TriSearch Products, where there is an actual or suspected systems or security concern associated with the continued access by those users; and
  - (f) make temporarily unavailable or otherwise suspend access to the TriSearch Systems or TriSearch Products where reasonably necessary for: scheduled or emergency maintenance; system updates; other upgrades; or any other changes to the TriSearch Systems and/or TriSearch Products, and
- where possible will provide reasonable notice to You via the TriSearch Systems.
- 6.2 **Reservation of Rights:** TriSearch reserves the right to, at any time during the Term
- (a) store any and all data using cloud storage technology, at TriSearch's discretion; and
  - (b) gather analytics in relation to any and all activity on the TriSearch Systems, use of the TriSearch Products and Client Data for internal purposes (subject to clause 20 and 21), including for purposes such as billing, gauging interest and identifying usage patterns.
- 6.3 **Termination:** Where TriSearch exercises its rights under clause 6.1 above, You may terminate this Agreement immediately by notice in writing to TriSearch within 60 days of the change taking effect. For clarity, You may simply cease using your TriSearch account at any time without the need to provide us with formal notice of termination (ie, leave the account open but unused).

## 7. CLIENT DATA

- 7.1 **Client Data:** You will provide Client Data reasonably required to enable TriSearch to provide the TriSearch Systems and TriSearch Products.
- 7.2 **Licence to Use Client Data:** Without limiting clause 7.4, You grant TriSearch a non-exclusive, non-sublicensable (except as provided under clause 7.3) licence to use Client Data during the Term for the limited purpose of providing the TriSearch Systems and TriSearch Products to You. TriSearch must not use Client Data for any other purpose without Your prior written consent.
- 7.3 **Sublicence:** You consent to and agree that TriSearch may sub-license and disclose the Client Data to Third Party Suppliers and subcontractors during the Term for the limited purpose of providing the TriSearch Systems and TriSearch Products to the Client.
- 7.4 **Licence to Use Property Attributes:** You grant to TriSearch a non-exclusive, irrevocable, perpetual, world-wide, royalty free unlimited right to use, reproduce, modify, adapt, publish, make derivative works from, and sub-licence any Property Attributes provided or supplied to TriSearch by You.

## 8. CLIENT ACKNOWLEDGEMENTS AND OBLIGATIONS

- 8.1 **Client Acknowledgements:** You acknowledge and agree that TriSearch is entitled to rely on the accuracy and completeness of the Client Data as provided by the Client and, unless expressly required otherwise, TriSearch has no obligation to verify the accuracy or completeness of the Client Data.
- 8.2 **User Credentials:** You acknowledge and agree that:
- (a) TriSearch may update the User Credentials from time to time in accordance with its security measures, protocols and procedures to protect the security or integrity of the TriSearch Systems and TriSearch Products;
  - (b) You must (and must ensure that each of Your Permitted Users):
    - (i) take all steps necessary to protect the User Credentials from theft, loss, fraudulent or unauthorised use and keep the User Credentials confidential in accordance with clause 20; and
    - (ii) ensure that the User Credentials are not disclosed to or used by any person other than an authorised Permitted User (**Unauthorised Person**); and
  - (c) You are solely responsible for all use of the User Credentials by Permitted Users and any Unauthorised Person (including all TriSearch Products ordered using the User Credentials) and TriSearch is entitled to rely upon any order for TriSearch Products received through the use of the User Credentials.
- 8.3 **Client Obligations:** You acknowledge and agree You must (and must ensure Your Representatives & Permitted Users as appropriate):
- (a) provide TriSearch with any Client Data and sufficient written instructions as reasonably required to enable TriSearch to provide the TriSearch Systems and TriSearch Products;
  - (b) comply with any Third Party Terms;
  - (c) implement the security measures specified under clause 22.2; and
  - (d) comply with the terms of this Agreement,
- (together, the **Client Obligations**).

- 8.4 **Exclusion of liability:** TriSearch is not liable for any failure to provide the TriSearch Systems or TriSearch Products to the extent that such failure is due to Your failure to fulfil any of Your Client Obligations.

## 9. FEES AND INVOICES

- 9.1 **Tax Invoice:** TriSearch must issue to You a Tax Invoice that complies with the GST Law for all Fees applicable to the TriSearch Products and Third Party Products ordered and supplied to You during the invoice period.
- 9.2 **Payment of Fees:** You must pay to TriSearch all undisputed Fees in accordance with the terms of this Agreement.
- 9.3 **Payment Terms:** Subject to clause 9.12(a), You acknowledge and agree that the payment of any Tax Invoice issued by TriSearch to You will fall due within 7 days of receiving the relevant Tax Invoice, unless otherwise agreed between the Parties.
- 9.4 **Credit Card:** TriSearch reserves the right to charge a reasonable transaction fee where you elect to pay by credit card, which will be displayed at point of sale or otherwise agreed in writing. TriSearch, in its sole discretion, may elect to waive the transaction fee where you pay by direct debit.
- 9.5 **Third Party Suppliers:** A significant portion of the TriSearch Products are reliant on Third Party Products sourced from Third Party Suppliers and are subject to the Third Party Supplier Terms and the Authority Fees. TriSearch does not have any ability to control the Authority Fees charged by Third Party Suppliers, or any changes to those Authority Fees. In order to continue providing the TriSearch Products, TriSearch may be required to amend, from time to time, the Fees in order to reflect changes made to the Authority Fees, as set by the Third Party Suppliers.
- 9.6 **Authority Fee Increases:** Noting clause 9.5, TriSearch may increase the Fees at any time solely as necessary to pass through and take into account any Authority Fee increases or additional charges imposed by its Third Party Suppliers. If TriSearch is required to increase the Fees under this clause 9.6, we will use reasonable endeavours to provide You with reasonable advanced written notice of the new Fees payable for particular TriSearch Products. However, this may not always be possible, such as where Third Party Suppliers only provide TriSearch with little (or no) notice of adjustments to the Authority Fees. The adjusted Fees will also be present at the point of sale before completion of Your order.
- 9.7 **Fee Review:** Without limiting clause 9.6, TriSearch may increase the Fees as reasonably determined by TriSearch by providing You with reasonable advanced written notice of the proposed Fee adjustment. The adjusted Fees will also be presented at the point of sale before completion of Your order.
- 9.8 **Termination:** If you object to any increase to Fees notified by TriSearch under clauses 9.6 or 9.7, you may elect to terminate this Agreement immediately by providing notice in writing from receipt of such notice and within 60 days of the change taking effect. For clarity, and subject to clause 16.4, You may simply cease using your TriSearch account at any time without the need to provide us with formal notice of termination (ie, leave the account open but unused).
- 9.9 **Cancelled Orders:** TriSearch reserves the right to retain or charge the Fees where an order for an TriSearch Product is cancelled, or the search result is NIL where TriSearch has reasonably incurred costs, charges or Authority Fees. Any refund is assessed based on its own merits and requires the relevant Third Party Supplier to refund the applicable Authority Fee.
- 9.10 **Disputes:** Any failure by You to object to a Tax Invoice prior to the due date for payment or actual payment will not prejudice Your right to dispute the amount of the Tax Invoice.
- 9.11 **Interest:** Any undisputed Fees not paid when due will be subject to interest equal to a rate that is 5% per annum above the cash rate last published by the Reserve Bank of Australia, and will be calculated on a daily basis.
- 9.12 **Payment Default:** You acknowledge and agree that:
- (a) where You have a history of late payment or non-payment of your Tax Invoices by the due date, as a condition of keeping Your TriSearch account open, TriSearch may require that You are converted to direct debit by credit card with payment to be automatically deducted on the date of the Tax Invoice;
  - (b) if any Fees are due and payable but not received by TriSearch within thirty (30) days from the date on which such amounts fall due, then, at TriSearch's sole discretion, TriSearch may;
    - (i) terminate this Agreement and close your account immediately; and
    - (ii) transfer the right to receive, recover or pursue such amounts to a third party and You will be liable to TriSearch and/or the third party for any associated costs until such time as such amounts are paid in full to such third party;
  - (c) TriSearch may, in its sole discretion acting reasonably, notify a commercial credit reporting agency, such as Creditor Watch Pty Ltd (ABN 80 144 644 244) in circumstances where:
    - (i) any Fee is not paid within sixty (60) days from the date on which such amounts fall due;
    - (ii) the amount owed is over \$150.00;
    - (iii) TriSearch has requested payment of the debt either in person (for example by phone call) or by Notice in writing and provided You with Notice of TriSearch's intent to notify the credit reporting agency if such payment is not received; and
    - (iv) as otherwise permitted by Law.

