

**REGISTER OF
CONTRACT AGREEMENTS**

CONTRACT AGREEMENT NO: CA13/1

TITLE: Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

I.R.C. NO: IRC13/36

DATE APPROVED/COMMENCEMENT: 15 February 2013 / 15 February 2013

TERM: 36

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 5 April 2013

DATE TERMINATED:

NUMBER OF PAGES: 30

COVERAGE/DESCRIPTION OF

EMPLOYEES: The contract agreement applies to Recall Information Management Pty Ltd, located at Level 40, Gateway, 1 Macquarie Place, Sydney NSW 2000, who enters into a contract of carriage with Recall for the purposes of transporting records, including but not limited to, documents, computer tapes and where required by Recall exchange computer back up tapes in clients' servers at clients' premises in the the Area (the Contractor), who fall within the coverage of the Transport Industry - Courier and Taxi Truck Contract Determination, Transport Industry - (GST Protocol) Contract Determination, Transport Industry - Redundancy (State) Contract Determination and Transport Industry - Mutual Responsibility for Road Safety (State) Contract Determination.

PARTIES: Recall Information Management Pty Ltd -&- the Transport Workers' Union of New South Wales

**RECALL INFORMATION MANAGEMENT PTY LTD – DATA
PROTECTION SERVICES CONTRACT AGREEMENT 2012**

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

Table of Contents

1. TITLE.....	4
2. PARTIES AND OPERATION	4
3. DEFINITIONS & INTERPRETATION	4
4. TERM AND SCOPE OF AGREEMENT.....	7
5. CONTRACTOR’S ACKNOWLEDGEMENTS.....	7
6. RECALL’S OBLIGATIONS	8
7. CONTRACTOR’S OBLIGATIONS	9
8. CONDUCT AND PERFORMANCE	11
9. CONTRACTOR’S EMPLOYEES	12
10. CHARGES.....	13
11. PAYMENT	13
12. TERMINATION	15
13. TRAINING & INDUCTION	16
14. CONTRACTOR’S INSURANCE	16
15. FORCE MAJEURE.....	16
16. INDEMNITY	17
17. NON-SOLICITATION	17
18. CONFIDENTIALITY	17
19. INTELLECTUAL PROPERTY.....	18
20. MATERIALS AND VEHICLE.....	18
21. NO PARTNERSHIPS OR EMPLOYMENT	19
22. DISPUTES PROCEDURE	20
24. WAIVER.....	20
25. ENTIRE AGREEMENT.....	21
26. VARIATION.....	21
27. ASSIGNMENT	21
28. SEVERABILITY	21
29. GOVERNING LAW	21
30. SIGNATORIES	22
SCHEDULE 1 — ANTI-DISCRIMINATION	23
SCHEDULE 2 - SERVICES	24
SCHEDULE 3 - RATES PAYABLE TO THE CONTRACTOR	25
SCHEDULE 4 - VEHICLE SPECIFICATIONS AND MAINTENANCE	27

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

SCHEDULE 5 - AREA.....29
SCHEDULE 6 - SECURITY.....30

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

1. TITLE

- 1.1 This is the Recall Information Management Pty Ltd – Data Protection Services Contract Agreement 2012 (the **Agreement**).

2. PARTIES AND OPERATION

- 2.1 The Agreement shall apply to:

- (a) **Recall Information Management Pty Ltd** (ABN 25 004 270 991), Level 40 Gateway, 1 Macquarie Place, Sydney NSW 2000 (**Recall**); and
- (b) **Transport Workers Union of New South Wales** (ABN 77 710 588 395), 31 Cowper Street, Parramatta NSW 2150 (**TWU**).

- 2.2 The Agreement shall apply to a person who enters into a contract of carriage with Recall for the purposes of transporting records, including but not limited to, documents, computer tapes and where required by Recall exchange computer back up tapes in clients' servers at clients' premises in the Area (the **Contractor**).

3. DEFINITIONS & INTERPRETATION

- 3.1 In this Agreement the following definitions shall apply:

Act means the *Industrial Relations Act 1996* (NSW);

Adjustment Note means an Adjustment Note, or Recipient Created Adjustment Note as defined in the GST Law and subsequent rulings;

Area means the area over which the Services are to be provided by the Contractor, being the area specified in Schedule 5 as at the Commencement Date, and as amended by the parties from time to time in writing;

Charges means those prices listed in Schedule 3 as amended by the parties from time to time by agreement in writing;

Commencement Date means the first full pay period on or after the date the Agreement is approved by the Commission;

Commission means the Industrial Relations Commission of New South Wales;

Confidential Information means any information, including, without limitation, all know-how, trade secrets, ideas, concepts, pricing, technical, operational and customer information, including information held by Recall on behalf of its customers, regardless of its form:

- (a) that is disclosed or provided directly or indirectly by one party (**Disclosing Party**) to the other (**Recipient**); and
- (b) that is treated or designated as confidential by the Disclosing Party, or which the Recipient knows, or ought to know, is confidential;

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

Contract of carriage means a contract of carriage as defined in the Act.

GST means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under the GST Law;

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or an Act imposing, or relating to the imposition or administration of such a tax;

Intellectual Property means all intellectual property (registered or unregistered) and includes without limitation: customer information, document, photos, videos, dvd's, drawings, inventions, improvements, technical data, formulae, computer programs, databases, designs, patents and trademarks, information relating to Recall's physical security, security requirements, standard operating procedures or any information relating to the manner in which services are provided to customers.

