

The Conscience Organisation

STANDARD TERMS AND CONDITIONS

The Conscience Organisation Pty Ltd ABN 69 125 933 637 (TCO) provides a range of creative and marketing products and services. This document sets out the terms and conditions under which TCO supplies these products and services.

These Standard Terms and Conditions apply to all products and services provided by TCO to the Customer to the exclusion of any purchase order or other document submitted by the Customer to TCO.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, unless the context otherwise requires:

Base Intellectual Property means all Intellectual Property owned, created or used by the Customer.

Business Day means a day on which banks are open for retail banking business in Sydney, New South Wales other than a Saturday or Sunday.

Commencement Date means the date determined in accordance with clause 2.

Confidential Information means in the case of each party, all of that party's information which would reasonably be regarded as confidential, disclosed or made available to the other party before or after the Commencement Date, including information relating to its business, customers, suppliers, products, databases, services, strategies, or plans, but excluding information which:

- (a) the other party can prove it possessed before the relevant information was disclosed or made available to it by or on behalf of the disclosing party;
- (b) is lawfully acquired prior to the date of disclosure under this Agreement by the other party from a third person without restrictions as to its use or disclosure; or
- (c) is in or becomes part of the public domain other than as a result of the breach by the other party of this Agreement.

Contract Material means all materials and deliverables provided by TCO to the Customer or created or developed by or on behalf of TCO in the course of providing the Services, whether before or after the date of this Agreement.

CPI means the Consumer Price Index, Australia, All Groups, Weighted Average of Eight Capital Cities, published by the Australian Bureau of Statistics and, if that index ceases to be published, an alternative consumer price index nominated by TCO.

Customer means the company, person or other entity named as the customer in the Statement of Work.

Expenses means reasonable transport, hotel, meals and other expenses incurred by TCO in connection with the supply of Services and Products, provided that the expenses have either received the Customer's prior written approval or, where applicable, are in accordance with the Scope of Work.

Fees means the fees payable by the Customer to TCO for provision of the Services as specified in the Statement of Work. The Fees do not include any Expenses, Production Costs or Third Party Costs.

Force Majeure means a circumstance beyond the reasonable control of a party which results in the party being unable to observe or perform on time an obligation under this Agreement.

GST means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 and related legislation (as amended).

Insolvency Event means:

- (a) a party enters into any arrangement between itself and its creditors;
- (b) a party ceases to be able to pay its debts as they become due;
- (c) a party ceases to carry on business;
- (d) a mortgagee enters into possession or disposes of the whole or any part of the party's assets or business;
- (e) an order is made (and not set aside within 28 days) or a resolution passed for the winding-up or dissolution of a party; or
- (f) a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person for the party's applicable place of incorporation is appointed over the whole or any part of the party's assets or business.

Intellectual Property Rights means all statutory and other proprietary rights (including rights to require information be kept confidential) in respect of know-how, trade secrets, copyright, trade marks, designs, patents and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

Invoice has the meaning given to it in clause 7.2(a).

Material includes property, information and the subject matter of any category of intellectual property.

Milestone Dates means, in respect of a specific task which is to be performed by TCO as part of the Services, the target date for the performance of the relevant task.

Moral Right means each and every 'moral right' as defined in the *Copyright Act 1968* (Cth).

Production Costs means any costs incurred by TCO on the Customer's behalf in the creation or development of the Contract Material.

Products means any goods TCO provides to the Customer, whether as set out in a Statement of Work or otherwise.

Project Plan means the document (developed by TCO where required by the Statement of Work) which specifies the services, materials and personnel to be contributed by each party and the responsibilities of each party relating to the Services to be provided under this Agreement. A Project Plan will only be developed where required by the Statement of Work.

Statement of Work means the written Statement of Work, including a quotation, scope of works or estimate, which has been provided to the Customer, which describes the Products and/or Services to be supplied by TCO to the Customer under this Agreement.