## 10. TRICONVEY REBATE OFFER

- 10.1 **Rebate Offer:** In exchange for your loyalty and:
- (a) using TriSearch as Your Exclusive Search Provider during the invoicing month; and/or
  - (b) meeting the Minimum Spend requirement on searches through the TriSearch Platform over the invoicing quarter,
- (Rebate Requirements)**, we will apply a 100% rebate of your quarterly TriConvey invoice as set out below.
- 10.2 **How the Rebate Offer is applied:** We will invoice the Licence Fees for Your access to the TriConvey Software quarterly in arrears in the amount specified in the TriConvey Fees Schedule. Where You meet the Rebate Requirements, we will apply a Quarterly Rebate in an amount equal to the Licence Fees on the same invoice (covering the cost of the TriConvey Software) (the **Rebate Offer**).
- 10.3 **TriConvey Invoice:** Where you:
- (a) do not meet the Rebate Requirements for the relevant quarterly invoicing period; or
  - (b) if you breach the TriConvey Terms & Conditions or these General Terms,



then the Rebate Offer will not be applied and the quarterly TriConvey Licence Fees will be due and payable within 30 days of the date of issue of the relevant Tax Invoice.

- 10.4 **Fees:** All TriConvey Licence Fees, Minimum Spend requirements and Quarterly Rebate amounts will be specified in the TriConvey Fees Schedule.
- 10.5 **Fee Review:** TriSearch may increase the Licence Fees as reasonably determined by TriSearch by providing You with reasonable written notice of the proposed Licence Fee adjustment.
- 10.6 **Add-Ons:** TriSearch may from time to time make Add-ons available at an additional Fee. If You purchase an Add-on:
- (a) You must pay the applicable Fees for that Add-on pursuant to the TriConvey Fees Schedule; and
  - (b) You will be permitted to access and use the Add-on for your Term.
- 10.7 **Termination:** If you object to any increase to Licence Fees notified by TriSearch under clause 10.5, you may elect to terminate this Agreement immediately by providing notice in writing anytime up until 60 days after the change taking effect.

## 11. GST

- 11.1 All Fees quoted under this Agreement will be exclusive of GST, unless expressly stated otherwise.
- 11.2 If the supply of a TriSearch Product is subject to GST, You must pay to TriSearch an additional amount equal to the relevant Fee multiplied by the applicable GST rate. Such additional amount is payable at the same time as the related Fee. TriSearch will provide You with a Tax Invoice on a periodic basis and in any event in accordance with GST Law.
- 11.3 **Survival of Clause:** This clause 11 survives the termination of this Agreement.

## 12. WARRANTIES, ACKNOWLEDGEMENTS AND EXCLUSIONS

- 12.1 **Mutual Warranties:** Each Party represents and warrants to the other on a continuing basis that:
- (a) it has full corporate power and authority to enter into and give effect to this document and to complete any and all transactions contemplated by this Agreement;
  - (b) at the date of this Agreement, the execution, delivery and performance of this Agreement by it does not contravene any contractual, legal or other obligations that apply to it; and
  - (c) it is lawfully able to grant any relevant licences to the other Party as provided for under this Agreement.
- 12.2 **TriSearch Warranties:** Further to the mutual warranties set out in clause 12.1, TriSearch warrants that:
- (a) it will not knowingly introduce any errors, faults or other imperfections to the TriSearch Systems or TriSearch Products;
  - (b) the supply of the TriSearch Systems and TriSearch Products by TriSearch for the Permitted Purpose:
    - (i) is not contrary to any applicable Laws as they relate to TriSearch; and
    - (ii) will not infringe the copyright of any third party.
- 12.3 **Client Warranties:** You represent and warrant that:
- (a) in respect of the Client Data provided or disclosed by or on behalf of You to TriSearch in connection with this Agreement:
    - (i) TriSearch's use of the Client Data in accordance with this Agreement will not infringe any applicable Laws; and
    - (ii) TriSearch's use of the Client Data in accordance with this Agreement will not infringe the copyright or other Intellectual Property Rights of any third party;
    - (iii) You have obtained or will obtain (prior to disclosure to TriSearch) all required and necessary consents and authorisations for TriSearch to collect, use, hold, process and disclose the Client Data in accordance with this Agreement; and
  - (b) You shall use the TriSearch Products and TriSearch Systems in compliance with this Agreement and applicable Laws.
- 12.4 **Client Acknowledgements:** Except to the extent You are a Consumer and the following are Consumer Guarantees that cannot be excluded by Law, You acknowledge and agree that, to the fullest extent permitted by Law:
- (a) the mutual warranties set out in clause 12.1 and the TriSearch warranties set out in clause 12.2 are in lieu of any other warranties by TriSearch, express or implied;
  - (b) all terms, conditions or warranties are expressly excluded, and TriSearch expressly disclaims any warranties that:
    - (i) the TriSearch Systems and TriSearch Products are provided on an "as-is" and "as available" basis and all terms, warranties, representations and conditions are expressly excluded, and TriSearch expressly disclaims all express or implied terms, warranties, representations and conditions in respect of the TriSearch Systems and TriSearch Products, including that the TriSearch Systems and TriSearch Products: will be merchantable, will be non-infringing, will meet Your requirements; are fit or suitable for Your intended purpose or use; will be compatible with, or suitable for use with, Your own software or applications; will be error-free, correct, accurate, complete, reliable, secure, current, up-to-date or otherwise (including any TriSearch Products sourced from Third Party Suppliers), or that the statistical methodology on which any of the TriSearch Products are derived use appropriate or accurate assumptions;
  - (c) TriSearch does not provide any legal advice or legal services, accounting or other professional services advice by providing You access to the TriSearch Products;
  - (d) access to the TriSearch Systems and TriSearch Products is made available to You, and Your Permitted Users subject to the terms and conditions set out in this Agreement, as well as any applicable TriSearch Product Terms and Third Party Terms as provided from time to time; and
  - (e) You are solely responsible for ensuring, and must satisfy Yourself, that the TriSearch Systems and TriSearch Products licensed to You meet Your needs; and
  - (f) the TriSearch Systems or TriSearch Products may include links, integrations, or connections to third-party websites, applications, or other services. Such connections do not imply review or endorsement by us. You and (where applicable) Your End User client proceed at your own risk to a Third Party Supplier website, application, or service.

