

## TIMETTA SUBSCRIPTION AGREEMENT

BY CHECKING THE ACCEPTANCE BOX OR ACCESSING OR USING ALL OR ANY PORTION OF TIMETTA, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS PUBLISHED ON TIMETTA'S WEBSITE AT [WWW.TIMETTA.COM](http://WWW.TIMETTA.COM) (AS MAY BE RELOCATED BY TIMETTA FROM TIME TO TIME). YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU AND LEGALLY BINDING BETWEEN YOU AND WORKPOINT PSA S.R.O. OR THE APPLICABLE TIMETTA AFFILIATE ("TIMETTA"). IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT ACCESS OR USE TIMETTA. IF YOU WISH TO USE TIMETTA AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT AND AUTHORITY TO DO SO. TIMETTA MAY MODIFY THIS AGREEMENT AS SET FORTH IN SECTION 12.18 (MODIFICATIONS TO THIS AGREEMENT).

This Timetta Subscription Agreement ("**Agreement**") is between Timetta and the customer (individual or entity) that has purchased a subscription to Timetta ("**you**" or "**your**"). "**Timetta**" means the Timetta entity designated on the applicable Ordering Document. "**Ordering Document**" means any order on a Timetta order form which references this Agreement. Each Ordering Document which references this Agreement shall be deemed a part of this Agreement. The "**Effective Date**" of this Agreement is the date which is the earlier of (a) your initial access to Timetta through any online provisioning, registration or order process, or (b) the effective date of the first Ordering Document referencing this Agreement.

### 1. TIMETTA

**1.1. Provision of Timetta.** Timetta is a hosted service permitting you to access Timetta's products, as such products may be modified, enhanced, and/or updated from time to time ("**Timetta**"). Provision of Timetta to you involves the ongoing operation, support and improvement of Timetta for all users. Timetta is described more fully in the then-current version of any supporting product help and technical specifications documentation provided by Timetta. Documentation does not include white papers, community forums, training videos, tutorials, Knowledge Base articles or other similar resources which may be made available for your convenience. Timetta is provided on a subscription basis for a set term designated herein or in the applicable Ordering Document (each, a "**Subscription Term**"). This Agreement applies only to Timetta and does not grant you rights to any other Timetta services or software. All access rights and technical capabilities for each Authorized User are as set forth in the Documentation and Ordering Document. All undefined names of Software products have the meanings given to them in the Documentation.

### 1.2. Evaluation Access.

If Timetta has made available to you free, trial or evaluation access to Timetta ("**Evaluation Access**"), you may use such access solely for the purpose of evaluating Timetta to determine whether to purchase a subscription from Timetta. You may not use Evaluation Access for any other purposes, including but not limited to competitive analysis, commercial, professional or for-profit purposes. Evaluation Access is limited to fourteen (14) days from the date you activate your Evaluation Access, unless otherwise specified by Timetta in the applicable Ordering Document or a separate writing from Timetta ("**Evaluation Period**"). Unless you purchase a subscription for Timetta, your Evaluation Access may be terminated and, in any event your right to access and use Timetta automatically expires at the end of the Evaluation Period. Upon any termination or expiration of the Evaluation Period, your Evaluation Access will cease and you will no longer have access to any Customer Data used in connection with such Evaluation Access. Notwithstanding any other provision of this Agreement, Evaluation Access is provided "AS IS" without warranty or support of any kind, express or implied. Timetta may terminate your Evaluation Access at any time for any reason and without liability of any kind. IF YOU SUBSEQUENTLY PURCHASE A SUBSCRIPTION TO TIMETTA, YOUR EVALUATION ACCESS SHALL IMMEDIATELY TERMINATE AND YOU EXPRESSLY AGREE THAT, UNLESS YOU HAVE A SEPARATE SIGNED AGREEMENT GOVERNING YOUR ACCESS TO AND USE OF TIMETTA, THIS AGREEMENT, AND THE TERMS AND CONDITIONS HEREIN,

SHALL GOVERN YOUR USE OF SUCH NON-EVALUATION VERSION.