Recipient Created Tax Invoice means a Tax Invoice or a Recipient Created Tax Invoice as defined in the GST Law and subsequent rulings;

Serious and Willful Misconduct includes, but is not limited to, the Contractor or any of its employees, agents or subcontractors involved in supplying the Services to Recall:

- (a) failing to follow standard operating procedures in respect to scanning items at the point of collection or delivery to a customers' premises;
- (b) breaching security requirements as listed in Schedule 6 – Security Procedures;
- (c) being under the influence of alcohol or drugs while supplying the Services other than a prescribed drug which does not impair the ability to supply the Services;
- (d) failing to advise Recall where the Contractor, or its employees have been convicted of any criminal offence (other than a road traffic offence);
- (e) failing to report for work without a reasonable and valid explanation;
- (f) in the reasonable opinion of Recall being dishonest, objectionable or abrasive to either Recall, Recall's customers, or to any person during the course of, or at any time when, performing the Services and such conduct damages the reputation of Recall;
- (g) falsifying documents relating to the business of Recall or deliberately overstating rates, hours worked or timings on the worksheets;
- (h) being fraudulent or, in the reasonable opinion of Recall, negligent in the supply of the Services;
- (i) knowingly disclosing false information at the time of entering into this Agreement;

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

- (j) failing to follow safety rules as reasonably required by Recall or Recall's customers;
- (k) failing to obtain and keep current insurances as set out in clause 14;
- (l) failing to obtain and keep current any licenses or permits required for the operation of any vehicle;
- (m) refusing any lawful and reasonable direction or request by Recall in relation to the Services;
- (n) breaching confidentiality requirements specified in clause 18 of this Agreement;
- (o) failing to maintain vehicle security and maintenance standards as outlined in Schedules 4 & 6;
- (p) failing to ensure that employees or other potential passengers in the vehicle have signed Recall confidentiality agreements prior to providing the Services; and
- (q) failing to ensure that employees undergo Australian Federal Police Security Clearance background checks as specified in clause 7.1 (j) prior to the commencement of the Services.

Services means the collection and delivery of records (including but not limited to documents and tapes) for storage, retrieval or destruction as more specifically described in Schedule 2;

Tax Invoice has the meaning given to that term in the GST Law; and

Vehicle Specification means the vehicle specification set out in Schedule 4 or such other specification as Recall may notify to the Contractor pursuant to clause 20.

3.2 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes any gender;
- (c) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (d) headings are for convenience only and do not affect the interpretation of this Agreement;
- (e) a reference to legislation or a provision of any legislation includes all amendments, re-enactment and replacements of that legislation or provision;
- (f) the words *schedule*, *clause* and *sub-clause* mean a schedule or clause of this Agreement;

- (g) a provision of this Agreement must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it;
- (h) the word **business day** means a day which is not a Saturday or Sunday, public holiday or bank holiday in the **State of New South Wales**;
- (i) the word **person** includes a firm, body corporate, unincorporated association or authority and a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including but not limited to a person taking by novation) and assigns;
- (j) the words **in writing** means any mode of representing and reproducing words in tangible and permanently visible form and includes facsimile and electronic transmission; and
- (k) if a period of time is specified and that period begins:
 - (i) at the time of an act or event; or
 - (ii) on a specified date;then the calculation of the period begins on the day following the day of the act.

4. TERM AND SCOPE OF AGREEMENT

- 4.1 Recall engages the Contractor to provide the services to Recall in accordance with the terms of this Agreement.
- 4.2 The Agreement shall operate from the first full pay period on or after the date the Agreement is approved by the Commission and shall have a nominal term of three years.
- 4.3 The Agreement operates to the exclusion of the *Transport Industry – General Carriers Contract Determination*, the *Transport Industry – Courier and Taxi Truck Contract Determination* and the *Transport Industry – (GST Protocol) Contract Determination*. The Agreement prevails over any other contract determination of the Commission that deals with the same matters as the Agreement in so far as the provisions of the contract determination apply to a person bound by the Agreement.

5. CONTRACTOR'S ACKNOWLEDGEMENTS

- 5.1 The Contractor acknowledges and agrees that:
 - (a) Recall is under no obligation to allocate the Services to the Contractor;
 - (b) there is no minimum value or volume of Services to be acquired by the Contractor;

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

- (c) the allocation of Services by Recall to the Contractor will be made by Recall in consultation with the Contractor, but ultimately will be at Recall's absolute discretion;
 - (d) the allocation of Services is subject to availability of suitable work, customer demand and the number of contractors engaged by Recall; and
 - (e) subject to the above, Recall will use its best endeavours to utilise the Contractors engaged at the time that this Agreement is made before engaging outside labour.
- 5.2 The Contractor acknowledges and agrees that other than any express representations contained in this Agreement, and to the extent permitted by Law, no representation has been made and no warranty is or has been expressly or impliedly given by or on behalf of Recall in respect of any matter relating to this Agreement.
- 5.3 Recall agrees that without limiting the effect of clause 5.2, and to the extent permitted by Law, no representation has been made and no warranty is or has been expressly or impliedly given by or on behalf of Recall in respect of the volume or value of Services to be acquired by Recall.
- 6. RECALL'S OBLIGATIONS**
- 6.1 Recall will:
- (a) nominate a representative who will liaise with the Contractor in respect of the Contractor's provision of the Services (***Recall Representative***);
 - (b) provide the Contractor with all information and co-operation reasonably necessary to enable the Contractor to perform its obligations under this Agreement; and
 - (c) subject to the Contractor's compliance with its obligations under this Agreement, provide the Contractor with reasonable access to Recall's sites as reasonably required for the purpose of allowing the Contractor to provide the Services.
- 6.2 Recall will pay the Contractor \$250 per day if the Contractor is available to perform the Services for Recall, but is not allocated any Services by Recall's transportation controller, between the hours of 7:00am and 5:00pm on each Business Day. Availability to perform will be signified by the Contractor or its accepted employee being present at the Recall site with the Contractor's vehicle, with all the necessary materials and in the requisite uniform. If Recall is not of the view that the Contractor is available to perform the Services, then Recall will not pay the amount of \$250 per day.
- 6.3 The \$250 per day will only be payable should the Contractor's daily income average less than this amount over the full billing period.