- 12.5 **Remedies:** In the event of breach by TriSearch of (i) clause 12.2; (ii) any warranties implied by Law; or (iii) any warranties that cannot be excluded by Law, then TriSearch's liability will at TriSearch's sole discretion be limited to TriSearch:
- (a) using commercially reasonable efforts to modify, correct or provide access to the relevant TriSearch Systems or TriSearch Products;
  - (b) re-supplying the TriSearch Products to You;
  - (c) reimbursing to You the relevant Fees paid by You (where applicable) for the provision of the TriSearch Products; and/or
  - (d) waiving payment of any Fees for the re-supply of the TriSearch Products to You.

### 13. INDEMNITIES

- 13.1 **Indemnities:** Subject to clause 14.2, the first Party (**Indemnifying Party**) will indemnify and keep indemnified the other Party from and against any third party Claims (including any reasonable legal costs) reasonably incurred or suffered by the other Party arising directly from:
- (a) any infringement by the Indemnifying Party or its Representatives upon any person's Intellectual Property Rights, misuse of any person's Confidential Information in connection with this Agreement;
  - (b) where You are the Indemnifying Party, any breach of clause 4 (Access, Licence & Restrictions) or clause 19 (Intellectual Property Rights);
  - (c) any wilful, criminal or fraudulent act or omission of the Indemnifying Party or its Representatives in breach of this Agreement; or
  - (d) any personal injury or death or property damage caused by the acts or omissions of the Indemnifying Party or its Representatives in connection with this Agreement.
- 13.2 **Third Party Claims:** Where clause 13.1 applies and the Claim being indemnified against is a Claim made by a third party against You:
- (a) TriSearch reserves the right to defend a Claim (or any Losses claimed, as may be applicable); and
  - (b) where TriSearch exercises this right, You warrant and agree that You will:
    - (i) give TriSearch sole control of the defence and settlement of the Claim (but TriSearch may not settle any Claim unless it unconditionally releases You of all liability);
    - (ii) provide all assistance reasonably requested by TriSearch (and TriSearch will cover Your reasonable third party costs of doing so); and
    - (iii) take all reasonable steps to mitigate Your Losses in respect of any such Claim.

### 14. LIMITATION OF LIABILITY

- 14.1 **Liability Cap:** Except as provided under clauses 14.2, 14.3, 14.4 and 14.5 and to the extent permitted by Law, and excluding the obligation to pay Fees, each Party's maximum aggregate liability to the other Party or any other person (including any Affiliate of the Party) for all and any Claims or Losses (in aggregate) howsoever arising in connection with this Agreement (including in equity, contract, tort or negligence) whether directly or indirectly will be limited to the total amount of Service Fees actually paid to TriSearch by You under this Agreement solely within the 12 months immediately preceding the date of any such Claim or Loss.
- 14.2 **Liability under the Indemnity:** Subject to clauses 14.4 and 14.5 and to the extent permitted by Law, each Party's maximum aggregate liability to other Party or any other person (including any Affiliate of the Party) for all and any Claims or Losses suffered or incurred:
- (a) Except as provided under (b) below, arising from: (i) the indemnities under clauses 13.1(a) and any other indemnity granted under this Agreement, and (ii) any Losses suffered by TriSearch from any breach of clauses 4 or 19 by You or Your Representatives, will be limited to \$250,000 per Claim and in the annual aggregate; and
  - (b) arising from: (i) the indemnities under clauses 13.1(d); (ii) the obligation to pay Fees; or (iii) any other liability which may not be limited or excluded at Law, will not be limited.
- 14.3 **Consequential Loss:** To the maximum extent permitted by Law (but excluding any event set out in clause 13.1), neither Party will be liable to the other Party for any Consequential Loss arising out of or in connection with this Agreement.
- 14.4 **Contributory Acts:** To the extent permitted by Law, a Party's liability to the other Party in connection with this Agreement will be reduced proportionately by the extent to which the acts or omissions of the other Party or any of any of its Affiliates caused or contributed to the relevant Loss suffered or incurred by the first Party.
- 14.5 **General Exclusions:** Notwithstanding any other term of this Agreement, TriSearch will have no liability whatsoever to You or any of Your Affiliates for any Loss or Claim caused directly or indirectly by:
- (a) the failure by You to comply with any Laws governing the conduct of Your business;
  - (b) the inability of You, Your Representatives, Affiliates or any Permitted User to access or use the TriSearch Systems or TriSearch Products for any reason;
  - (c) a failure by You, Your Representatives, Affiliates or any Permitted User to comply with Your Client Obligations under this Agreement;
  - (d) the act or omission of any person not within TriSearch's reasonable control;
  - (e) equipment, data, Client Data or services supplied to TriSearch by You or any third party;
  - (f) the Third Party Products, Third Party Suppliers, Third Party Supplier websites, or any linked or integrated third party websites, content, services or applications; or
  - (g) a Force Majeure Event.
- 14.6 **Survival of Clause:** This clause 14 is intended to survive the termination of this Agreement.

### 15. SUSPENSION OF ACCESS

- 15.1 **Suspension:** TriSearch may, by notice in writing, suspend this Agreement in whole or in part (by reference to specified TriSearch Products) where:

- (a) it is directed to do so by a Third Party Supplier;
- (b) TriSearch becomes aware of, or reasonably suspects that, You are in breach of the Third Party Terms;
- (c) TriSearch becomes aware of, or reasonably suspects that, You are in breach of clause 22.2 (Client Security Measures); or
- (d) under clauses 16.2, 16.3, or 18.2.

15.2 **Notice:** When exercising its rights under this clause, TriSearch will use reasonable commercial endeavours to:

- (a) provide as much notice as possible in the circumstances; and
- (b) restore provision of the suspended elements of this Agreement if and when TriSearch is satisfied (acting reasonably) that the direction, issue or matter referenced out in clause 15.1 has been rescinded or resolved (as applicable).

## 16. TERMINATION

16.1 **Termination for Convenience:** TriSearch will be entitled to terminate this Agreement by providing at least 30 days' written notice to You. For clarity, You may simply cease using your TriSearch account at any time without the need to provide us with formal notice of termination (ie, leave the account open but unused).

16.2 **Termination for Material Breach:** Either Party may terminate or suspend (at its election) this Agreement at any time with immediate effect by giving Notice to the other Party where the other Party:

- (a) commits a material breach of this Agreement that cannot be remedied;
- (b) commits a material breach of this Agreement that is capable of remedy and the Party fails to remedy that breach within ten (10) Business Days following receipt of written Notice from the other Party requiring it to do so;
- (c) commits multiple or recurring breaches of this Agreement which, in aggregate, amount to a material breach, regardless of whether or not such breaches are cured or remain uncured or are capable of being remedied;
- (d) is the subject of or suffers an Insolvency Event; or
- (e) does anything that materially damages or is likely to materially damage the reputation of any relevant brand of the other Party.

16.3 **Termination or suspension for non-payment:** TriSearch may terminate or suspend (at its election) this Agreement with immediate effect where You owe to TriSearch undisputed amounts that have been outstanding for more than 30 days, provided that TriSearch has provided to You a written demand for payment.

16.4 **Termination or suspension for non-use:** TriSearch reserves the right to suspend or terminate Your account if You have not used or accessed the TriSearch Systems or ordered any TriSearch Products in the previous 2 years.