**1.3. Access to Timetta.** Subject to the terms and conditions of the Agreement, and except as set forth in Section 5 (Term and Termination) Timetta hereby grants to you a non-exclusive, non-transferable, non-sublicensable (except as permitted under Section 1.5), worldwide right during the applicable Subscription Term to access and use Timetta solely for your business purposes but only in accordance with: (i) the Documentation; (ii) the restrictions in Section 1.1 (Provision of Timetta), Section 1.7 (General Restrictions), and Section 2 (Customer Data and Your Obligations) and (iii) any restrictions designated on the applicable Ordering Document, including, but not limited to the number of Authorized Users ("**Access Grant**"). You will use reasonable efforts to prevent any unauthorized access to or use of Timetta and the Documentation, and will promptly notify Timetta in writing of any unauthorized access or use of which you become aware and provide all reasonable cooperation to prevent and terminate such access or use.

**1.4. Authorized Users.** "**Authorized Users**" means those uniquely identified individuals subject to an Access Grant who are authorized by you to use and access Timetta for any purpose regardless of whether those individuals are actively using Timetta at any given time. The Authorized Users will receive user IDs and passwords to access Timetta. These credentials are granted to individual, named persons and may not be shared. You will ensure that all Authorized Users keep these credentials strictly confidential. Subscriptions to Timetta may be permanently reassigned between uniquely identified individuals over time, but may not be reassigned so frequently as to enable the sharing of a single Timetta subscription between multiple users. You may allow your Contractors and Affiliates to access Timetta as Authorized Users in accordance with this Agreement, provided you shall remain liable for all acts and omissions of your Affiliates and Contractors as if their breach were your own. "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with you (where "**control**," means direct or indirect ownership or control of more than 50% of your voting interests). "**Contractor**" means those independent third parties who perform services related to this Agreement for you, but solely to the extent they are acting on your behalf.

**1.5. Client Sublicensees.** Subject to the terms and conditions of this Agreement, during the Subscription Term, you may permit third-parties ("**Client Sublicensees**") to be Authorized Users of your account to Timetta

In providing such access to Client Sublicensees, you may not act as "Marketing Service Provider", "Service Bureau" or other entity with a similar business model. You shall ensure that all Client Sublicensees' use of Timetta is limited as described in this Section 1.5 by designating the appropriate access levels for Client Sublicensees within Timetta. You shall be solely responsible for your relationships with Client Sublicensees and for any of your own products or offerings used in connection with the Software. You must disclaim on Timetta's behalf (in a legally effective manner) any direct or indirect indemnity, warranty, support or other obligation or liability to Client Sublicensee. You acknowledge that Timetta does not assume and should not be exposed to the business and operational risks associated with your business or any aspects of providing Visualization Access to your Client Sublicensees, and therefore you shall be liable for all acts and omissions of Client Sublicensees as if their acts or omissions were your own.

**1.6. Third-Party Code.** Timetta may contain or be provided with components which are licensed from third parties ("**Third Party Code**"), including (a) components subject to the terms and conditions of "open source" software licenses ("**Open Source Software**"), (b) Non-Timetta Apps, and (c) Content.

**(a) Open Source Software.** Open Source Software may be identified in the Documentation, or in a list of the Open Source Software provided to you upon written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

**(b) Non-Timetta Apps.** Timetta may contain features designed to interoperate with Non-Timetta Apps. "**Non-Timetta Apps**" are software applications, extensions, database services or other functionality, whether web-based, mobile, offline or otherwise, that are provided by you or a third-party or some marketplace that interoperate with Timetta. If you enable, access or use any Non-Timetta App, the following apply: (a) your use of each Non-Timetta App is subject to the applicable terms between you and the Non-Timetta App provider, and you shall comply with those terms; (b) any exchange of Customer Data or other data between you and any Non-Timetta App you use is solely between you and the applicable third-party provider; (c) Timetta does not warrant or support Non-Timetta Apps or other third-party products or services, whether or not they are designated as "certified" or otherwise; and (d) you shall be responsible for the interoperation of any Non-Timetta App with your use of Timetta. Timetta does not guarantee the continued availability of any Non-Timetta App or related features, and may cease providing without entitling you to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Timetta App ceases to make the Non-Timetta App available for interoperation with Timetta in a manner acceptable to Timetta. If you choose to use a Non-Timetta App with Timetta, you grant to Timetta permission to allow the Non-Timetta App and its provider(s) to access Customer Data and information about your usage of the Non-Timetta App for the interoperation of that Non-Timetta App. Use of Customer Data by the Non-Timetta App is governed by your agreement with the Non-Timetta App provider. Timetta is not responsible for any disclosure, modification, use or deletion of Customer Data resulting from any such access by Non-Timetta Apps or their provider(s).