7. CONTRACTOR'S OBLIGATIONS

7.1 The Contractor must:

- (a) nominate a representative, who will liaise with Recall in respect of Recall's provision of the Services, the representative may be a TWU delegate, organiser or official (***Contractor Representative***);
- (b) provide the Services as allocated by Recall as well as any other ancillary duties requested by Recall with due care and skill and in a manner consistent with industry best practices;
- (c) comply with all reasonable and lawful directions of Recall including Recall's policies, procedures and manuals. For the purposes of clarity Recall's policies, procedures and manuals are not incorporated and do not form part of this Agreement;
- (d) provide a driver fit for full duties and acceptable to Recall during the accepted spread of hours and at those times requested;
- (e) ensure that any of the drivers or other employees involved in performing the Services have the basic skills and training to competently provide the Services. The Contractor shall provide such evidence reasonably required by Recall to prove and demonstrate the competency of the driver or employee;
- (f) ensure that drivers of vehicles will take a nominated lunch break during each working day;
- (g) actively ensure all drivers adhere to Recall's C.A.R.E principals, encompassing the values while dealing with Recall's customers;
- (h) meet the required standards as per perfect order service level requirements including compliance with all national and local laws during the provision of the Services;
- (i) not carry children, relations or other passengers in the vehicle during working hours unless otherwise authorised by the Recall Representative;
- (j) ensure that the Contractor's employees comply with the duty of confidentiality in clause 18 prior to the commencement of providing Services;
- (k) allow Recall to undertake Australian Federal Police Security Clearance background checks for both the Contractor and the Contractor's employees from time to time throughout the duration of the contract or provide police background checks from time to time, at Recall's cost;
- (l) not carry animals or hazardous material in the vehicle at any time;

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

- (m) agree to meet with the Recall Representatives regularly as required to discuss service levels of both parties;
- (n) observe all operating procedures including Recall's Standard Operating Procedures and directives as provided at the time of entering into this Agreement and amended from time to time. Mandatory requirements under this Clause include:
 - (i) communication with Recall on matters of customer service;
 - (ii) obtaining customers signatures on all service dockets and receipts; and
 - (iii) scanning of items including loose files, and cartons at the point of delivery or collection.
- (o) at all times, ensure its drivers hold a current driver's licence valid in the State in which the Services are provided and applicable to the type of vehicle used. The Contractor shall also ensure that any driver employed by it to provide any of the services required by Recall holds such a licence;
- (p) notify Recall immediately in the event that the licence of any driver employed by the Contractor to provide services to Recall is cancelled or suspended for any reason;
- (q) notify Recall immediately should the Contractor or any of the Contractors employees engaged in providing Services be convicted of any criminal offence other than a road traffic offence.
- (r) agree not to perform work whilst under the influence of drugs or alcohol and agree to comply with a written drug and alcohol policy;
- (s) until such time as a drug and alcohol policy is implemented, the Contractor:
 - i. agrees to undertake drug and alcohol testing by a Recall-nominated doctor if Recall reasonably suspects the Contractor may be under the influence of alcohol and/or drugs whilst providing the Services;
 - ii. reasonable suspicion may exist where the Contractor has been involved in a safety related accident or incident or their attention, concentration, coordination and perceptual processes appear to be affected;
 - iii. if a Contractor refuses to undertake the test, the Contractor will be in breach of this Agreement and clause 12 may apply. Further, Recall will not allocate the Contractor the Services until the Contractor agrees to undertake the drug and alcohol test and the Contractor will not be entitled to payment until the test is undertaken;
 - iv. if a Contractor tests positive to drugs or alcohol, the Contractor will be in breach of this Agreement and clause 12 may apply; and

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

- v. Recall will pay the Contractor for any lost earnings as a result of undertaking the drug and alcohol test if the test is negative to drugs and alcohol. Recall will pay the Doctor's testing fees;
- (t) comply and bear all fees payable in connection with the requirements of all Acts of parliament of the Commonwealth of Australia and of the State in which the Services are provided and with the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued there under and with the lawful requirements of public, municipal and other authorities in any way affecting or applicable to the Services;
- (u) where supplied with a Recall PDT scanner, scan all items as required at delivery/pickup exchanges. A failure to comply with any policy or procedure relating to the use of PDT scanners may result in non-payment for any relevant service for which the scanner was required to be used;
- (v) in the event the Contractor, Vehicle or Nominated Person is unavailable to carry out the daily Services or a run, the Contractor will at its own expense and subject to the approval of Recall, make alternative arrangements to meet its contractual obligations.
- (w) otherwise comply with any lawful direction by Recall in relation to performance of the Services.

7.2 During the term of this Agreement, the Contractor must:

- (a) ensure that it and its employees, agents and subcontractors comply with all occupational health and safety laws applicable in the state in which the Services are provided;
- (b) prepare and follow an occupational health and safety management plan appropriate for the provision of the Services. Any accident, injury, property or environmental damage that occurs during the provision of the Services must be dealt with by the Contractor in accordance with its occupational health and safety management plan; and
- (c) notify Recall of any incident, potential or present hazard and the remedial or corrective action implemented by the Contractor.

8. CONDUCT AND PERFORMANCE

8.1 In the event that Recall considers that the Contractor is not satisfactorily performing its obligations under this Contract, but it is not conduct, which falls within the definition of Serious and Willful Misconduct, Recall may, but is not required to:

- (a) give notice to the Contractor in writing of the matters constituting the unsatisfactory performance;
- (b) nominate in the written notice, a period during which the Contractor has an opportunity to improve its performance; and

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

- (c) review the further performance of the Contractor at the end of the nominated period with the Contractor.
- 8.2 If at the end of the nominated period, the Contractor's performance does not improve, then Recall may terminate the Contractor in accordance with clause 12.