16.5 **Termination for conduct:** TriSearch aims to treat all clients with courtesy and respect. In turn, TriSearch expects clients to adhere to the same standards when dealing with TriSearch staff. TriSearch reserves the right to terminate this Agreement upon immediate written notice to You where, in the reasonable opinion of TriSearch, behaviour by You or any of Your Representatives constitutes unacceptable conduct, including harassment or abuse of any kind (whether verbal, physical or written), towards a TriSearch Representative.

## 17. CONSEQUENCES OF TERMINATION

17.1 **Obligations:** Upon termination or expiry of this Agreement for any reason:

- (a) You must immediately cease using all relevant TriSearch Systems, TriSearch Products and any other TriSearch Materials in Your possession or control;
- (b) You must make payments of any outstanding Fees owed to TriSearch under this Agreement for any TriSearch Products provided by TriSearch prior to the date of termination;
- (c) TriSearch must immediately cease using any Client Data and Your Intellectual Property Rights (but excluding any Third Party Product);
- (d) subject to clauses 4.3(b) and 17.1(e), unless a request for return has been made within 30 days' of termination, each Party must promptly securely and permanently delete or destroy all TriSearch Materials (in the case of You), Client Materials (in the case of TriSearch), any other materials or records containing Confidential Information of the other Party in its possession or control; and
- (e) each Party may retain a copy of the following information until no longer required for the specified purpose, and in any event for a maximum period of seven (7) years from the date of termination of this Agreement (or such longer period as may be required by Law) (**Retention Period**), following which it must be permanently deleted and destroyed in accordance with this clause 17:
  - (i) any documents or other materials which the Recipient must retain to the extent required by Law or under any legally binding order or rule of any regulator or stock exchange;
  - (ii) any documents or other materials which the Recipient must retain to the extent required for accounting, corporate governance, insurance or litigation purposes; and/or
  - (iii) any documents or materials contained in an archived backup of the respective Party's relevant software (or other server environment),

to be kept in accordance with each Party's respective confidentiality obligations as set out in clause 20 of this Agreement and not used for any purpose other than as permitted above.

17.2 **Accrued Rights:** Termination or expiry of this Agreement will not act as a waiver of any breach or other accrued Rights arising in connection with this Agreement; and will not act as a release of either Party from any accrued obligations under this Agreement.

## 18. FORCE MAJEURE

18.1 **Neither Party Liable:** Neither Party will be liable for any failure to perform or delay in performing their obligations under this Agreement if the failure or delay results from an event of Force Majeure.

18.2 **Suspension of Obligations:** To the extent that a Party's delay or inability to perform the Party's obligations is due to an event of Force Majeure, the affected obligations of that Party under this Agreement will be suspended until the passing of that Force Majeure event.



## 19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 **TriSearch IP:** You acknowledge and agree that:
- (a) all Rights, title and interests (including all Intellectual Property Rights) in or arising out of the TriSearch Materials (including any modifications made to the TriSearch Materials) are owned by and will immediately and absolutely vest in, TriSearch, its Affiliates or Third Party Suppliers on and from creation; and
  - (b) the TriSearch Systems and TriSearch Products are made available to You on a limited access basis, and except to the extent of any right expressly granted under this Agreement, You do not acquire any Right, title, interest or any Intellectual Property Rights to the TriSearch Materials through this Agreement.
- 19.2 **Client Data:** TriSearch acknowledges and agrees that You are and remain the sole and exclusive owner of all Rights, title and interests (including all Intellectual Property Rights) in Client Data.
- 19.3 **Derivative Works:** Where the Client is authorised in the Permitted Purpose to create new material or works using the TriSearch Materials (**Derivative Work**), then, unless otherwise specified:
- (a) subject to TriSearch's underlying ownership of the TriSearch Materials, the Client owns the Derivative Work upon creation; and
  - (b) for clarity, in respect of the TriSearch Materials incorporated in such Derivative Works:
    - (i) TriSearch's (or its Affiliates or Third Party Suppliers) owns and continues to own all Rights, title and interests (including all Intellectual Property Rights) to those TriSearch Materials; and
    - (ii) the TriSearch Materials subsisting in a Derivative Work are subject to the licence granted under clause 4.3 and this Agreement.

## 20. CONFIDENTIALITY

- 20.1 **Mutual obligations of confidence:** Subject to clause 20.2, where the Recipient receives Confidential Information from the Discloser under or in connection with this Agreement, the Recipient must:
- (a) keep the Confidential Information strictly confidential;
  - (b) not use, modify, reproduce or exploit the Confidential Information for any purpose other than as expressly permitted under this Agreement;
  - (c) not disclose Confidential Information to any person other than as expressly permitted under this Agreement;
  - (d) ensure that the Recipient's Representatives and Affiliates observe all of the Recipient's obligations as set out in this Agreement as if those obligations were imposed on the relevant Representative or Affiliate directly; and
  - (e) establish and maintain effective security measures to safeguard the Confidential Information in the Recipient's possession or control (including Confidential Information in the possession or control of any of its Representatives or Affiliates) from loss, theft or unauthorised access, use, copying, modification, destruction or disclosure using reasonable measures (but in any event using measures no less stringent than those used to protect the Recipient's own Confidential Information of a like nature).
- 20.2 **Permitted use and disclosure:** Notwithstanding clause 20.1, and subject to clause 20.3 the Recipient may disclose Confidential Information to:
- (a) its Representatives, limited to the extent necessary to perform the Recipient's obligations or exercise its rights under this Agreement;
  - (b) to its professional advisors, to obtain legal or other professional advice in relation to matters arising under or in connection with this Agreement;
  - (c) the extent required to comply with any Law, binding directive of a Regulator or a court order;
  - (d) to the extent required to do so in connection with legal proceedings relating to this Agreement; or
  - (e) as otherwise agreed in writing by the Parties.
- 20.3 **Conditions of Disclosure:** Before using or disclosing the Confidential Information under clause 20.2, the Recipient must:
- (a) notify the Discloser promptly in writing upon becoming aware that a disclosure may be required under clauses 20.2(c) or 20.2(d) in order for the Discloser to have the opportunity to prevent the disclosure of its Confidential Information or to obtain a protective order or other remedy;
  - (b) to the extent such disclosure is not prevented, limit the disclosure of any Confidential Information permitted under clause 20.2 solely to the extent strictly necessary to satisfy the purpose of the disclosure; and
  - (c) without limiting any other obligations under this Agreement, take all reasonable and lawful steps to preserve the confidentiality of the Confidential Information and, to the extent possible, ensure that any Confidential Information disclosed under clause 20.2 is subject to obligations of confidentiality in accordance with the terms of this Agreement.
- 20.4 **Acknowledgements:** The Parties acknowledge and agree that the other Party's Confidential Information is commercially sensitive, proprietary and valuable to the other Party and, in respect of any breach or threatened breach by a Party or any of its Representatives or Affiliates of its obligations under this Agreement (including those contained in this clause 20):
- (a) damages may not be available, or if they are, they may not be an adequate remedy for the other Party;
  - (b) the other Party is entitled to seek injunctive relief as a remedy, in addition to any other remedies available at Law.
- 20.5 **Survival:** All obligations of confidence set out in this clause 20 are intended to continue in full force and effect even after the termination of this Agreement.