**(c) Content.** Timetta may include features that provide access to Content. "**Content**" means information obtained by Timetta from publicly available sources or third-party providers and made available to you through Timetta. Your use of any Content is subject to the applicable terms between you and the Content provider, and you shall comply with those terms. Timetta does not guarantee the continued availability of any Content or related features, and may cease providing Content without entitling you to any refund, credit, or other compensation, if for example and without limitation, the provider ceases to make the Content available in a manner acceptable to Timetta. Timetta is not designating or adopting Content as its own.

**1.7. General Restrictions.** As a condition to the rights granted to you hereunder, you shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer Timetta or any Third Party Code or attempt to reconstruct or discover any source code, APIs, underlying ideas, algorithms, file formats, data or programming interfaces of Timetta or the Third Party Code by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, or as permitted by an applicable Open Source Software license); (b) distribute, sell, sublicense, rent, lease or use Timetta or any Third Party Code (or any portion thereof) for time sharing, hosting, service provider or like purposes, except as expressly permitted under Section 1.5 of this Agreement; (c) remove any product identification, proprietary, copyright trademark, service mark, or other notices contained in Timetta or any Third Party Code (including any reports or data printed via the use of Timetta); (d) modify any part of Timetta or any Third Party Code, create a derivative work of any part of Timetta or any Third Party Code, or incorporate Timetta or any Third Party Code into or with other software, except to the extent expressly authorized in writing by Timetta or as permitted by an applicable Open Source Software license; (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to Timetta; (f) utilize any equipment, device, software, or other means designed to circumvent or remove any form of copy or other protection used by Timetta in connection with Timetta, or use Timetta together with any user credentials or other copy protection device not supplied by Timetta; (g) use Timetta to develop a product which is competitive with any Timetta product offerings; (h) use unauthorized user credentials or distribute or publish such credentials except as may be expressly permitted by Timetta in writing; (i) enable access to Timetta for a greater number of Authorized Users than the sum quantity of subscriptions purchased on the applicable Ordering Document(s); (j) reassign subscription access rights between Authorized Users so frequently as to enable a single subscription to be shared between multiple users; (k) assert, nor will you authorize, assist or encourage any third-party to assert, against Timetta or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding Timetta or any support you have purchased or used hereunder; (l) use Timetta to develop a product that converts any Timetta file format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of Timetta; or (m) use Timetta in a way that has a detrimental impact on Timetta's and its licensors ability to provide Timetta to their other customers.

**1.8. Removal of Non-Timetta Apps and Content.** If you receive notice that a Non-Timetta App or Content must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or any other Timetta terms or policies to which you are bound, you shall promptly do so. If you do not do so, or if in Timetta's sole judgment continued violation is likely to reoccur, Timetta may disable the applicable Non-Timetta App or Content or your access to Timetta. If requested by Timetta, you shall confirm your removal, modification or deletion in writing and Timetta will be authorized to provide a copy of such confirmation to any third-party claimant or governmental authority, as applicable. In addition, if Timetta is required by any third-party rights holder to remove Content, or receives information that Content provided to you may violate applicable law or third-party rights, Timetta may discontinue your access to Content through Timetta without liability.

## 2. CUSTOMER DATA AND YOUR OBLIGATIONS

**2.1 Customer Data.** “Customer Data” means any business information or other data which you input, or provide to Timetta for inputting, into Timetta for the purpose of your analysis. Customer Data does not include Content or Non-Timetta Apps.