Related Bodies Corporate has the meaning provided by the Corporations Act 2001.

Service means any services which the Statement of Work requires TCO to provide to the Customer or, in the absence of a Statement of Work, which TCO provides to the Customer.

Taxes means all taxes, charges, duties and similar imposed by a government or statutory body relating to the supply or use of goods or services or otherwise arising out of this Agreement including sales tax, goods and services tax, value added tax, fringe benefits tax, undistributed profits tax, financial institutions duty, stamp duties and any interest or penalty imposed in connection with any of the preceding items but does not include income or capital gains tax.

Third Party Costs means all third party costs incurred by TCO on the Customer's behalf in provision of the Services and Products, including media buying and placements, but excluding Production Costs. Third Party Costs include TCO's mark up or commission where such mark up or commission is set out in the Scope of Work or otherwise agreed by the parties.

Third Party Material means Material owned by a third party that is included, embodied in or attached to the Contract Material.

TCO means The Conscience Organisation Pty Ltd ABN 69 125 933 637.

TCO Material means all Material created by TCO prior to the commencement of this Agreement.

Term has the meaning provided by clause 3.

1.2. Interpretation

In this Agreement:

- (a) The singular includes the plural and vice versa.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.

- (d) If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.
- (e) Headings are for ease of reference and do not affect the construction of this Agreement.
- (f) Money amounts are stated in Australian currency unless otherwise specified.
- (g) The words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.

1.3. Interpretation – order of precedence

This Agreement is comprised of the following documents which apply in the following order of precedence:

- (a) a Statement of Work;
- (b) a Project Plan (if applicable); and
- (c) these Standard Terms and Conditions,

with the result that any inconsistency between these documents will be resolved in favour of the earlier listed document.

2. COMMENCEMENT DATE

2.1. Customer's acceptance of Statement of Work

Subject to clause 2.2, the Commencement Date is the date the Customer signs a Statement of Work, or otherwise notifies TCO of its acceptance of the Statement of Work, or otherwise accepts Products and/or Services provided by TCO.

3. TERM

The Agreement commences on the Commencement Date and will continue until the earlier of:

- (a) the parties having completed the performance of their obligations; or
- (b) this Agreement is terminated in accordance with clause 14.

4. PROJECT PLAN

- (a) If the Statement of Work requires the development of a Project Plan, the parties must develop and agree to the Project Plan before TCO provides any of the applicable Products and/or Services.
- (b) The Customer and TCO will consult with each other and use reasonable efforts to develop the Project Plan.
- (c) The Customer will pay TCO for the development of the Project Plan in accordance with the Statement of Work.
- (d) The Project Plan will describe:
 - (i) the obligations of each party and the resources and facilities which will be provided by each party as required for the supply of the Products and/or the performance of the Services;
 - (ii) if applicable, the Milestone Dates applicable to the supply of the Products and/or the performance of the Services; and

- (iii) any other the details required by the Statement of Work.
- (e) Once the Project Plan has been developed and agreed the parties must comply with the Project Plan, unless varied in writing.

5. SERVICES – GENERAL OBLIGATIONS

5.1. Appointment

- (a) Nothing in this Agreement requires TCO to provide any Services to the Customer at any time when:
 - (i) the Customer has not paid for Products and/or Services previously provided by TCO for which payment is then due; or
 - (ii) the Customer has breached this Agreement and that breach has not been duly remedied.

5.2. Personnel and facilities

- (a) The Customer will provide sufficient, qualified personnel capable of performing all of its duties and obligations under the Statement of Work and Project Plan (as applicable) and this Agreement and will provide reasonable and necessary access to its relevant personnel.
- (b) The Customer will provide TCO with access to the information, equipment and facilities that TCO reasonably requires to perform the Services.

5.3. Provision of Services

- (a) TCO will provide the Customer with all other services requested by the Customer and set out in the Statement of Work in accordance with the terms of this Agreement.