## 21. PRIVACY

- 21.1 **Privacy Policy:** In addition to these General Terms, our Privacy Policy sets out in detail how we process Your Personal Information that You, Your Representatives or Your End Users disclose to TriSearch.

- 21.2 **Compliance with Privacy Laws:** Each Party warrants and agrees that it and its Representatives will comply with all Privacy Laws in connection with any Personal Information collected, used, disclosed, stored or received in connection with this Agreement.
- 21.3 **Disclosure of Personal Information:** Each Party warrants that any Personal Information disclosed by or on behalf of the Discloser to the Recipient or its Representatives under this Agreement will be and has been collected, used, processed, held and disclosed in accordance with the relevant requirements of the Privacy Laws.
- 21.4 **Receipt of Personal Information:** In relation to any Personal Information disclosed by or on behalf of the Discloser to a Recipient or its Representatives under this Agreement, the Recipient must (and must ensure that its Representatives must):
- (a) not collect, use, disclose, store, transfer or handle the Personal Information except in accordance with the Privacy Laws and strictly for the purpose of performing its obligations and exercising its rights under this Agreement, including the Permitted Purposes;
  - (b) take all reasonable steps to ensure that the Personal Information is protected from misuse, Loss, unauthorised access, modification or disclosure;
  - (c) take all reasonable steps to destroy or permanently de-identify the Personal Information upon the earlier of the expiry or termination of this Agreement or when it is no longer needed for a purpose connected with this Agreement;
  - (d) only use or disclose the Personal Information for a purpose connected with this Agreement or as permitted or required by Law; and
  - (e) notify the Discloser in writing, without delay and within no more than 72 hours after becoming aware:
    - (i) of any compliance notice or other request issued by a relevant Regulator; or
    - (ii) of any breach of this clause 21 or any applicable Privacy Law.
- 21.5 **Notification of Data Breach:** Where a Party has reasonable grounds to suspect a Data Breach has occurred, that Party will:
- (a) notify the other Party in writing including all relevant details regarding the suspected Data Breach without undue delay and no later than 72 hours after becoming aware of such a breach;
  - (b) co-operate with the other Party to investigate the suspected Data Breach;
  - (c) take all reasonable steps to mitigate the impact of the Data Breach;
  - (d) take all reasonable actions to prevent any repeat of the Data Breach; and
  - (e) co-operate with the other Party in good faith to minimise reputational damage or loss of goodwill, including liaising on communications with the Privacy Regulator, affected individuals and other third parties to minimise disruption or distress to the individual; and
  - (f) where the Data Breach is a Notifiable Data Breach, co-operate in good faith with the other Party to prepare and submit notifications to the Privacy Regulator and affected individuals and provide other assistance as reasonably required to support the other Party in its compliance with Privacy Laws.
- 21.6 **Survival of Clause:** This clause 21 survives the termination of this Agreement.

## 22. DATA PROTECTION & SECURITY

- 22.1 **TriSearch Obligations & Safeguards:** TriSearch will use commercially reasonable efforts to establish, implement and maintain security controls in respect of any TriSearch Environment used to deliver the TriSearch Products, or that stores, handles, processes or transmits Client Data:
- (a) that meet or exceed ISO 27001:2013 and ISO 9001:2015 (or equivalent standard) and any successor standards;
  - (b) that are designed to ensure that the TriSearch Systems and TriSearch Products and any other materials supplied by TriSearch to You under this Agreement do not contain any publicly known Malware; and
  - (c) that are designed to protect Client Data that is stored, handled or processed by TriSearch from accidental or unlawful destruction, loss, alteration, or unauthorised disclosure or access.
- 22.2 **Client Security Measures:** You must establish, maintain and enforce appropriate security measures designed to ensure that:
- (a) Client Data and any other materials provided by You or Your Representatives to TriSearch do not contain any publicly known Malware; and
  - (b) no Unauthorised Persons can obtain unauthorised access to the TriSearch Systems or TriSearch Products or otherwise use the TriSearch Systems or TriSearch Products for purposes not authorised or permitted by the terms of this Agreement (including for Non-Permitted Purposes).
- 22.3 **Client Warranties:** You warrant and agree that You will not:
- (a) seek to circumvent or attempt to violate any data security measures employed by TriSearch in respect of its access to and use of an TriSearch Systems, the TriSearch Products and the TriSearch Environment generally; or
  - (b) attempt to scan or test the vulnerability of the TriSearch Environment or otherwise attempt to breach TriSearch's data security systems or any applicable authentication procedures.

## 23. AUDIT RIGHTS

- 23.1 **Client Obligation:** You agree to maintain all financial, operational and technical records in respect of Your access to the TriSearch Environment, the TriSearch Systems and TriSearch Products accessed, received or used under or in connection with this Agreement, and other such records reasonably related to Your compliance with this Agreement (**Client Records**), and to ensure that all such Client Records are (i) complete and up to date; and (ii) kept in manner which permits them to be conveniently and properly audited for a period of at least seven (7) years after the expiry or termination of this Agreement.
- 23.2 **TriSearch Obligation:** TriSearch agrees to maintain all financial, operational and technical records required to evidence accuracy of the warranties given by TriSearch under this Agreement (**TriSearch Records**), and to ensure that all such TriSearch Records are: (i) complete and up to date; and (ii) kept in manner which permits them to be conveniently and properly audited for a period of at least seven (7) years after the expiry or termination of this Agreement.

- 23.3 **Notice of Audit:** Not more than once in any 12 month period (unless TriSearch has reason to suspect that You are in breach of this Agreement), TriSearch may give reasonable written notice (not less than 5 Business Days) to You that it requires an audit of the Client Records to be undertaken via a questionnaire.
- 23.4 **Conduct of Audit:** If TriSearch requires an audit to be carried out, you must:
- (a) answer all questions to the best of Your knowledge and belief;
  - (b) provide copies of or access to the Client Records reasonably requested for the purposes of carrying out the audit; and
  - (c) provide all reasonable cooperation and assistance to TriSearch as reasonably necessary to facilitate the conduct of the audit.
- 23.5 **Treatment of Records:** TriSearch must treat as confidential any Client Records or any other Confidential Information that is disclosed, inspected, or accessed by TriSearch during an audit.
- 23.6 **Third Party Suppliers:** You acknowledge and agree that:
- (a) You must comply with any reasonable request from a Third Party Supplier to exercise the audit rights granted to TriSearch under this clause for the audit and inspection of the Client Records or TriSearch Records relating to Your use of the TriSearch Systems or TriSearch Products, compliance with this Agreement and any relevant Third Party Terms;
  - (b) the Third Party Supplier may appoint TriSearch to carry out an audit or inspection of the Client Records on its behalf;
  - (c) subject to clause 23.5, TriSearch may provide to a Third Party Supplier any relevant Client Records or TriSearch Records held or discovered by TriSearch or otherwise reasonably requested by a Third Party Supplier; and
  - (d) except where it would cause You to breach any applicable Laws, You must take reasonable steps to ensure that You do not disclose or advertise that a Third Party Supplier has conducted an audit in respect of this Agreement.
- 23.7 **Survival of Clause:** This clause 23 survives the termination of this Agreement.