### 2.2 Your Obligations

(a) **General.** You are solely responsible for the accuracy and content of all Customer Data. You represent and warrant to Timetta that (i) you have sufficient rights in the Customer Data to authorize Timetta to process, distribute and display the Customer Data as contemplated by this Agreement and the Documentation, (ii) the Customer Data and its use hereunder will not violate or infringe the rights of any third party, and (iii) your use of Timetta and all Customer Data is at all times compliant with your privacy policies and all applicable local, state, federal and international laws, regulations and conventions, including without limitation those related to data privacy, international communications and the exportation of technical or personal data.

(b) **Health Information.** You will not upload to Timetta or publish thereon any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations (“Health Information”) and acknowledge that Timetta is not a Business Associate and that Timetta is not HIPAA compliant. “HIPAA” means the Health Insurance Portability and Accountability Act, as amended and supplemented. Timetta shall have no liability under this Agreement for Health Information, notwithstanding anything to the contrary herein.

(c) **Payment Card Data.** You will not upload to Timetta or publish thereon any payment card information. You acknowledge that Timetta is not compliant with the Payment Card Industry Data Security Standards.

**2.3 Rights in Customer Data.** As between the parties, you shall retain all right, title and interest (including any and all intellectual property rights) in and to your Customer Data as published on Timetta. Subject to the terms of this Agreement, you hereby grant to Timetta a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, and distribute, perform and display (including publicly), modify and create derivative works of the Customer Data solely to the extent necessary to provide Timetta in accordance with this Agreement and the Documentation.

**2.4 Storage of Customer Data.** Timetta does not provide an archiving service. Timetta agrees it shall not intentionally delete any Customer Data from Timetta prior to termination or expiration of your applicable Subscription Term. Except as otherwise set forth herein, Timetta expressly disclaims all other obligations with respect to storage of Customer Data.

## 3. OWNERSHIP

**3.1. Timetta Technology.** Notwithstanding anything to the contrary contained herein, except for the limited access and use rights expressly provided herein, Timetta and its licensors retain all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to Timetta, the Documentation, the Third Party Code, any other Timetta deliverables and any and all related and underlying software (including interfaces), databases (including data models, structures, and any other non-customer specific data and statistical data), technology, reports, documentation, as well as any related process or methodology provided or used by Timetta, and with respect to each of the foregoing, any copies, modifications, improvements, derivative works, or enhancements thereto however developed or provided (including any which incorporate any of your ideas Feedback or suggestions)(collectively, “Timetta Technology”). You acknowledge

that you are obtaining only a limited right to access and use Timetta on a hosted basis and that irrespective of any use of the words “purchase”, “sale”, “sublicense” or like terms hereunder no ownership rights are being conveyed to you under this Agreement or otherwise, and further acknowledge that nothing contained in this Agreement shall be construed to convey to you ownership of any intellectual property rights in or to any Timetta Technology or any related methodologies or processes. Nothing in this Section 3.1 shall be deemed as granting Timetta ownership of Customer Data or your Non-Timetta Apps or in any way impacting your ownership of Customer Data or your Non-Timetta Apps.

**3.2. Feedback.** From time to time, you or your Authorized Users may submit suggestions, enhancements, requests, recommendations, corrections, or other feedback relating to Timetta, Content or other Timetta software or services (“Feedback”). You agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by you, shall not, absent a separate written agreement, create any confidentiality obligation for or upon Timetta. You will not give Feedback that is subject to license terms that seek to require any Timetta product, technology, service or documentation incorporating or derived from such Feedback, or any Timetta intellectual property, to be licensed or otherwise shared with any third party. Timetta may in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner it sees fit without any obligation, royalty or restriction based on intellectual property rights or otherwise.

## 4. SUBSCRIPTION TERM, FEES & PAYMENT

**4.1. Subscription Term.** Unless otherwise specified on the applicable Ordering Document, each Subscription Term shall begin on the effective date of the applicable Ordering Document and expire twelve (12) months thereafter. All applicable fees for such renewals will be at Timetta’s then-current rates. If your subscription is not renewed, your access to Timetta will terminate at the end of the then- current Subscription Term.