9. CONTRACTOR'S EMPLOYEES

- 9.1 The Contractor must ensure that its employees, agents and subcontractors:
- (a) are approved in writing by Recall. Such approval may be withdrawn in writing and without notice by Recall and the Contractor must cease permitting the driver to perform the Services, if the driver commits Serious and Wilful Misconduct or fails to comply with a provision of this clause 9 or any other provision of this Agreement appropriate to be complied with by a driver of a vehicle of the Contractor;
 - (b) are competent, appropriately trained and have the necessary skills and experience to provide the Services;
 - (c) will be suitably attired, courteous and diligent at all times for the supply of the Services; and
 - (d) will comply with all other Recall specific policies and guidelines, including, without limitation, those relating to drugs and alcohol and occupational health and safety.
- 9.2 All employees, representatives or subcontractors employed or engaged by the Contractor to perform all, or part of the Services, will be under the control of the Contractor and will not be deemed to be employees of Recall and nothing in this Agreement or in any subcontract will be construed to create any contractual relationship between any such employees, representatives or subcontractors and Recall.
- 9.3 Any act, default or misconduct by of the Contractor or its agents or employees will be deemed to be an act, default or misconduct committed by the Contractor.
- 9.4 The Contractor shall be solely responsible for all payments to, deductions from and entitlements of the Contractor and any persons employed or engaged by the Contractor, including but not limited to remuneration for any work done by a Contractor's employee/s or sub-contractor/s in connection with this Agreement including amounts payable by the Contractor to the employee or sub-contractor by legislation, or under an industrial instrument including a contract determination of the Commission, workers compensation insurance and for paying all wages, long service leave, sick pay, holiday pay, PAYE tax, fringe benefits tax, payroll tax, Superannuation and other statutory charges and entitlements.
- 9.5 If any payment, fine, penalty or other charge including for recovery of remuneration is imposed on Recall as a result of non-compliance by the Contractor with the obligations in clause 9.3 or 9.4, the Contractor indemnifies Recall in respect of that payment, fine, penalty or other charge including for recovery of remuneration.

9.6 The Contractor must provide to Recall a completed Subcontractor's Statement in accordance with s.127 of the Act in respect of Services being performed by sub-contractors and/or employees in NSW for each calendar quarter or as otherwise reasonably requested by Recall. Recall may withhold any payment due under the Agreement until the Contractor gives Recall the Subcontractor's Statement in accordance with s.127(5) of the Act.

10. CHARGES

10.1 In consideration of the Contractor providing the Services to Recall, Recall agrees to pay the Contractor in accordance with the Charges set out in Schedule 3. The Charges set out in Schedule 3 are exclusive of GST. Rates for any additional services not included in Schedule 3 will be agreed upon by the parties.

10.2 The Charges set out in Schedule 3 are inclusive of a 3% increase from the first full pay period on or after 1 July 2012, a 3% increase from the first full pay period on or after the first anniversary of the Commencement Date and a further 3% increase from the first full pay period on or after the second anniversary of the Commencement Date.

10.3 Despite sub-clauses 10.1 and 10.2, if the weighted average over eight capital cities all groups CPI most recently published by the ABS on the second anniversary of the Commencement Date is greater than 3%, that CPI will apply to the rates in the "rates from first full pay period on or after 1st anniversary of Commencement Date" column in Schedule 3 to the Agreement from the first full pay period on or after the second anniversary of the Commencement Date, and the third rates column in Schedule 3 will have no application.

10.4 In addition to the Charges, Recall will pay to the Contractor any GST in respect of the provision of the Services, on the same date on which payment for the relevant Services are due and payable.

10.5 The Charges and the GST paid to the Contractor compensate the Contractor for any entitlements that it may have under any contract determination, or law including, but not limited to, remuneration, fuel levy and GST.

10.6 The Charges and the GST paid to the Contractor under this supply agreement which is in excess of any entitlements that the Contractor may have under any contract determination, or law may be set off against any such entitlements.

11. PAYMENT

11.1 The Contractor will complete daily work sheets showing:

- (a) starting time;
- (b) finishing time; and
- (c) services performed with rates as per Schedule 2; and

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

shall have the work sheet checked by a Recall staff member authorised to give concession on disputed services performed. The Contractor shall provide Recall with all completed worksheets on a daily basis.

- 11.2 Recall and the Contractor confirm that they are each registered for GST as at the commencement of this Agreement and will promptly notify the other party if they cease to be registered for GST.
- 11.3 The parties agree that:
- (a) Recall will issue Recipient Created Tax Invoices in respect of any supply made under or in connection with this Agreement; and
 - (b) the Contractor will not issue Tax Invoices or Adjustment Notes in respect of any supply made under or in connection with this Agreement.
- 11.4 The Contractor must provide the Recall operations manager with weekly details of the Services the Contractor has provided during the preceding seven (7) days (*Services Record*), including:
- (a) the event or service type;
 - (b) times of the events and services, and clarification as to whether the charge is per job or per hour;
 - (c) the amount for tolls and petrol, with clear notification of whether GST is included or not;
 - (d) the unit price of each event or service, with clear notification of whether GST is included or not; and
 - (e) the start and end date for the event or service period.
- 11.5 The Services Record must be verified by the Recall operations manager before a Recipient Created Tax Invoice will be created.
- 11.6 If the Services Record is not provided within 8 days of the provision of the previous Services Record, then Recall will not issue a Recipient Created Tax Invoice for that 7-day period, and the Recipient Created Tax Invoice will be issued for the following 7 day period.
- 11.7 Nothing in this clause will prevent the Contractor from disputing a Recipient Created Tax Invoice issued by Recall. Where applicable, any dispute must be resolved according to the dispute resolution provisions in this Agreement. Where none apply, the dispute must be notified to the Recall operations manager to resolve.
- 11.8 Recall will pay the Contractor for Services provided within seven (7) days of the date of invoice, and an amount for GST, by EFT transfer to a nominated bank account.