6. INTELLECTUAL PROPERTY

- (a) The Customer grants TCO an irrevocable, fee free and worldwide licence (with an unlimited right of sub-licence) to use or allow the use of Base Intellectual Property for the purpose of fulfilling TCO's obligations under this Agreement.
- (b) Unless expressly specified otherwise in the Statement of Work, TCO will own all Intellectual Property Rights in all Contract Material.
- (c) TCO grants to the Customer (subject to payment of all amounts payable under this Agreement) a royalty free, non-transferrable, licence to use the material and the deliverables for the purposes of the project or business activity to which the Products and/or Services relate.
- (d) To the extent any personnel of the Customer have any moral rights in respect of any Contract Material, the Customer must procure that such personnel give a moral rights consent to TCO, and its successors and nominees, doing or omitting to do anything which, but for that moral rights consent would constitute a breach of that person's moral rights.
- (e) If TCO is required to communicate the brands of the Customer, the Customer hereby consents to the use of the Customer's logo for TCO's marketing collateral

including but not limited to website, social media, corporate profile and printed materials.

- (f) TCO shall retain all masters, rushes and other preparatory material and the Customer will not be entitled to such originals. The Customer may request duplicates of these materials at additional cost.
- (g) The Customer appoints TCO as agent to procure any use of any third party intellectual property required for the performance of this Agreement.

7. FEES, EXPENSES, PRODUCTION COSTS, THIRD PARTY COSTS AND INVOICING

7.1. Invoice and Payment

The Customer must pay TCO the Fees, Expenses, Products Costs and Third Party Costs in accordance with this Agreement and the Statement of Work. Subject to the payment terms set out in the Statement of Work, TCO will provide valid tax invoices (**Invoices**), and the Customer will pay the Invoices within 14 Business Days after the date of the relevant Invoice.

7.2. Fees and Expenses

TCO will invoice the Customer for the Fees and Expenses on a monthly basis.

7.3. Third Party Costs and Production Costs

- (a) TCO will invoice the Customer for the Third Party Costs, and the Customer will pay the Third Party Costs, prior to TCO engaging the relevant third party for the provision of services, including placing media with a media vendor.
- (b) TCO will invoice the Customer for the Production Costs, and the Customer will pay the Production Costs, in the following ways:
 - (i) 50% - prior to TCO or a third party commencing production of the relevant Contract Material; and
 - (ii) 50% - after TCO or a third party completing the production of the relevant Contract Material, but prior to the delivery of the relevant Contract Material.
- (c) The Customer acknowledges that its delay in the payment of Third Party Costs or Production Costs may adversely impact on a third party (including a media vendor)'s performance, and TCO is not responsible for the consequences of the late payment.

7.4. Surcharges

Any third party transaction surcharges will be passed onto the Customer with or without notice to the Customer, including the transaction fees charged by the banks or credit cards issuers.

7.5. Out of scope services

Where TCO provides the Customer with services that are not specified in a Statement of Work, but are related to or ancillary to those services, TCO will invoice and the Customer must pay for those services in accordance with the terms of clause 7.2 at TCO's standard hourly rates for providing those service, which standard hourly rates may be as amended by TCO from time to time and notified to the Customer or which may otherwise be set out in a Statement of Work.

7.6. Disputed invoices

If the Customer wishes to dispute an Invoice it must:

- (a) pay TCO all parts of the Invoice which are not the subject of a bona fide dispute; and
- (b) give TCO notice of the dispute and the reasons why the Customer disputes the relevant Invoice,

before the due date for payment of the Invoice, after which time if the Customer does not dispute the Invoice in the manner specified in this clause 7.4 the customer may not thereafter Dispute that Invoice and must pay that invoice immediately upon demand.