**4.2. Fees and Payment.** You shall pay all fees set forth in the applicable Ordering Document. All payments shall be made in the currency noted on the applicable Ordering Document within thirty (30) days of the date of the applicable electronic invoice. Except as expressly set forth herein, all fees are non-refundable once paid. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, Timetta will invoice you for all applicable taxes including, but not limited to, VAT, GST, sales tax, consumption tax and service tax. If any withholding tax is required by applicable law to be paid by you in relation to payments due to Timetta hereunder, you will provide Timetta with official receipts and/or certificates from the appropriate taxing authorities to establish that any applicable taxes have been paid.

**4.3. Suspension of Services.** If your account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Timetta reserves the right to suspend your access to Timetta without liability to you until such amounts are paid in full. Within a reasonable time after written notice by Timetta that your use of the Timetta service is having a detrimental impact on Timetta’s ability to provide Timetta to its other customers, Timetta reserves the right, at its sole discretion, to suspend or limit your access to Timetta.

## 5. TERM AND TERMINATION

**5.1. Term.** This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of the Subscription Term(s).

**5.2. Termination for Cause.** Either party may terminate this Agreement (including all related Ordering Documents) if the other party (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach including without limitation your failure to pay, provided that Timetta may terminate this Agreement immediately upon any breach of Section 1.7 (General Restrictions) or if you violate any other restrictions contained in Section 2 (Customer Data and Your Obligations), or Section 11 (Export Control); (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition, or comparable proceeding, or if any such proceeding is

instituted against that party (and not dismissed within sixty (60) days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

**5.3. Effect of Termination.** Upon any termination or expiration of this Agreement, you shall immediately cease any and all use of and access to Timetta and destroy (or, at Timetta's request, return), any Timetta Confidential Information in your possession. You acknowledge that, except as exported or printed prior to termination or expiration by you as may be permitted through the functionality of Timetta, following termination or expiration you shall have no further access to Content, Maps, Non-Timetta Apps or any Customer Data input into Timetta, and that Timetta may delete any such data at any time. Except where an exclusive remedy is specified in this Agreement, the exercise by either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

**5.4. Survival.** The following Sections shall survive any expiration or termination of this Agreement: Sections 1.7 (General Restrictions), 3 (Ownership), 4.2 (Fees and Payment), 5 (Term and Termination), 6.3 (Warranty Disclaimer), 8 (Limitation of Remedies and Damages), 9.2 (Indemnification by You), 10 (Confidential Information), 11 (Export Compliance) and 12 (General Terms).

## **6. LIMITED WARRANTY**

**6.1. Limited Warranty.** Timetta warrants to you that Timetta will operate in substantial conformity with the applicable Documentation. Timetta does not warrant that your use of Timetta will be uninterrupted or error-free, nor does Timetta warrant that it will review the Customer Data for accuracy or that it will preserve or maintain the Customer Data without loss. Timetta's sole liability (and your sole and exclusive remedy) for any breach of this warranty shall be, in Timetta's sole discretion and at no charge to you, to use commercially reasonable efforts to correct the reported non-conformity, or if Timetta determines such remedy to be impracticable, to allow you to terminate the applicable Subscription Term and receive as your sole remedy a refund of: (a) the monthly subscription fees specified in the applicable Ordering Document which are allocable to the thirty (30) day period prior to the date the warranty claim was made and (b) any fees you have pre-paid for use of Timetta or related services you have not received as of the date of the warranty claim.

**6.2. Exclusions.** The above warranty shall not apply: (a) unless you make a claim within thirty (30) days of the date on which the condition giving rise to the claim first appeared; (b) if Timetta is used with hardware or software not authorized in the Documentation; (c) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services; (d) to any Evaluation or Beta Access or other use provided on a no charge or evaluation basis; or (e) to any Third Party Code.

**6.3. Warranty Disclaimer.** THIS SECTION 6 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN IN THIS SECTION 6, TIMETTA, INCLUDING WITHOUT LIMITATION THE THIRD-PARTY CODE ARE PROVIDED "AS IS". NEITHER TIMETTA NOR ITS LICENSORS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS OR NON-INFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES SHALL BE LIMITED AS PROVIDED HEREIN. TIMETTA SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF TIMETTA.