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

11.9 In addition to the Charges, Recall will pay for the following additional costs reasonably incurred by the Contractor in the course of providing the Services:

- (a) bridge and motorway tolls;
- (b) Recall will not reimburse the Contractor for:
 - i. lunch break periods;
 - ii. periods awaiting IC run preparation – for the avoidance of doubt and by way of example only, if Recall directs a Contractor to collect goods at 6:00am but the Contractor arrives earlier, the Contractor is not entitled to be paid for time waiting to 6:00am however, if the Contractor is kept waiting after 6:00am they will be reimburse for that period of waiting time after the collection time;
 - iii. time taken to discuss business matters with Recall;
 - iv. public holidays, unless so called upon to work on those days; and
 - v. any Services outside of perfect order or the agreed service levels that could reasonably have been avoided by the Contractor.

12. TERMINATION

12.1 Recall may terminate a Contractor with immediate effect by written notice on the ground of Serious and Willful Misconduct by the Contractor, its employees agents or subcontractors.

12.2 Recall or the Contractor may terminate the Services with immediate effect by written notice where the other party has committed a material breach of this Agreement which cannot be rectified or has not rectified that breach within fourteen (14) days of written notice being served on it by the first party specifying the breach

12.3 Notwithstanding clauses 12.1 and 12.2, Recall may terminate a Contractor on one (1) month's written notice of its intention to do so.

12.4 Should Recall elect to terminate this Agreement upon the giving of notice under clause 12.3, it may make a payment in lieu of the whole or any part of that notice.

12.5 In the event of termination of a Contractor for any reason:

- (a) the Contractor must return to Recall all uniforms and equipment supplied to the Contractor by Recall;
- (b) Recall will remove all Recall signage and identification from the Contractor's vehicles at Recall's expense prior to payment for all outstanding invoices by Recall; and
- (c) the Contractor must deliver to Recall all Confidential Information, Intellectual Property and other Recall or customer property including,

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

without limitation, all papers, writings, disks, access keys and other material which are in the possession or custody or under the control of the Contractor relating in any way to the affairs of Recall or its business or to any company related to Recall within the meaning of Section 50 of the Corporations Act 2001.

13. TRAINING AND INDUCTION

13.1 The Contractor shall ensure that all its employees or subcontractors participate in the induction and customer service training programs stipulated and organised by Recall.

13.2 Recall will provide safety and security induction training to Contractors as required.

14. CONTRACTOR'S INSURANCE

14.1 During the term of this Agreement, the Contractor must at its own expense procure and maintain:

- (a) Workers Compensation insurance for all its employees as required by all relevant laws in the state in which the Contractor conducts business and incorporating cover in relation to any common law claims commenced by employees, agents and/or subcontractors.
- (b) Public Liability insurance to a minimum amount of \$10,000,000 per any one event with Recall's interest as principal being nominated on the policy. The Public Liability insurance must include coverage for goods in transit if it is available;
- (c) Comprehensive Motor Vehicle insurance covering each vehicle used by the Contractor in the performance of the Services for Recall for own damage to vehicle and to an amount of \$10,000,000 for third party property damage per any one event with Recall Information Management's interest as principal being nominated on the policy.

14.2 The Contractor must provide satisfactory evidence to Recall, as and when requested by Recall that the insurance policies required by the preceding sub-clauses have in fact been obtained and remain current throughout the term of this Agreement. Such evidence is to be in the form of certificates of currency provided by the insurer and not the insurance broker. Where the insurance required by Recall is not obtained by the Contractor or lapses after the commencement of this Agreement, Recall may after notifying the Contractor that it wishes the Contractor to provide sufficient proof of insurance, and the Contractor has not provided such proof within 14 days of notification, terminate the Services of the Contractor.

15. FORCE MAJEURE

15.1 Notwithstanding any other provision of this Agreement, neither party will be liable for any omission, failure or delay in the performance of any of its obligations under this Agreement if such omission, failure or delay is occasioned by or arises from circumstances beyond its power or control including, but without limiting the

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

generality of the foregoing, omissions, failures or delays caused by or arising from acts of God, industrial action or dispute, flood, lightning, storm, acts of war, riot, government or industrial embargo or accident fire or explosion beyond the control of either party.

16. INDEMNITY

16.1 To the extent permitted by law, in consideration of Recall agreeing to carry out its obligations under this Agreement, Recall will not be liable to the Contractor and the Contractor indemnifies Recall from all present and future claims, actions, demands, proceedings, threats, losses, costs (including solicitors' costs on a solicitor and own client basis), expenses, penalties and liabilities whatsoever and whenever incurred, which any person may have or bring against Recall arising from or in any way connected to the performance or non performance of the Services pursuant to this Agreement or breach of obligations under this Agreement including, without limitation, the negligence or breach of contract or willful act or default of the Contractor or its employees or agents.

16.2 The indemnity in clause 16.1 survives termination of this Agreement.

17. NON-SOLICITATION

17.1 During the term of this Agreement the Contractor must not, either directly or indirectly without the prior written consent of Recall:

- (a) deal with or solicit any customer of Recall or person who had dealt with Recall or who Recall was in the process of negotiating with, for the purpose of carrying out any business with that person, involving the collection or transport of records for storage, retrieval, destruction or recycling or any other business which Recall is involved in; or
- (b) induce or attempt to induce any director, manager or employee of Recall to terminate his employment with Recall whether or not that person would commit a breach of that person's contract of employment with Recall.

18. CONFIDENTIALITY

18.1 The Contractor acknowledges that in the course of the performance of the Services, the Contractor may obtain access to, or become aware of Confidential Information, which is or may be of commercial value to Recall or Recall's customers and that disclosure of such information could materially harm Recall or Recall's customers.