7.7. Default in payment

If the Customer fails to pay any amount payable under this Agreement by the due date then, except where the amount has been validly disputed pursuant to clause 7.4, TCO may (without prejudice to any other remedies to which it is entitled):

- (a) charge the Customer interest on the amount due and not paid, for the duration that the payment is outstanding by the Customer, at the rate of 2% per month calculated daily; and/or
- (b) suspend performance of TCO's obligations under this Agreement without any liability to the Customer for any loss or damage suffered or incurred in respect of the suspension.

7.8. Other rights and obligations not affected

The exercise by TCO of any of TCO's rights under clause 7.5 does not affect:

- (a) the Customer's obligations; or
- (b) any other rights or remedies TCO may have in relation to the default by the Customer,

under this Agreement or any other agreement between TCO and the Customer.

7.9. Variation

- (a) The Price and Fees are subject to variation as set out in this clause 7.7.
- (b) If the Services are provided during a period greater than 12 months, the Price in the Statement of Work may be subject to annual adjustment on the first anniversary of the Commencement Date, and on each anniversary of the Commencement Date after that, by TCO giving the Customer written notice. Any increase in the Price will be calculated in accordance with the greater of:
 - (i) the change in the CPI between the relevant anniversary date and the date on which the Price were last set or varied; or
 - (ii) 5%

7.10. Expenses

The Customer must pay TCO or reimburse TCO for any expenses which the Customer is required to pay or incur under the Statement of Work or otherwise under this Agreement in order to provide the Products and/or Services.

8. CONFIDENTIAL INFORMATION

8.1. Acknowledgement of confidentiality

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Each party (**Recipient**) acknowledges that:

- (a) all the Confidential Information of the other party (**Discloser**) is secret and confidential to the Discloser; and
- (b) any unauthorised use, reproduction or disclosure of the Confidential Information may cause loss, damage or expense to the Discloser.

8.2. Obligation of confidentiality

The Recipient must (except as may be required by law or with the Discloser's prior written consent):

- (a) maintain the secrecy and confidentiality of the Confidential Information;
- (b) not divulge or disclose any of the Discloser's Confidential Information to any other person, firm, corporation or entity;
- (c) only use the Discloser's Confidential Information where it is necessary to do so to enable the supply or use of the Products and/or Services;
- (d) refrain from copying any of the Discloser's Confidential Information, or attempting to do the same, except where necessary to do so to enable the supply or use of the Products and/or Services; and
- (e) immediately notify the Discloser of any actual or suspected unauthorised use, reproduction or disclosure of the Discloser's Confidential Information.

8.3. Disclosure required by law

If the Recipient is required by law to disclose the Discloser's Confidential Information:

- (a) the Recipient will promptly give the Discloser written notice specifying the legal requirement and the Confidential Information to be disclosed; and
- (b) the Recipient will use best endeavours to arrange for disclosure of the relevant Confidential Information in a manner which safeguards the confidentiality of the information disclosed.

8.4. Injunctions

The Recipient acknowledges and agrees that a breach of this Agreement may cause the Discloser to suffer loss, damage and expense for which damages may not be adequate compensation and may be difficult to ascertain and that the Discloser may immediately seek to restrain any actual or threatened breach of this Agreement by injunction or any similar remedy.

9. GST

9.1. Definitions

In this clause 9:

- (a) the expressions Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act; and
- (b) Supplier means any party treated by the GST Act as making a Supply under this Agreement.

9.2. Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

9.3. Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to TCO an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

9.4. Reimbursement of expenses

If this Agreement requires a party (the First Party) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (Reimbursable Expense) suffered or incurred by the other party (the Other Party), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (Net Amount); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

10. RESTRICTIVE COVENANTS

- (a) In this clause 10, Restraint Period means a period commencing on the Commencement Date and ending:
 - (i) 2 years; or if this period is considered unenforceable then
 - (ii) 1 year; or if this period is considered unenforceable then
 - (iii) 6 months; or if this period is considered unenforceable then
 - (iv) 3 months,after the date on which TCO last provided any Services under this Agreement, the applicable period being the longest period enforceable by an appropriate court.
- (b) In this clause 10, the Restraint Area means:
 - (i) any country in which TCO or any Related Bodies Corporate is conducting business or planning to conduct business, in each case, as at the date of Termination of this Agreement; or if this geographic scope is considered unenforceable; then
 - (ii) the State or Territory in which TCO primarily performed services for the Customer; or if this geographic scope is considered unenforceable; then

- (iii) a two hundred (200) kilometre radius from the premises from which TCO primarily performed the Services.