**7. SUPPORT AND SECURITY.** During the Subscription Term, Timetta is subject to the reasonable support terms and security procedures.

## **8. LIMITATION OF REMEDIES AND DAMAGES**

**8.1. BUT FOR:** (1) BREACH OF SECTION 1.5 (CLIENT SUBLICENSEES), SECTION 1.7 (GENERAL RESTRICTIONS), OR SECTION 11 (EXPORT CONTROL), OR (2) DAMAGES ARISING OUT OF CLIENT SUBLICENSEE'S USE OF TIMETTA, INCLUDING YOUR OBLIGATIONS UNDER SECTION 9.2, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**8.2. BUT FOR:** (1) BREACH OF SECTION 1.5 (CLIENT SUBLICENSEES), SECTION 1.7 (GENERAL RESTRICTIONS), OR SECTION 11 (EXPORT CONTROL), OR (2) DAMAGES ARISING OUT OF CLIENT SUBLICENSEE'S USE OF TIMETTA, INCLUDING YOUR OBLIGATIONS UNDER SECTION 9.2, EACH PARTY'S ENTIRE LIABILITY AND OBLIGATION TO THE OTHER PARTY SHALL NOT EXCEED THE LESSER OF (A) FEES PAID OR OWED BY YOU TO TIMETTA UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE CLAIM OR (B) US \$100,000. IN THE CASE WHERE NO AMOUNT WAS PAID FOR THE SERVICE GIVING RISE TO THE CLAIM, TIMETTA AND ITS LICENSORS' ENTIRE LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED US\$100.

**8.3. Failure of Essential Purpose.** The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## **9. INDEMNIFICATION**

**9.1. Timetta Indemnification.** Timetta shall defend you from and against any claim by a third party alleging that Timetta, when used as authorized under this Agreement, infringes a U.S. patent, U.S. copyright, or U.S. trademark and shall indemnify and hold you harmless from and against any damages and costs awarded against you or agreed to in settlement by Timetta (including reasonable attorneys' fees). Provided that Timetta shall have received from you: (i) prompt written notice of such claim (but in any event notice in sufficient time for Timetta to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation from you. If your use of Timetta is (or in Timetta's opinion is likely to be) enjoined, if required by settlement or if Timetta determines such actions are reasonably necessary to avoid material liability, Timetta may, in its sole discretion: (a) substitute for Timetta substantially functionally similar programs and documentation; (b) procure for you the right to continue using Timetta; or if (a) and (b) are not commercially reasonable, (c) terminate the Agreement and refund to you the subscription fees paid by you for the portion of the Subscription Term which was paid by you but not rendered by Timetta. The foregoing obligations of Timetta shall not apply: (1) if Timetta is modified by any party other than Timetta, but solely to the extent the alleged infringement is caused by such modification; (2) if Timetta is combined with other non-Timetta services or processes not provided or authorized by Timetta, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of Timetta; (4) to any action arising as a result of Customer Data or any third-party components contained within or uploaded to Timetta; (5) to any Third Party Code, or (6) if you settle or make any admissions with respect to a claim without Timetta's prior written consent. SECTIONS 8 AND 9 SET FORTH TIMETTA AND ITS LICENSOR'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

**9.2. Indemnification by You.** Subject to this Section 9, you shall defend Timetta from and against any and all claims by third parties (including any Client Sublicensees and Contractors) resulting from or relating to: (i) the Customer Data, including without limitation any claim based on your breach or alleged breach of Section 2.2 (Your Obligations), use by any Non-Timetta App or alleging that the Customer Data infringes upon any valid patent, copyright, trademark, trade secret, or other proprietary right of, or otherwise harms, such third party; (ii) any breach by you of Section 1.5 (Client Sublicensees); (iii) your own products or offerings used by Client Sublicensees or relationships with Client Sublicensees; (iv) a Client Sublicensee's use of Timetta, (v) a Non-Timetta App provided by you; or (vi) the combination of a Non-Timetta App provided by you and used with Timetta, infringes or misappropriates a third party's intellectual property right; or (vii) your use of Content in an unlawful manner or in violation of the Agreement or other applicable license terms and shall indemnify and hold Timetta harmless from and against any damages and costs awarded against Timetta or agreed in settlement by you (including reasonable attorney's fees) resulting from such claims, provided that you shall have received from Timetta: (a) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (c) all reasonably necessary cooperation from Timetta. You may not settle any such claim relating to Timetta without Timetta's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