18.2 The Contractor must not and must procure that its employees or subcontractors must not without the prior consent in writing of Recall disclose or use any Confidential Information unless such disclosure or use is made in the proper course of the provision to Recall of the Services by the Contractor.

18.3 The information referred to in clause 18.2 includes information disclosed or provided to Recall, or the Contractor or its employees or subcontractors by an existing or potential customer, supplier, contractor, agent, licensor or licensee of Recall.

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

- 18.4 The Contractor must, and must also ensure that the Contractor's employees, sign a confidentiality agreement containing similar provisions to the provisions of this clause prior to commencement of providing Services.
- 18.5 On termination of the Contractor for any reason, the Contractor will, at Recall's request deliver to or do all things necessary to procure the delivery to Recall all Confidential Information in the possession of the Contractor or its employees or subcontractors which is in a physical or electronic form, including all copies whether those copies are in the same form as the original or capable of being recreated into that or other form by any method, device or process.
- 18.6 This clause will survive the termination of this Agreement in all circumstances.

19. INTELLECTUAL PROPERTY

- 19.1 The parties acknowledge that property in all Intellectual Property which arises pursuant to or during the course of the performance of this Agreement and relating to the business of or products marketed by the Recall is vested and shall vest in Recall and the Contractor undertakes to do all such acts and things to execute all such documents as may be necessary or effectively vest such property in Recall.
- 19.2 To the extent that any rights in the Intellectual Property vest in the Contractor, the Contractor hereby assigns those rights to Recall.
- 19.3 The Contractor shall require all of the Contractor's employees and sub-contractors who perform services for the Contractor in relation to the Contractor's obligations under this Agreement, to enter into a covenant in the form reasonably required by Recall to the same effect as the covenant set out in clause 19.1 and 19.2.

20. MATERIALS AND VEHICLE

- 20.1 Except where this Agreement provides, the Contractor must supply everything, including stationery and documentation necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities, including but not limited to a mobile phone with message facilities.
- 20.2 Recall will provide uniforms to the Contractor and the Contractor will ensure that all vehicle drivers wear the uniform at all times when carrying out work for Recall. The Contractor shall ensure that the uniform as issued by Recall is worn only while performing Services for Recall.
- 20.3 Recall will supply and maintain mobile scanners and operational system equipment that is deemed necessary to meet the current service matrix and Standard Operating Procedures.
- 20.4 Recall will, where appropriate, provide a communication system and pay such costs as may be associated with system update or repairs regarded as resulting from normal usage.
- 20.5 The Contractor will ensure all Recall equipment is in good order, reporting any incident to the Recall Representative and will be liable for any repair, or loss, of this equipment deemed to be damaged, or lost, other than by normal wear and tear.

- 20.6 The Contractor will make available a vehicle(s) to carry out the Services that meet Recall's specifications as set out in Schedule 4 and in the base colour required by Recall. Recall will pay for all signwriting and identification required by Recall on the Contractor's vehicle. The Contractor must ensure that all vehicles with Recall signage will be used for the business of providing services for Recall alone, during normal working hours.
- 20.7 If at any time Recall reasonably considers the vehicle normally used by the Contractor to be unsuitable for work performed by the Contractor for Recall, Recall may so advise the Contractor and request the Contractor repairs or obtains a replacement vehicle within such time as is agreed between Recall and the Contractor, or in default of agreement, within such period as Recall reasonably requires, being not less than 6 weeks. In the event that the Contractor believes it is unreasonably disadvantaged by the request, the matter shall be dealt with in accordance with clause 22 of the Agreement.
- 20.8 The Contractor must allow Recall to regularly inspect the Contractor's vehicle to determine that the standard of appearance and body fittings meet with the required specification.
- 20.9 The Contractor must fully maintain all vehicles supplied by the Contractor (which includes but is not limited to complying with the requirements set out in Schedule 4 and Recall will not be responsible in any way for any costs incurred in the operation or maintenance of these vehicles.
- 20.10 Unless otherwise provided in this Agreement, the Contractor must ensure that all equipment and vehicles used in the performance of this Agreement are fit for the purpose for which they are used and are properly maintained.
- 20.11 Recall may direct the Contractor to stand down an item of equipment or a vehicle which in its reasonable opinion is not fit for the purpose for which it is used or presents a serious risk to the environment or to the health and safety of employees until the reason for the stand down is resolved for example by repair or replacement of the equipment or vehicle or through clause 22 of the Agreement. Where an item of equipment or a vehicle is stood down in accordance with this clause, the Contractor shall have no right of recourse against Recall for damages.

21. NO PARTNERSHIPS OR EMPLOYMENT

- 21.1 Nothing in this Agreement is intended to create any partnership as between Recall and the Contractor. The Contractor acknowledges that it has no authority to bind Recall without Recall's prior written approval.
- 21.2 This Agreement does not constitute the relationship of employee and employer between Recall and the Contractor or between Recall and any person nominated by the Contractor to perform the Services. The parties acknowledge that the Contractor enters into this Agreement as an independent contractor and retains the ultimate responsibility for management and direction in relation to the provision of Services.

22. DISPUTES PROCEDURE

22.1 In the event a dispute arises between Recall and a Contractor, it shall be dealt with as follows:

- (a) The matter should first be discussed at the workplace level between the Contractor and their nominated representative (if any) and the relevant management of Recall and its nominated representative (if any).
- (b) If the matter is not resolved, discussions shall occur between the Contractor and their nominated representative (if any, which may include a TWU delegate, organiser or branch secretary or nominee) and senior management of Recall and its nominated representative (if any).
- (c) If the matter is not resolved after discussions under clause 22.1 (a) and (b) have occurred, either party may notify the dispute to the Commission in accordance with the Act.
- (d) At all times, whilst the steps referred to above are being pursued, the parties shall continue to abide by the terms of the Agreement and undertake the Services and contracts of carriage in the normal manner subject to any rights arising under work, health and safety legislation.
- (e) The procedure and obligations above will be equally binding on the parties to this Agreement and any decision of the Commission made under the Act will be accepted and adhered to by all parties, subject to each parties appeal rights under the Act.