- (c) During the Restraint Period, the Customer will not:
 - (i) carry on or be concerned, engaged or interested directly or indirectly in any capacity whatsoever in any trade or business which competes with the business carried on by TCO or any business which TCO has formulated plans to undertake;
 - (ii) directly or indirectly endeavour to entice away from TCO or solicit or accept the business of or deal with any person, firm or TCO who is or was a customer or customer or prospective customer of TCO or its Related Bodies Corporate during the term of this Agreement; or
 - (iii) directly or indirectly solicit or seek to entice away from TCO any person who is or was a director, employee or consultant of TCO whether or not such person would commit any breach of this Agreement by reason of so leaving the service of TCO or otherwise; or
 - (iv) directly or indirectly employ or engage or induce, or seek to induce to leave the service of TCO or any person who is or was a director whether or not such person would commit any breach of their Agreement by reason of so leaving the service of TCO or otherwise.
- (d) The Customer agrees that if it breaches clauses 10(c)(iii)-(iv) of this Agreement, it will pay to TCO liquidated damages in an amount equal to 30% of the annual salary or annualised contracted amount (if a contractor) at the time of departing TCO of such person referred to in those clauses. The Customer acknowledges and agrees that such liquidated damages are a reasonable and genuine pre-estimate of the losses TCO would sustain in the event of such breach.
- (e) At any time after the Termination of this Agreement, the Customer will not represent itself as being in any way currently connected with or interested in the business of TCO.
- (f) The Customer agrees that each of these separate provisions is a fair and reasonable restraint of trade that goes no further than reasonably necessary to protect TCO's goodwill and business.
- (g) Each of the restrictions is intended to be separate and severable. If any restriction is held to be unreasonably wide but would be valid if part of the wording were deleted, such restriction will apply with the necessary wording deleted to make it valid.
- (h) The restrictions in this clause 10 apply to each party acting directly or indirectly and on its own behalf or on behalf of, or in conjunction with, any firm, company or person.

11. PRIVACY

- (a) In performing their respective obligations under this Agreement, each party will comply with applicable privacy

and data protection laws. In respect of any data to which the Customer gives TCO access or possession for the purpose of providing the Services, the Customer warrants that TCO's access or possession (as applicable) for that purpose complies with applicable privacy and data protection laws.

- (b) When accessing or handling the Customer's data, TCO will comply with the Customer's applicable reasonable policies that have been disclosed to TCO in writing.

12. IMPLIED TERMS

12.1. Exclusion of implied terms

Any representation, warranty, condition, guarantee or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

12.2. Non-excludable rights implied by statute

Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law, Schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement

12.3. Liability for breach of non-excludable rights

To the fullest extent permitted by law, the liability of TCO for a breach of a non-excludable guarantee referred to in clause 12.2 is limited, at TCO's option, to:

- (a) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

12.4. Survival of clause

Despite any other provision of this Agreement, this clause 12 survives the expiry or termination of this Agreement.

13. LIABILITY

13.1. Limitation of liability

TCO will be under no liability to the Customer or any other person in respect of:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Customer or any of its officers, employees, agents or contractors;
- (b) any negligent act or omission by TCO; or

- (c) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or corruption of data or loss or damage resulting from wasted management time irrespective of whether:

- (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
- (ii) the Customer or any other person was previously notified of the possibility of the loss or damage.