## 24. GENERAL

- 24.1 **Notices:** TriSearch will provide notices to You by sending an email to the email address notified to Us as the primary account contact. You will provide notices under this Agreement to Us by sending an email to [helpdesk@trisearch.com.au](mailto:helpdesk@trisearch.com.au). Notice will be treated as received when the email is sent. You are responsible for keeping Your notification email address current throughout the Term.
- 24.2 **Assignment:** A Party must not assign any of its rights or obligations under this Agreement, without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.
- 24.3 **Costs:** Except as otherwise set out in this Agreement, each Party must pay its own costs in relation to preparing, negotiating and executing this Agreement and any document related to this Agreement.
- 24.4 **Entire Agreement:** This Agreement contains everything the Parties have agreed in relation to the matters it deals with. This Agreement supersedes all other prior or contemporaneous understandings or agreements between the Parties regarding the subject matter of this Agreement. Neither Party can rely on an earlier agreement, or anything said or done by another Party, or by a director, officer, agent, partner or employee of that Party, before this Agreement was executed.
- 24.5 **Further acts:** Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests in writing to effect, perfect or complete this Agreement and all transactions incidental to it.
- 24.6 **No agency or partnership:** Except as specifically provided in this Agreement or by express written agreement between the Parties, the relationship between the Parties is that of principal and independent contractor and no Party is an agent, Representative or partner, employee/employer, fiduciary or joint venturer of any other Party by virtue of this Agreement.
- 24.7 **No authority to act:** Except as specifically provided in this Agreement or by express written agreement between the Parties, no Party has any power or authority to act for or to assume any obligation or responsibility on behalf of another Party, to bind another Party to any agreement, negotiate or enter into any binding relationship for or on behalf of another Party or pledge the credit of another Party.
- 24.8 **Severability:** If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
- 24.9 **Variation:** No variation of this Agreement will be of any force or effect unless it is in writing and accepted by the Parties to this Agreement. In this regard, the following will constitute acceptance by You:
- (a) electronic acceptance such as by clicking "I agree" (or similar) upon notification of any variation to the terms of this Agreement; and
  - (b) continued use of the TriSearch Systems or TriSearch Products following the written notification of any variation to the terms of this Agreement.
- 24.10 **Waiver:** The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing and signed by the Party. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 24.11 **Governing law and jurisdiction:** This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## 25. DEFINITIONS AND INTERPRETATION

### 25.1 Definitions

The following definitions apply in this Agreement, unless context otherwise requires:

**Add-on** means an additional feature or functionality that is offered by TriSearch for purchase separately from the core TriConvey Software and which is used in conjunction with the core TriConvey Software.

**Affiliate** means, with respect to a Party, an entity or individual that directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that Party, including a Related Body Corporate.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth), any equivalent State or Territory legislation, and any equivalent applicable provisions of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Authority Fee** means the fees and charges payable by TriSearch to Third Party Suppliers for Third Party Products.

**Business Day** means a day other than a Saturday, Sunday or gazetted public holiday in Australia.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether arising in contract (including under an indemnity), tort (including negligence), statute, equity, at Law or otherwise.

**Client Data** means any data, information, text, content or other materials (including Personal Information and Confidential Information) which is supplied to TriSearch or its Affiliates by You or Your Representatives in connection with this Agreement; but for clarity, does not include: any TriSearch Materials supplied to You in connection with this Agreement; any materials already held by TriSearch prior to any supply by You to TriSearch; any material that independently comes into the possession of TriSearch (other than through You or Your Representatives); and any metadata generated by TriSearch in the operation of the TriSearch Environment or provision of the TriSearch Products.

**Client Obligations** means the obligations set out in clause 8.3.

**Commencement Date** has the meaning given to that term under clause 1.3.

**Confidential Information** means any information (in any form) directly or indirectly disclosed by the Discloser to the Recipient (regardless of whether identified as such or not) and includes:

- (a) the terms of this Agreement and the commercial arrangements between the Parties;
- (b) any information that the other Party knows, or ought to know, is confidential to the Discloser;
- (c) the Discloser's Intellectual Property Rights and any Intellectual Property Rights of third party suppliers or Third Party Suppliers to TriSearch (or their Affiliates);
- (d) trade secrets, know-how, specifications, inventions, processes or initiatives which are of a confidential nature;
- (e) in relation to TriSearch, the TriSearch Materials; and
- (f) in relation to You, any Client Data,

but does not include any information to the extent which:

- (a) it is in, or becomes part of, the public domain other than through breach of this Agreement or an obligation of confidence owed to the Discloser;
- (b) the Recipient can prove by contemporaneous written documentation:
  - (i) it was already known to it at the time of disclosure by the Discloser;
  - (ii) it was independently developed by the Recipient without reference to the Confidential Information of the Discloser; or
  - (iii) the Recipient acquired it from a source other than the Discloser or any of its Representatives, where such a source is entitled to disclose it on a non-confidential basis.

**Consequential Loss** means Losses that are indirect, incidental, or consequential, including: loss of revenue, loss of profits or savings, loss of opportunity, loss or damage to or corruption of data, loss of goodwill, loss of reputation, whether arising in equity, for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise; and where such Losses may not reasonably be considered as arising naturally or directly from the event by which they are caused.

**Consumer Guarantees** means the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law.

**Corporations Act** means the *Corporations Act 2001* (Cth) and any regulations made under it.

**Data Breach** means the accidental or unlawful destruction, loss, alteration, or unauthorised disclosure of, or access to:

- (c) where You are the Recipient, the TriSearch Materials transmitted, stored or otherwise processed by You in connection with this Agreement; or
- (d) where TriSearch is the Recipient, Client Data transmitted, stored or otherwise processed by TriSearch in connection with this Agreement.

**Derivative Work** means a new original work or other works or materials created by You based wholly or partly upon (whether by using, incorporating, adapting, altering, modifying or other nature) the TriSearch Materials.

**Direct Marketing** includes the use and/or disclosure of Personal Information to identify, target, segment or filter and then directly communicate to an identified individual or group of individuals for the purposes of marketing or promoting goods and/or services (whether or not addressed to that individual by name) by any means and includes, telemarketing, email, SMS, targeted online advertising (including Facebook and Google Ads), mail or flyer drops and list brokering.

**Discloser** means the Party disclosing Confidential Information and/or Personal Information (as applicable) to the other Party (or its Representatives) in connection with this Agreement.

**Documentation** means the whole and any part of TriSearch guides, manuals, user instructions and written specifications regarding the TriSearch Products or the TriSearch Systems and any marketing material regarding the TriSearch Products or the TriSearch Systems.

**End User** means Your clients by whom You have been engaged to provide professional, legal, transactional or advisory services on a one-to-one basis.

**Exclusive Search Provider** means that you do not use another provider for a particular search or report where those same searches and reports are available for purchase within the TriSearch Platform.

**Fees** means the fees charged by TriSearch for the TriSearch Products notified in the TriSearch Systems (as varied from time to time in accordance with this Agreement) and includes the Authority Fees.

**Force Majeure** means any circumstances, acts or omissions beyond a Party's control including strikes or industrial disputes, acts of God, epidemics and pandemics, acts of government, declared states of emergency, refusal of licence, failures or outages of any utilities (including telecommunications and data communication equipment or services), denial of service attacks, fire, explosion, floods, cyclone, tsunami or other extreme weather events, aircraft unserviceability or unavailability, war, terrorism or civil disturbance, or impossibility of obtaining material and/or data.

**GST** means the relevant goods and services tax, value added tax or sales tax as defined in the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all regulations and rulings made under it.