23. CONSULTATIVE COMMITTEE

23.1 The parties agree to establish a Consultative Committee that shall be made up of representatives from Recall and Contractors including senior management representative/s of Recall and at least 2 Contractors elected by the Contractors. The Committee shall meet at least once a month at a set date and time and shall discuss issues that include but are not limited to the following:

- Utility of Contractors;
- Measures to improve efficiency and productivity;
- Industrial concerns and grievances; and
- Occupational health, safety and welfare concerns and measures to improve the occupational health, safety and welfare of Contractors.

24. WAIVER

23.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

23.2 The exercise of a power or right does not preclude:

- (a) its future exercise; or

(b) the exercise of any other power or right.

23.3 No waiver is effective unless it is in writing.

23.4 The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

25. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous oral and written proposals, responsibilities, agreements and other communications between the parties.

26. VARIATION

Any amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

27. ASSIGNMENT

Neither party shall without the prior written approval of the other assign this Agreement or any part thereof.

28. SEVERABILITY

If anything in this Agreement is unenforceable, illegal or void, then it is severed and the rest of this Agreement remains in force.

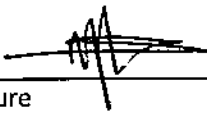
29. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the state of New South Wales and the Commonwealth of Australia.

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

30. SIGNATORIES


Signed on behalf of RECALL INFORMATION MANAGEMENT (ABN 25 004 270 991) by:


Signature

MARK COLE
Print name

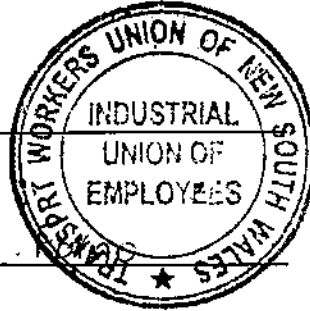
OPERATIONS DIRECTOR
Office held

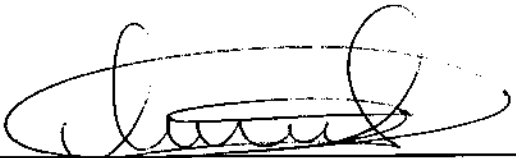
Signed on behalf of TRANSPORT WORKERS UNION OF NEW SOUTH WALES (ABN 77 710 588 395) by:


Signature

Wayne
Print name

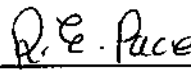
State Secretary
Office held




Signature

MAX MAROT
Print name

NSW OPERATIONS MANAGER
Office held


Signature

ROSEMARY ELAINE PACE
Print name

Industrielle Officer (Legal)
Office held
Justice of the Peace

Rosemary Elaine Pace
Justice of the Peace
in and for the state of
New South Wales
Registration No. 141357

SCHEDULE 1 — ANTI-DISCRIMINATION

1. It is the intention of the parties to this Agreement to seek to achieve the object in s 3(f) of the Act to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
2. It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Agreement which, by its terms or operation, has a direct or indirect discriminatory effect.
3. Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
4. Nothing in this clause is to be taken to affect:
 - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under s 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this Agreement from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
5. This schedule does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this schedule.

NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:
"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

SCHEDULE 2 - SERVICES

The transport (collection and delivery) of records from and to Recall's customers not limited to documents and computer tapes and/or other ancillary duties as allocated by Recall.

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

SCHEDULE 3 - RATES PAYABLE TO THE CONTRACTOR

TYPE OF SERVICE	RATES FROM FIRST FULL PAY PERIOD ON OR AFTER 1 JULY 2012	RATES FROM FIRST FULL PAY PERIOD ON OR AFTER 1ST ANNIVERSARY OF COMMENCEMENT DATE	RATES FROM FIRST FULL PAY PERIOD ON OR AFTER 2ND ANNIVERSARY OF COMMENCEMENT DATE
Supply Fee - Weekdays	\$ 28.42	\$ 29.27	\$ 30.15
Supply Fee - Weekends	\$ 55.33	\$ 56.99	\$ 58.70
Scheduled Deliveries	\$ 6.82	\$ 7.02	\$ 7.23
Unscheduled Deliveries	\$ 19.32	\$ 19.90	\$ 20.50
Item Handling	\$ 0.68	\$ 0.70	\$ 0.72
Other Allowances			
Mobile Phone Reimbursement Weekly	\$ 22.74	\$ 23.42	\$ 24.13
Tape Exchange	\$ 2.00	\$ 2.06	\$ 2.12
Hourly Rate	\$ 35.85	\$ 36.93	\$ 38.04
BHP (Port Kembla / ING (Tuggerah)	\$ 121.73	\$ 125.38	\$ 129.14
Chinese Bank	\$ 33.20	\$ 34.19	\$ 35.22
National Foods (Penrith)	\$ 18.81	\$ 19.37	\$ 19.95
IBM (KZI) 0800	\$ 27.67	\$ 28.50	\$ 29.35
IBM East Ryde to Chatswood	\$ 42.68	\$ 43.96	\$ 45.28
Waiting Time (Per 15 mins increments)	\$ 16.01	\$ 16.49	\$ 16.98
RAAF Base / Huhtamaki (LIL)	\$ 28.81	\$ 29.67	\$ 30.56
After Hours Urgent	\$ 38.65	\$ 39.80	\$ 41.00
Tolls - Bridge / Freeways (not to and from work)			
DMS Deliveries and Collections			
DMS Event	\$ 10.51	\$ 10.82	\$ 11.15
DMS Carton Handling	\$ 0.89	\$ 0.91	\$ 0.94

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

DMS Retail Per Item	\$ 0.89	\$ 0.91	\$ 0.94
DMS Sachel Delivery	\$ 0.56	\$ 0.57	\$ 0.59
DMS File Pick Up (If 8 Per Workorder)	\$ 0.69	\$ 0.71	\$ 0.73
After Hours Call Out Rate - Per Two Way Event	Negotiated	Negotiated	Negotiated
	Negotiated	Negotiated	Negotiated
Saturday Call Out Rate - Per Two Way Event	Negotiated	Negotiated	Negotiated
	Negotiated	Negotiated	Negotiated
Sunday / Public Holiday Call Out Rate - Per Two Way Event	Negotiated	Negotiated	Negotiated

Rates are exclusive of GST.