13.2. Maximum liability

The maximum aggregate liability of TCO for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts actually paid by the Customer to TCO under the Statement of Work in relation to the particular Product or Service which was responsible for or connected with the relevant loss, damage or claim.

13.3. No reliance on representations

- (a) The Customer warrants that it has not relied on any representation made by TCO which has not been stated expressly in this Agreement, or relied upon any descriptions, illustrations or specifications contained in any document including websites or publicity material produced or provided by TCO.
- (b) The Customer acknowledges that to the extent TCO has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

13.4. Indemnity

The Customer will at all times indemnify and hold harmless TCO and its officers, employees and agents ('**those indemnified**') from and against any loss, (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by the Customer of its obligations under this Agreement; or
- (b) any wilful, unlawful or negligent act or omission of the Customer.

14. TERMINATION

14.1. Termination by TCO

Without limiting the generality of any other provision in this Agreement, TCO may suspend or terminate (or suspend then subsequently terminate) its provision of all or any of the Services under any Statement of Work and this Agreement immediately by notice in writing if:

- (a) the Customer fails to pay an amount owing under this Agreement within 10 Business Days of a written reminder that it is overdue;
- (b) the Customer is in breach of any term of this Agreement not relating to the payment of money and that breach is

not remedied within 14 Business Days of notification by TCO;

- (c) the Customer suffers, experiences or commits an Insolvency Event;
- (d) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- (e) the Customer, being a natural person, dies or becomes incapacitated.

14.2. Termination by Customer

The Customer may terminate this Agreement immediately by notice in writing if:

- (a) TCO is in breach of any term of this Agreement and that breach is not remedied within 14 Business Days of notification by TCO; or

TCO suffers or commits an Insolvency Event.

14.3. Consequences of termination

If a notice of termination is given under clause 14.1 or clause 14.2, all monies payable to TCO under this Agreement or which would have become payable but for that termination will, to the extent permitted by law, become immediately due and payable, and:

- (a) each party may repossess any of its property in the possession, custody or control of the other party;
- (b) TCO may retain any monies paid;
- (c) TCO may charge for all Services performed in respect of which no Price has been previously charged;
- (d) TCO may charge for all costs, disbursements and expenses, incurred in expectation of performing all of the requirements of the Statement of Work including the cost of any Products and/or Services purchased on behalf of or for on-supply to the Customer prior to the termination date (except to the extent the Customer has already paid the applicable Price for those items);
- (e) each party may require the other party to deliver to it or erase or destroy, or procure the delivery, erasure or destruction (as applicable), all materials containing its Confidential Information and certify its compliance with these obligations; and
- (f) each party may pursue any additional or alternative remedies provided by law.

15. FORCE MAJEURE

- (a) TCO will not be liable for any delay or failure to perform its obligations under a Statement of Work or this Agreement if that delay is due to Force Majeure.
- (b) If a delay or failure of TCO to perform its obligations is caused or anticipated due to Force Majeure, the performance of TCO's obligations will be suspended.
- (c) If a delay or failure by TCO to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate the Agreement on providing notice in writing to the other party, in which event TCO will not be deemed to have breached this Agreement.

- (d) If this Agreement is terminated pursuant to clause 15(c), TCO will refund moneys previously paid by the Customer under this Agreement for the Services which were not provided due to Force Majeure.

16. DELAY

- (a) Without limiting clause 15, TCO will not be responsible for any delays (or costs and losses arising from delays) which occur during the course of the Services and which arise from any non-compliance by the Customer with this Agreement, an applicable Statement of Work or Project Plan, the late supply or provision of instructions and information by the Customer, delays in obtaining access to the Customer's personnel and/or facilities or any delays caused by the Customer's third party suppliers and contractors.
- (b) TCO will be entitled to extension of time in respect of any schedule, deadline or milestone equal to the duration of any delay caused by Force Majeure or a cause specified in clause 15(a).