## 10. CONFIDENTIAL INFORMATION.

**10.1. Use of Confidential Information.** Each party (as "Receiving Party") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, pricing, documentation or technical information provided by Timetta (or its agents), performance information relating to Timetta, and the terms and conditions of this Agreement shall be deemed Confidential Information of Timetta without any marking or further designation. Customer Data shall be deemed your Confidential Information without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information to anyone other than its affiliates, employees and consultants ("Representatives") who have a need to know and who agree in writing to keep the information confidential on terms no less restrictive than those contained in this Agreement. Both Timetta and you will ensure that their respective Representatives comply with this Agreement and will be responsible for any unauthorized use or disclosure of Confidential Information by such Representatives. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information could cause substantial harm for which damages alone would not be a sufficient remedy, and therefore upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

**10.2. Privacy Statement:** Timetta may collect certain personal information in connection with your use of Timetta, including without limitation, registration data and usage data, in accordance with Timetta Privacy Policy, a current version of which is available at <https://timetta.com/privacy>.

**11. Export Control.** You acknowledge that Timetta and Third Party Code are subject to United States export control and economic

sanctions laws, regulations and requirements and to import laws, regulations and requirements of foreign governments. You agree that (1) all use, exports, and imports related to this Agreement will be in compliance with these laws and regulations and (2) you shall not allow any third party to export, re-export, or transfer any part of Timetta or Third Party Code in violation of these laws and regulations. The foregoing obligations include but are not limited to you or a third party exporting, transferring, or importing Timetta to: (i) to any country subject to export control embargo or economic sanctions implemented by any agency of the U.S. or foreign governments; (ii) to any person or entity on any of the U.S. Government's Lists of Parties of Concern (<https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>) or applicable international specially-designated parties or economic sanctions programs; (iii) to any end-user or for any known end-use related to the proliferation of nuclear, chemical or biological weapons or missiles, without first obtaining any export license or other approval that may be required by any U.S. Government agency having jurisdiction with respect to the transaction; or (iv) otherwise in violation of any export or import laws, regulations or requirements of any United States or foreign agency or authority.

## 12. GENERAL TERMS

**12.1. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Ordering Documents), without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, Timetta will refund you any prepaid fees covering the remainder of the Subscription Term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.2. Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

**12.3. Governing Law; Jurisdiction and Venue.** Excluding conflict of laws rules, this Agreement shall be governed by and construed under (a) the laws of the State of Washington, U.S. if you are located in North or South America, (b) the laws of Japan if you are located in Japan, (c) the laws of Singapore if you are located in Asia (excluding Japan) or Australia, or (d) the laws of England and Wales if you are located outside of North or South America, Asia and Australia. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the courts of (i) Seattle, Washington when the laws of Washington apply, (ii) Tokyo, Japan when the laws of Japan apply, (iii) Singapore when the laws of Singapore apply, or (iv) London when the laws of England and Wales apply. Nothing in this section shall restrict Timetta's right to bring an action (including for example a motion for injunctive relief) against you in the jurisdiction where your place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

**12.4. Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

**12.5. Timetta's Customer List.** You agree that Timetta may disclose you as a customer of Timetta and use your name and logo on Timetta's website and in Timetta's promotional materials.

**12.6. Notice.** Any notice or communication required or permitted under this Agreement shall be in electronic format. Such notice or report shall be sent to: [support@timetta.com](mailto:support@timetta.com). If to you such notice or report shall be sent to the

email address you provided upon placing your order. Any notices and reports sent by email shall be effective upon sending.