**Initial Term** means the "Initial Term" set out in an Order Form.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a Party:

- (a) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) it is insolvent within the meaning of the Corporations Act;
- (c) it must be presumed by a court to be insolvent by reason of an event set out in the Corporations Act;
- (d) it fails to comply with a statutory demand (as defined in the Corporations Act);
- (e) it has an administrator, receiver, controller or similar officer appointed to manage all or any of its property or any step preliminary to the appointment of such officer is taken (including statutory management);
- (f) it has proceedings commenced, a resolution passed, an order of a court made or other steps taken against or in respect of it for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or
- (g) it ceases conducting business in the normal course, or is in liquidation, wound up, deregistered, or dissolves.

**Intellectual Property Rights** means all industrial and intellectual property rights throughout the world protected or recognised at Law and includes all current and future registered and unregistered rights relating to:

- (a) trade marks, trade or business names, domain names, service marks, logos and other proprietary design;
- (b) rights associated with works of authorship, including copyright works, Moral Rights, publicity rights, personality rights;
- (c) patents, trade secrets, know-how, inventions and discoveries;
- (d) all other intellectual and industrial property of every kind and nature, however designated, whether arising by operation of law, contract, licence or otherwise, including as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967; and
- (e) any current or future application or right to apply for the registration of any of the rights referred to in paragraph (a) – (e) above, including current or future renewals, extensions, continuations, divisions, reissues or amendments.

**Law** means all applicable common law, principles of equity, legislation, statutes, and regulations (and consolidations, amendments, re-enactments or replacements of any of them) in the Territory or any other applicable jurisdiction.

**Licence Fees** means the fees which may be invoiced by TriSearch for providing You with access to the TriConvey Software, as set out in an Order Form.

**Loss** means all liabilities, losses, damages, outgoing, costs and expenses including reasonable legal costs (on a solicitor-client basis) and any penalties or fines imposed by a regulatory authority.

**Malware** means malicious software code, programming instruction, or including any thing or device that may damage, disrupt, overload, disable, adversely affect or modify the operation of any computer hardware, software or code including to shut down or deny users access to all or any part of a relevant system or environment; or otherwise impair the reliability of any information held on a relevant system or environment (whether by re-arranging, altering or erasing data in whole or in part or otherwise), and includes Trojan horses, viruses, bots, bugs, spyware, file corruption, worms, logic bombs, backdoors, disabling code, key-loggers, ransomware, hijackers, rootkit and other similar things.

**Minimum Spend** means the minimum value of searches You are required to order through the TriSearch Platform over the invoicing quarter in order to qualify (amongst other things) for the TriConvey Rebate Offer.

**Modifications** means all enhancements, modifications, updates, improvements, configurations and derivative works relating to or in connection with the TriSearch Materials.

**Moral Rights** means any moral rights including the rights described in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute or any applicable Law, that exist or that may come to exist, anywhere in the world.

**Non-Permitted Purpose** has the meaning set out at clause 4.6 and any other restriction on use specified in an Order Form or the Third Party Terms.

**Notifiable Data Breach** means a Data Breach or any other data breach that is notifiable to a Regulator under applicable Privacy Laws in respect of Personal Information which is disclosed to or received by a Party under or in connection with this Agreement.

**Order Form** means any Order Form entered into by the Parties pursuant to the terms of this Agreement that sets out the terms applicable to the access and use of identified TriSearch Systems and TriSearch Products.

**Party** means a Party to this Agreement and **Parties** means both of them.

**Permitted Purpose** means, subject to any limitations set out in these General Terms:

- (a) In respect of the TriConvey Software: for legal practice management purposes;
- (b) In respect of the TriSearch Platform: for the purposes of ordering and accessing TriSearch Products;
- (c) In respect of the TriSearch Products:
  - (i) Your internal business purposes in connection with the preparation of and provision of professional advisory or legal services to Your End User clients, including the provision of a Derivative Work;
  - (ii) the meaning set out in any relevant Product Terms or Third Party Terms (as applicable) and which takes precedence in accordance with clause 1.2.

**Permitted User** means Your Representatives who:

- (a) are required by You to access the TriSearch Systems and/or TriSearch Products but only to the extent needed to enable You to achieve the Permitted Purpose;
- (b) have been allocated User Credentials to access the TriSearch Systems in accordance with this Agreement; or
- (c) persons or entities expressly identified as such in an Order Form.

**Personal Information** means any 'personal information' or 'personal data' as that term is defined in applicable Privacy Laws and which is disclosed by or on behalf of the Discloser to the Recipient or its Representatives under this Agreement.

**Personnel** means employees, agents, independent personal services contractors, or any other staff or personnel acting on behalf of or at the direction of the relevant Party.



**Privacy Laws** means all applicable privacy or data protection laws relating to the collection, use, processing, disclosure, storage or granting of access to the Personal Information applicable to the relevant Party (to the extent a Party is subject to or required to comply with such Laws including under this Agreement), and includes the *Privacy Act 1988* (Cth), the Australian Privacy Principles, the *Spam Act 2003* (Cth) and the *Do Not Call Register Act 2006* (Cth) and any State or Territory acts and regulations applicable in the relevant State or Territory, and all applicable binding privacy codes or policies.

**Privacy Policy** means the TriSearch policy located here: [www.trisearch.com.au/trisearch-privacy-policy](http://www.trisearch.com.au/trisearch-privacy-policy).

**Product Terms** means the product specific terms set out at <https://www.infotrack.com.au/legal/ProductTerms> applicable to any TriSearch Products as identified in the relevant 'Product Terms'. For clarity, any reference to InfoTrack in the Product Terms should be read as a reference TriSearch.

**Property Attributes** means the physical, environmental and other observable factual data and information relating to a real property including: living area and layout, number of bedrooms, bathrooms, floor levels, number of car spaces and type, fixtures, utility services, condition (including repairs, hazards or defects), access, construction type and materials, roof type, land size, property aspect, land and yard feature, spatial data, property improvements (such as buildings, pool, garage), and year built or renovated.

**Quarterly Rebate** means the rebate applied against Your invoice for the TriConvey Licence Fees where You have met the Rebate Requirements and qualified for the Rebate Offer, as set out in Your Order Form.

**Rebate Offer** has the meaning given to that term under clause 10.1.

**Rebate requirements** has the meaning given to that term under clause 10.2.

**Recipient** means the Party in possession or control of Confidential Information and/or Personal Information (as applicable) disclosed to it by the other Party (or its Representatives) in connection with this Agreement.

**Regulator** means any third party body or agency having regulatory or supervisory authority over any part of the business or affairs of the relevant Party through the operation of applicable Laws; and includes the Office of the Australia Privacy Commissioner.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Renewal Term** means the "Renewal Term" set out in an Order Form.

**Representative** means a Party and any of its Personnel, officers, directors, contractors and subcontractors, associates, representatives and any other person who acts for or on behalf of that Party.

**Right** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

**Service Fees** means the Fees set out in an Order Form (as varied from time to time in accordance with this Agreement), excluding the Authority Fees.

**Tax Invoice** has the meaning given to it in the GST Law.

**Term** has the meaning given under clause 3.1.

**Territory** means any State or Territory in Australia.

**Third Party Product** means data, information, Property Attributes, reports, images, plans, documents or other materials of any nature which is supplied to, collected, licensed or acquired by TriSearch and which TriSearch uses, licenses, resells or otherwise exploits for commercial purposes, including by compiling or incorporating within TriSearch Products (in whole or in part).