17. SUB-CONTRACTS

- (a) TCO may subcontract the performance of all or part of its obligations under this Agreement.
- (b) TCO may, without the consent of the Customer, engage individuals on a subcontract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of the Services under this Agreement.

18. ENTIRE AGREEMENT

- (a) These terms and conditions, Statement of Work and Project Plan (as applicable) constitute this Agreement which is the entire agreement between the parties for the supply of the Products and/or Services and supersedes all prior representations, statements and understandings or undertakings, whether verbal or in writing.
- (b) No modification or alteration of any provision of this Agreement will be valid except those in writing signed by each party as set out in clause 25.

19. ASSIGNMENT

Neither the benefits nor burdens of this Agreement may be assigned, transferred, licensed or sub-licensed by the Customer without the prior written consent of TCO. TCO may assign the benefits or burdens of this Agreement to a Related Body Corporate or other entity under common ownership with TCO or the purchaser of all or part of TCO's business.

20. WAIVER

- (a) No right under this Agreement will be deemed to be waived except by notice in writing signed by each party.
- (b) A waiver by TCO under clause 20(a) will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.
- (c) Subject to clause 20(a), any failure by TCO to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by TCO to the Customer, will not be construed as a waiver of TCO's rights under this Agreement.

21. TCO'S RIGHTS

Any express statement of a right of TCO under this Agreement is without prejudice to any other right of TCO expressly stated in this Agreement or existing at law.

22. DISPUTE RESOLUTION

22.1. Negotiation

If any dispute arises out of or in connection with this Agreement or the Services, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

22.2. Mediation

If the dispute is not wholly resolved at the meeting under clause 22.1, the parties will attempt to settle it by mediation. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute, or the Chair's designated representative. The Resolution Institute Mediation Rules shall apply to the mediation. Neither party may commence litigation (other than for non-payment of money unless this clause 22.2 has been complied with).

23. SURVIVAL

The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Term or termination will remain in full force and effect following the expiration of the Term or termination.

24. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws in force in the State of New South Wales, and the parties irrevocably submit to the exclusive jurisdiction of the Courts of that State and of the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

25. NOTICES

- (a) Notices under this Agreement may be delivered by hand, by mail, by e-mail or by facsimile to the addresses specified in the Statement of Work.
- (b) Notices will be deemed given:
 - (i) in the case of hand delivery, upon delivery;
 - (ii) in the case of post, 3 days after posting;
 - (iii) in the case of e-mail or facsimile, upon receipt by the sender of confirmation of transmission if confirmation is received before 5.00 pm on a business day or otherwise at the commencement of the first business day following transmission.

26. VARIATION

- (a) Subject to the terms of clause 7.3, the provisions of this Agreement may not be varied, except by agreement in writing signed by the parties.

- (b) If either party (the '**Proposing Party**') wishes to vary the Agreement:
 - (i) the Proposing Party will submit a copy of the proposed variations to the other Party (the '**Receiving Party**'), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejection of the proposal;
 - (ii) if the Receiving Party accepts the variations, the Agreement will be deemed to be so amended from the date of acceptance; and
 - (iii) if the Receiving Party rejects the proposed variations, each party will perform the Agreement in accordance with the unvaried terms.

27. GENERAL

27.1. Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

27.2. Further assurances

A party, at its own cost and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to this Agreement.

27.3. No adverse construction

This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation

27.4. No right of set-off

Unless this Agreement expressly provides otherwise, a party has no right of set-off against a payment due to another party.

27.5. Counterparts & Electronic Execution

If this Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.

It is agreed by the Parties that, notwithstanding the use of the words "writing," "execution," "signed," "signature," or other similar words, the Parties intend that the use of electronic signatures and the keeping of records in electronic form are granted the same legal effect, validity or enforceability as a signature affixed by hand or the use of a paper-based record keeping system (as the case might be) to the extent and as provided for in any applicable law.