DEFINITIONS

Scheduled Delivery – A delivery, where the client code appears on the run sheet, or a case is given to an owner-driver prior to leaving base and can be delivered as part of their normal run.

Unscheduled Delivery – A delivery that does not appear on the run sheet and has to be delivered to a customer by a specific time.

Where Standard Operating Procedures allow, handling fee will be measured as the number of items scanned in performing deliveries and collections. In situations where files are not scanned as individual items and are collected or delivered in containers, a Per Item Handling Rate for the number of containers handled will apply.

SCHEDULE 4 - VEHICLE SPECIFICATIONS AND MAINTENANCE

SECURITY TRANSPORT VEHICLE – SPECIFICATION S

1. At the time of joining the fleet, vehicles should be no more than two years old. Replacement is mandatory when the vehicle is 6 years old unless otherwise approved by Recall management.
2. Vehicles may be one of the three (3) following categories unless otherwise approved and / or declined by Recall management:-
 - (a) 1 tonne capacity;
 - (b) 2 tonne capacity; and
 - (c) 3 tonne capacity;
(Vehicles in the 1tonne capacity, enclosed body type should be able to carry a minimum of 100 SCE's).

Recall Management reserves the right to specify the vehicle category it considers necessary to fulfil Recall's requirements.

3. Vehicles should be plain painted white and are not to carry any signwriting unless approved by Recall and will be required to carry Recall's own signwriting.
4. Vehicles must be fitted with dual air-conditioning front and rear.
5. A bulk head of approved type must be fitted between cab and load area to protect driver from injury by movement of contents in rear compartment.
6. An alarm system of approved type must be fitted covering all doors, windows and load area, preferably triggered by radio key.
7. Load area should be fitted with 12mm thick chipboard or similar between metal floor and rubber matting to minimise heat transfer to goods carried.
8. A fire extinguisher of approved type and size must be fitted within vehicle.
9. The Vehicle must be weatherproof at all times.
10. A First aid kit must be carried in vehicle
11. Vehicles are to be kept in clean and tidy and in good condition.
12. Vehicles engaged on Recall business must be registered and insured at all time.

SECURITY TRANSPORT VEHICLE – MAINTENANCE

1. Vehicles to be serviced regularly, and in accordance with manufacturer guidelines.
2. All vehicles to retain maintenance records (log book) up to date with evidence that the vehicle has been service by a reputable service provider.

Recall Information Management Pty Ltd - Data Protection Services Contract Agreement 2012

3. Tyres should be in roadworthy condition and contain sufficient tread to ensure that the safety of customers items are maintained and the chance of accident due to poor condition of tyres are eliminated.
4. Alarm systems should be working at all times. Should alarms systems fail, vehicle will be considered not fit for use until such time that the alarm has been repaired.

Where existing vehicles do not meet specifications, the contractor will be given 6 months from the signing of this contract to rectify such shortcomings. The 6 month grace period shall apply to the initial 6 months of the Agreement ONLY. Thereafter any non-compliance with vehicle specification will be deemed a breach.

SCHEDULE 5 - AREA

The areas of required services will be within the region of the Sydney Metropolitan Area and surrounding areas including other areas in New South Wales such as but not limited to Port Kembla and Richmond, as directed by Recall.

SCHEDULE 6 - SECURITY

Contractors must ensure:

1. Contractor must ensure that the vehicle is fitted with an alarm/immobiliser specified and approved by Recall.
2. Vehicles must remain locked at all times. This includes situations where the Contractor or Contractors' employees are out or away from the vehicle, as well as whilst the vehicle is travelling. This ensures that intruders cannot attempt to open the vehicle and remove items, even when the vehicle is stationary at traffic lights.
3. Alarm systems must be activated when the Contractor is out of, or away from the vehicle.
4. Windows must at all times be closed. This includes times when the vehicle is travelling. Partially open windows still provide opportunity for intruders to access the vehicle.
5. In the event of an accident, the Contractor should immediately notify Recall to advise the status of the situation and in particular advise if the integrity or custody of customer information is compromised.
6. The Contractor must ensure that items are scanned at the point of delivery to the customer, or collection at the customer's premises. Performing delivery scans at loading bays, car parking areas or anywhere else is strictly forbidden and will be construed as Serious and Willful Misconduct.
7. If there is any situation where a Contractor cannot scan items at the point of delivery or collection, the Contractor must immediately notify Recall.
8. The use of cameras, video cameras or any other such medium is forbidden within Recall's Information Centres and Secure Destruction Centres.
9. No smoking is allowed within the vehicle, when carrying customer items. This is considered a high risk with potential for fire within the vehicle and damage or destruction of customer's physical items.
10. Vehicles must be fitted with alarm systems that meet Recall Global standards. The cost of the initial installation of the alarm shall be at the cost of Recall provided that in the event of the vehicle being 'turned over' during the term of this Agreement, the cost of the de-installation/reinstallation of the alarm shall be at the cost of the Contractor. On expiry or termination of this Agreement the Contractor shall arrange for the de-installation and return of the alarm at the cost of Recall.