**Third Party Supplier** means any entity, government department, agency or other organisation from which TriSearch or any of its Affiliates licences the Third Party Product.

**Third Party Terms** means conditions, restraints, disclaimers or limitations (as required by Third Party Suppliers) applicable to certain TriSearch Products that are provided or licensed by Third Party Suppliers and resold by TriSearch and are either:

- (a) presented to You for acceptance at the point of sale;
- (b) located here <http://www.infotrack.com.au/legal/ThirdPartyTerms> and as updated by TriSearch from time to time and notified to You in writing in accordance with clause 6.1(d); or
- (c) agreed directly between You and the Third Party Supplier.

For clarity, any reference to InfoTrack in the Product Terms should be read as a reference to TriSearch.

**TriConvey Fees Schedule** means the fees schedule for the TriConvey Software and Add-ons located here: [www.trisearch.com.au/fees-schedule](http://www.trisearch.com.au/fees-schedule).

**TriConvey Software** means the conveyancing practice management software which is provided by TriSearch.

**TriSearch Systems** includes:

- (a) the TriSearch Platform; and
- (b) the TriConvey Software.

**TriSearch Environment** means any hardware, software, information, networks, systems, databases or other technology solutions owned or controlled by TriSearch (in the ordinary course of operating its business), including the TriSearch Systems.

**TriSearch Materials** means all materials, works, Rights and Intellectual Property Rights held, owned or licensed by TriSearch or its Affiliates (current or future) in the usual course of business including any Third Party Product, TriSearch Confidential Information, TriSearch Products, the TriSearch Environment, Documentation, and any metadata generated by TriSearch in the operation of the TriSearch Environment or supply of the TriSearch Products and any other material accessed by You in the use of the TriSearch Products or TriSearch Systems, and includes all Modifications to those materials.

**TriSearch Platform** means the web-based online search platform located at <https://www.trisearch.com.au/>, which is hosted by TriSearch and which may be accessed by Your Permitted Users via the TriConvey Software for the purposes of ordering TriSearch Products provided by TriSearch or its Affiliates.

**TriSearch Products** means all the products, services, data, information, statistics, analytics, results, reports, images, Property Attributes and Third Party Products that are compiled, incorporated into, created, produced, collected, held or acquired by TriSearch or its Affiliates and licensed or supplied to You (or Your Representatives) by or on behalf of TriSearch under this Agreement, but excludes Client Data.

**User Credentials** means any usernames, passwords, tokens and other authentication credentials for use by a Permitted User for the purpose of accessing and using the TriSearch Systems.

## 25.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) if the day on which any act, matter or thing is to be done under this Agreement is not a Business Day in the place where the act, matter or thing is to be done, the act, matter or thing must be done on the next Business Day in that place;
- (c) a reference to dollars or \$ means Australian dollars;
- (d) a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (f) a reference to a clause, part, schedule, module, exhibit or attachment is a reference to a clause, part, schedule, module, exhibit or attachment of or to this Agreement;
- (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (h) a reference to any government department or agency includes any successor of that department or agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (k) references to the words 'include', 'includes' or 'including' are to be construed without limitation;
- (l) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (m) a reference to this Agreement includes the agreement recorded in this Agreement;
- (n) any schedules and attachments form part of this Agreement.

## SCHEDULE 1 ARCHIE AI

### 1. AI SERVICES

- 1.1 For Clients using the Smokeball Archie AI services (**AI Services**), the following additional terms apply.

### 2. MATTER DATA

- 2.1 The AI Services utilise artificial intelligence (**AI**) algorithms and technologies, including generative AI.
- 2.2 The AI Services may include, but are not limited to, access to content, including automated documents, correspondence, and answers to questions produced by Archie AI (**Forms**), that are generated through the TriSearch Systems or by Smokeball. Additionally, AI Services may also include prompts and reminders regarding potential deadlines, due dates, and other requirements relating to legal or business practice through TriConvey (**Notifications**).

### 3. CONSENT

- 3.1 The AI Services involve the use of third-party services, and You acknowledge and agree that we may transfer any information automatically collected by the AI Services, submitted through TriConvey or the AI Services with third parties. For more information, please see our Privacy Policy.
- 3.2 Documents and materials uploaded, imported or stored against a matter file within Your TriConvey account (**Matter Data**) may be processed by AI as part of the AI Services from time to time. The AI Services data processing activities and functionality align with our products' primary uses. The use, collection, and processing of any data is consistent with our core principles and requirements described in our Privacy Policy.
- 3.3 You acknowledge that TriSearch may use Your de-identified Matter Data, together with other de-identified data, for the purpose of improving and training services and features You may access, and You instruct TriSearch to process Your Matter Data for such purpose. Neither Your Matter Data, nor You, will be identifiable as a result of such use. You retain all ownership of Your Matter Data and TriSearch retains all ownership in and to aggregated machine learning results.
- 3.4 You are responsible for ensuring that You have all necessary rights and consents, including third party privacy consents (**Client Consents**), to enable You to provide the Matter Data to TriSearch and to permit TriSearch to access and use the Matter Data for the purpose of delivering the AI Services, and otherwise in accordance with this Agreement. You shall indemnify, defend, and hold harmless TriSearch for any loss, damages, costs, and expenses TriSearch suffers or incurs as a result of Your failure to obtain and maintain such Client Consents as may be required. You acknowledge that TriSearch is not a legal authority, cannot, and has not provided You with advice related to the necessity of Client Consents within Your jurisdiction.
- 3.5 You warrant to TriSearch that You own or otherwise have and will have the necessary rights and consents in and relating to Matter Data (including, without limitation, Client Consents) so that, as received by Smokeball and processed in accordance with these Terms, they do not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or any other rights of any third party or violate any applicable law.

### 4. OPT-OUT

- 4.1 **Trial Period:** TriSearch may offer You a free trial period during which You may use the AI Services (or a part of them) without paying any Subscription Fees (**Trial Period**). The terms of this Agreement apply to Your use of the AI Services during the Trial Period, other than the terms of this Agreement relating to the payment of Fees. On expiry of the Trial Period, should You not wish to incur any additional subscription Fees in relation to the AI Services, You must opt-out of the AI Services in accordance with clause 4.2 below.
- 4.2 **Opt-out:** To opt-out of the AI Services, please contact us [here](#). We will process Your request within 24 hours and respond once the opt-out has been completed.

### 5. DISCLAIMERS

- 5.1 You acknowledge that:
- (a) the AI Services may not have been developed, designed, or approved by legal practitioners and services are not provided to You with any legal or professional opinion or endorsement of any kind. TriSearch does not represent or warrant that any elements of the AI Services:
    - (i) comply with or reflect applicable Laws;
    - (ii) are suitable for Your particular use, objectives, or circumstances; or
    - (iii) are up to date or current.
  - (b) the AI Services do not constitute legal advice nor should they be relied upon as such by You. The AI Services should be reviewed by a qualified lawyer before being incorporated in, or relied on, in connection with any legal advice;
  - (c) the AI Services, including the Notifications, may not be accurate or up-to-date and You are responsible for validating or ignoring the AI Services and Notifications based on Your own professional skill, judgment and experience; and
  - (d) Forms are provided in the AI Services as templates for You to edit and change to suit Your circumstances, using Your own professional skill, judgment and experience and may include technical inaccuracies or typographical errors, and do not necessarily reflect recent changes or developments in the law or industry practice.