**12.7. Waivers.** No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. All conflicting terms in any purchase order or other business form employed by you, including any electronic invoicing portals and vendor registration processes are void, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

**12.8. Entire Agreement.** This Agreement (including each Ordering Document, and any other mutually agreed exhibits or attachments) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. You acknowledge that Timetta is an on-line, subscription-based product, and that in order to provide improved customer experience Timetta may make changes to Timetta (which may include making available different or substitute code compared to those available as of the Effective Date), and Timetta will update the Documentation accordingly.

**12.9. Independent Contractors.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

**12.10. Audit Rights.** You understand that Timetta may monitor your use of Timetta in order to verify that you have not exceeded your permitted number of Authorized Users. If Timetta becomes aware of any excess usage of Timetta, then you will pay for the excess usage and for any ongoing excess usage at Timetta's then-current rates. Upon Timetta's written request, you shall furnish Timetta with a signed certification certifying that Timetta is being used pursuant to the terms of this Agreement, including any access and user limitations. With prior reasonable notice, Timetta may audit your compliance with this Agreement, your use of Timetta, and your software monitoring system and records, provided such audit is during regular business hours. If such inspections or audits disclose that you have accessed or permitted access to Timetta in a manner that is not permitted under this Agreement, then Timetta may terminate this Agreement pursuant to Section 5 and you are liable for the reasonable costs of the audit in addition to any other fees, damages and penalties Timetta may be entitled to under this Agreement and applicable law.

**12.11. Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, Non-Timetta Apps or Content, or refusal of a license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

**12.12. Government End-Users.** Timetta is commercial computer software. If the user of Timetta is an agency, department or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of Timetta, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by this Agreement in accordance with Federal Acquisition Regulation

12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. Timetta was developed fully at private expense. All other use is prohibited.

**12.13. Authorized Partner.** If you received Timetta under an agreement ("**Partner Agreement**") with an authorized Timetta reseller, partner ("**Authorized Partner**") then, notwithstanding anything to the contrary in this Agreement: (a) your use of Timetta is subject to any additional terms in the Partner Agreement, including any limitations on use of Timetta in conjunction with third-party applications; and (b) you agree to pay the Authorized Partner the fees agreed in the Partner Agreement and you have no direct payment obligations to Timetta for that purchase under Section 4 above. If your warranty and support terms stated in your Partner Agreement are different than what is stated in Section 6 or 7 herein, then Timetta has no warranty or support obligations to you under this Agreement (although the disclaimers of warranties in Section 6.3 still apply to you). If your warranty and support terms passed on in your Partner Agreement are as stated herein, then Section 6 and 7 shall apply to you as written. Notwithstanding anything in this Agreement to the contrary,

(i) the Partner Agreement may not modify any of the remaining terms of this Agreement and (ii) the Partner Agreement is between you and the Authorized Partner and is not binding on Timetta. Timetta may terminate this Agreement (including your right to use Timetta) in the event Timetta fails to receive payment for your use of Timetta from the Authorized Partner or if you breach any term of this Agreement.

**12.14. Third Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**12.15. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**12.16. Language.** Regardless of any language into which this Agreement may be translated, the official, controlling and governing version of this Agreement shall be exclusively the English language version.

**12.17. Modifications to this Agreement.** Timetta may modify this Agreement from time to time by giving notice to you through Timetta's online user interfaces. Unless a shorter period is specified by Timetta (e.g. due to changes in the law or exigent circumstances), the modifications become effective upon renewal of your current Subscription Term or entry into a new Ordering Document. If Timetta specifies that the modifications to this Agreement will take effect prior to your next renewal or order and you notify Timetta in writing at [support@timetta.com](mailto:support@timetta.com) of your objection to the modifications within **thirty (30) days** after the date of such notice, Timetta (at its option and as your exclusive remedy) will either: (a) permit you to continue under the existing version of the Agreement until expiration of the then-current Subscription Term (after which time the modified Agreement will go into effect), or (b) allow you to terminate this Agreement and receive a refund of any pre-paid Timetta fees allocable to the terminated portion of the applicable Subscription Term. You may be required to click to accept or otherwise agree to the modified Agreement in order to continue using Timetta, and, in any event, continued use of Timetta after the modified version of this Agreement becomes effective will constitute your acceptance of such modified version.